THE LAW
of
RADIO BROADCASTING

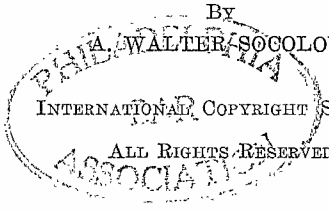
BY

A. WALTER SOCOLOW

Member of the New York Bar
Member of Federal Communications Commission Bar

In Two Volumes
VOLUME ONE

New York
BAKER, VOORHIS & CO.
1939



Printed in the United States of America

TO

MY WIFE

FOREWORD

It is axiomatic that the science of law must advance to meet the progress and exigencies of society. In the current scene, broadcasting undoubtedly plays a role of great social significance. The development of the radio industry as a private enterprise has been unhampered by government domination such as prevails in other countries. In the United States, Federal regulation, which is predicated upon the statutory requirement that broadcast operations comply with the standard of public interest, convenience or necessity, has not stunted the evolution of this avenue of communication as an effective entertainment and advertising medium.

The many facets of this modern business have created legal problems which run almost the entire gamut of domestic and international law. It has been my object to collate, discuss and survey comprehensively the various pertinent statutes, decisions and authorities and to help establish a body of rules for the systematic and regular administration of justice in this new sphere of activity.

I have found it necessary to cut a cross-section of many of the wider categories of the law in order to view in limited focus the legal implications of an industry which is *sui generis*. I have been obliged to telescope a treatment of the underlying concepts of such subjects as international, constitutional and administrative law, unfair competition, contracts, agency, defamation, copyright and labor law. To do otherwise would make the scope of this work more extensive than I intended it to be. Moreover, adequate general consideration has already been given to these larger branches of law by other writers.

Although my personal views and theories on controversial points are apparent in many instances, I have endeavored to be unbiased and to free myself of the par-

tisanship of the advocate. It has been my aim to make this work more useful by including the basic statutes and administrative rules in the appendices. I believe that few decisions have escaped my notice and I should appreciate being advised of any omissions or other faults which my readers may find.

The writing of this work was a formidable task for an active practitioner to assume. My burden was lightened by several research assistants. I am particularly grateful to Myron L. Shapiro, the most capable of these assistants, for his conscientious cooperation. I wish to praise him highly for fitting his invaluable services into the time-pattern I found it necessary to adopt.

I am greatly indebted to my wife, Edith G. Socolow, for her tireless and unsparing assistance in the literary aspects of this work. Her expert aid was also indispensable in the reading of the proofs.

I cannot refrain from recording my sentiments for my late father, Harry J. Socolow, who passed away while this book was being written. His encouragement and inspiration did much to engender this undertaking.

Finally, I wish to express my appreciation for the opportunities afforded me by my clients to work in and familiarize myself with the law of radio broadcasting. Without this privilege, I should never have entered this highly interesting and stimulating mine of legal study.

A. WALTER SOCOLOW

December, 1938
608 Fifth Avenue,
New York City.

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United States Treasury Dept., Bur. Internal Rev., Regulations 86, Art. 22(a) 368
United States Treasury Dept., Bur. Internal Rev., Regulations 91, Art. 4 369
United States Treasury Dept., Bur. Internal Rev., Regulations 91, Art. 8 370
United States Treasury Dept., Bur. Internal Rev., Regulations 91, Art. 12 365

BIBLIOGRAPHY

BIBLIOGRAPHY

BOOKS CITED

PAGE

Aly and Schively, Debate Handbook on Radio Control and Operation (1933) (Univ. of Iowa, Extension Bull.) 1035
Amdur on Copyright Law (1936) 1052, 1161, 1163
American Civil Liberties Union, "Radio Is Censored" (Nov., 1936) 11 1019, 1025
American Federation of Musicians, Constitution, By-Laws and Standing Resolutions (1936), Art. XII, 4 340
Beale, Treatise on the Conflict of Laws (1935) 873, 879
Berry, Communications (1937), 704–706 .....47, 58, 71, 72, 73, 94, 139, 162, 176, 1005
Brindze, Not to be Broadcast (1937) 794, 815, 1025
Broadcasting Yearbook (1937), 214 .....274, 291, 303
Broadcasting Yearbook (1937), 214, "Standard conditions governing contracts and orders for spot broadcasting." clause (a), § 7 275
Broadcasting Yearbook (1938), 165 *et seq.* 281, 668
Broadcasting, Yearbook (1938), 165, 166, 170, 172, 176, 177 668
Broadcasting Yearbook (1938), 166 *et seq.* 310
Broadcasting Yearbook (1938) 171, col. 2; (1937), 206, col. 2 292
Broadcasting Yearbook (1938), 355, Natl. Assn. of Broadcasters, Code of Ethics (1935), § 6 281
Cooley, The Law of Taxation (4th ed., 1924) 208, 220, 221
Cooley on Constitutional Limitations (8th ed., Carrington, 1927) ..17, 187, 195
Cooley on Torts (4th ed., 1932) 848, 853
Cooley on Torts (1907 ed.) 819
Copinger on the Law of Copyright (Eng. 7th ed., 1936) 761, 1042, 1045, 1048, 1053, 1085, 1131, 1144, 1168, 1178, 1228
Davis, S., Law of Radio Communication (1927) 849, 850, 851, 853, 857
Davis, W. J., Radio Law (1929) 27, 30
Derenberg, Trade Mark Protection and Unfair Trading (1936) ..920, 950, 951
De Wolfe, An Outline of Copyright Law (1925), 1, 2 ....820, 825, 1076, 1142
Dill, Radio Law (1938), 89 .....44, 58, 61, 176, 291, 309
Dillon, Municipal Corporations (5th ed., 1911) 204
Drone on the Law of Property in Intellectual Productions (1879) 102 .. 820, 825
Drone on the Law of Property in Intellectual Productions (1879), 118 .. 1043
Elliott on Bailments (2d ed., 1929), § 22, 124 .....234, 235
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Frohlich & Schwartz, Law of Motion Pictures (1917) ...709, 716, 717, 718, 723, 728, 730, 732, 738, 741, 753, 756, 944, 946, 947, 1048, 1049, 1056, 1062, 1077, 1158, 1163
Goodwin, Elements of a Lottery (Govt. Printing Office, 1912) 895

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Haase, Advertising Agency Compensation (1934) 662, 670
Handler, Cases & Materials on Trade Regulation (1937), 540 ..... 917, 932, 966
Harper on Torts (1933) 866
Holdsworth, History of English Law (1923) 825, 848
Hopkins, Trademarks, Tradenames, and Unfair Competition (4 ed., 1924) 13 921
Hughes, Federal Practice (1931) 876
Jones, Digest of Workmen's Compensation Laws of the States (1935) .. 353, 354, 356, 357, 360, 361
Kenner, The Fight for Truth in Advertising (1936) 966
Kent, Commentaries (Holmes, 13th ed., 1884) 1254
Koepfle, Copyright Protection Throughout the World (U. S. Dept. of Commerce, Div. of Commercial Laws, 1936) 1224
Labatt on Master and Servant (2d ed., 1913) 704
Lewis, Law of Leases of Real Property (2d ed., 1930), 775 257
McCormick on Damages (1936) 149 734
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Mechem on Agency (2nd ed., 1923) .. 664, 665, 666, 671, 672, 682, 712, 713
Mechem on Agency (2d ed., 1923), § 50 776
Mechem on Agency (2d ed., 1923), § 241 779
Mechem on Agency (2d ed., 1923), § 1709 790
Newell, Slander and Libel (4th ed., 1924) 872
Newell, Slander and Libel (4th ed., 1924), § 1 848
Newell, Slander and Libel (4th ed., 1924), § 187 ..... 858, 864
Newell, Slander and Libel (4th ed., 1924), § 343 *et seq.* 857
Oakes, Organized Labor and Industrial Conflicts (1927), 263 333
Oakes, Organized Labor and Industrial Conflicts (1927), 292 336
Oakes, Organized Labor and Industrial Conflicts (1927), 326–347, 411, 428 334
Odgers, Libel and Slander (6th ed., 1929), 132 851
Pollock, Principles of Contract (9th ed.), p. 2 696
Pollock and Maitland, History of English Law (1923), 53 825
Radio is Censored! (1936) American Civil Liberties Union 1025
Scott on Interstate Rendition (1917), § 1 880
Scott on Interstate Rendition (1917), § 35 883
Seelman, The Law of Libel and Slander (1933), 196 *et seq.* 849, 866
Seelman, The Law of Libel and Slander (1933), 627 812
Seelman, The Law of Libel and Slander (1933), § 97 822
Segal & Spearman, State and Municipal Regulation of Radio Communication (1929), 7 ..... 191, 196
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Shafter, Musical Copyright (1932), 18 1059
Shafter, Musical Copyright (1932), 90 1053
Shafter, Musical Copyright (1932), 91 1053
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Sharfman, The Interstate Commerce Commission (1931), 355 134
Speiser, Legal Rights of Performing Artists (1934) 1236, 1243

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Stephens, Administrative Tribunals and the Rules of Evidence (1933), pp. 92–103. 134
Strong on Dramatic & Musical Law (3d ed., 1909), 42. 748
Thomas, Lotteries, Frauds and Obscenity in the Mails (1900), 35. 894
Thomas, Lotteries, Frauds and Obscenity in the Mails (1900), 43 *et seq.* 901
Throckmorton's Cooley on Torts (1930), 67. 873
Variety Radio Directory (1st annual ed., 1937), 269, 278. . . . . 34, 36
Veeder, History of the Law of Defamation, 3 Select Essays in Anglo-American Legal History (1907), 472. 848
Walsh on Equity (1930), 65, 66. . . . . 736, 738
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Walsh, History of Anglo-American Law (1932), § 168. 825
Wigmore on Evidence (2d ed., 1923), § 4 c. 134, 137
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Weil on the Law of Copyright (1917), 109, 141. 1112
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Williston on Contracts (rev. ed., 1936), §§ 37, 620. 696
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Willoughby on the Constitution of the United States (2d ed., 1929), § 416 816

REPORTS OF GOVERNMENTAL AGENCIES CITED

Federal Communications Commission, 1 Annual Report (1935). 73
Federal Communications Commission, 2 Annual Report (1936). 98
Federal Radio Commission, 2 Annual Report (1928). 1005
Federal Radio Commission, 3 Annual Report (1929). 73
Federal Radio Commission, 3 Annual Report (1929). 1005
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Federal Radio Commission, 4 Annual Report (1930), 27, Practice and Procedure 107
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Federal Radio Commission, 6 Annual Report (1932), Release of July 15, 1932 73
Federal Trade Commission, 22 Annual Report (1936)..971, 972, 975, 976, 986, 1001, 1004
Federal Trade Commission, 22 Annual Report 152 (1936), Rules of Practice, Rule VII 976
Report to the Secretary of State by the Chairman of the American Delegation to the International Telecommunications Conferences of Cairo, Egypt (June 16, 1938) 35, 36

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Restatement, Agency (1933) § 1 .....664, 776
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Restatement, Agency (1933), § 82 .....674, 675
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Restatement of the Conflict of Laws (1934), § 65..... 872
Restatement of the Conflict of Laws (1934), § 377, comment (a)....871, 872

ARTICLES CITED

Albertsworth, *Judicial Review of Administrative Action*, (1922) 35 Harv. L. Rev. 127 .....130, 167
Bass, *Interpretative Rights of Performing Artists*, (1938) 42 Dickinson L. Rev. 57..... 1037
Baum, *Legal Phases of Local Sales Tax*, (1937) II. Legal Notes on Local Government, 329 223
Beckhoefer, *State Taxation of Radio Communication*, (1931) 1 Journ. Radio L. 477 211
Bellows, *Is Radio Censored?* (1935) Harper's Magazine 704..... 1013
Caldwell, *Developments in Federal Regulation of Broadcasting*, (1938) 2 Variety Radio Directory 546 36
Caldwell, *Regulation of Broadcasting by the Federal Government*, (1937) 1 Variety Radio Directory 269..... 34
Caldwell, *Freedom of Speech and Radio Broadcasting*, (1935) 177 The Annals 179 1009
Caldwell, L. G., *New Rules and Regulations of Federal Radio Commission*, (1932) 2 Journ. of Radio L. 66.....75, 76, 110, 126, 139
Cook, *Tort Liability and the Conflict of Laws*, (1935) 35 Col. L. Rev. 202 872
Cooper, *Fiction of Peaceful Picketing*, (1936) 35 Mich. L. Rev. 73..... 334
Davis, *International Radio Telegraph Conventions and Traffic Arrangements*, (1930) 1 Air L. Rev. 349.....24, 25, 26, 28, 29, 30, 31
Davis, *Regulation of Radio Advertising*, (1935) 177 Annals 154..... 972
Dill, Clarence C., *Radio and the Press: A Contrary View*, (January, 1935) 177 The Annals 170..... 797
Donovan, *Origin and Development of Radio Law*, (1931) 2 Air L. Rev. 107 .....24, 25
Fawcett, *Protecting the Trademarks Fostered by Radio*, (1934, N. S.) 29 Bull., U. S. Tr. Mark Assn. 148 939
Felix, *Engineering Foundations for Regulation of Television Broadcasting*, (1936) 7 Air L. Rev. 387..... 1249
Goodrich, *Tort Liability and the Conflict of Laws*, (1925) 73 U. of Pa. L. Rev. 19 872
Grimshaw, *State Radio Legislation*, (1937) 1 Fed. Communications Bar J. 9 1083

PAGE

Haase & Digges, *Suggestions for a New Form of Agency Contract,* (1935, No. 5) 170 Printers Ink 25 679

Haley, *The Broadcasting and Postal Lottery Statutes,* (1936) 7 Air L. Rev. 405, 408 .....889, 890, 896, 901

Haley, *The Law on Radio Programs* [Govt. Printing Office, S. Document No. 137 (1938)].....200, 897, 1018, 1023

Handler, *False and Misleading Advertising,* (1929) 39 Yale L. J. 22.. 966, 971, 986, 989

Handler, *Jurisdiction of the Federal Trade Commission over False Advertising,* (1931) 31 Col. L. Rev. 527.....971, 981, 984, 986

Handler, *Unfair Competition,* (1936) 21 Iowa L. Rev. 175..800, 917, 921, 942, 966, 978, 983, 986, 989, 997

Harris, *The Press and the Radio,* (January, 1935) 177 The Annals 163.. 798

Hellerstein, *Secondary Boycotts in Labor Disputes,* (1938) 47 Yale L. J. 341 344

Kassner, *Radio Censorship,* (1937) 8 Air L. Rev. 99..... 1025

Keating, *Pirates of the Air,* (1934) 169 Harpers 463.....794, 798

Klivitsky, *Protection of Unpatentable Ideas,* (1935) 17 J. Patent Off. Soc. 854, 855 .....928, 952

Larrimore, *The Law of Privacy,* (1912) 12 Col. L. Rev. 693..... 827

Magruder, *Development of Collective Bargaining,* (1937) 50 Harv. L. Rev. 1071 346

McDonald & Grimshaw, *How Libel and Slander Affect Radio,* Broadcasting, Oct. 1, 1937, 34..... 859

Miller, *A New and Stronger Advertising Statute,* Broadcasting, April 1, 1938, p. 19 .....969, 972, 989

O'Brien, *The Right of Privacy,* (1902) 2 Col. L. Rev. 437..... 827

Oppenheim, *Commercial Background and Legal Aspect of Television,* (1937) 8 Air L. Rev. 13..... 1249

Oranje, *Rights Affecting the Use of Broadcasts,* 3 Geistiges Eigentum, Part 4 . . ..806, 954, 1036, 1041

Payne, *The Appropriation of News by Broadcasting Stations,* (1936) 21 Iowa L. Rev. 33..... 802

Pickett, *Contests and the Lottery Laws,* (1932) 45 Harv. L. Rev. 1196.. 895

Porter, *Interstate Commerce Commission, Jurisdiction Over Radio,* (1933) 4 Air L. Rev. 304..... 231

Shapiro, *The Press, the Radio and the Law,* (1935) 6 Air L. Rev. 128.. 794, 797, 799, 802

Shechter, *Rational Basis of Trade Mark Protection,* (1927) 40 Harv. L. Rev. 813 923

Siegal, *Censorship in Radio,* (1936) 7 Air L. Rev. 1.....1025, 1029

Smith, *Liability of a Telegraph Company for Transmitting a Defamatory Message,* (1920) 20 Col. L. Rev. 369..... 855

Sprague, *Copyright—Radio and the Jewell-La Salle Case,* (1932) 3 Air L. Rev. 417, 424.....1136, 1145

Sprague, *Freedom of the Air,* (1937) 8 Air L. Rev. 30, 44.....852, 859

Stevens, *Involuntary Servitude by Injunction,* (1921) 6 Corn. L. Q. 235.. 736, 738, 740

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Stewart, *The Madrid Telecommunication Convention*, (1934) 5 Air L. Rev. 236 32
Stewart, *The International Regulation of Radio in Time of Peace*, Radio Supp., (1929) 142 The Annals 78 . . . . . 25, 26
Vold, *Defamation by Radio*, (1932) 2 Journ. Radio L. 673 . . . . 848, 851, 854
Vold, *The Basis for Liability for Defamation by Radio*, (1935) 19 Minn. L. Rev. 611 . . . . . 851, 852, 858
Warren & Brandeis, *The Right of Privacy*, (1890) 4 Harv. L. Rev. 193 . . 819, 825, 842, 844, 868
Watkins, *An Appraisal of the Work of the Federal Trade Commission*, (1932) 32 Col. L. Rev. 272 . . . . . 971, 983, 986
Wharton, *Television in America*, Scribners, p. 61 (Feb., 1937) 1250
Whittemore, *Radio's Fight for News*, (1935) 81 New Republic 354 . . 795, 796

NOTES AND CASE COMMENTS CITED

1 Air Law Rev. 127 (1930) 6
1 Air Law Rev. 349 (1930) 24, 25, 30, 31
2 Air Law Rev. 107, 126 (1931) 24, 25
2 Air Law Rev. 273 (1931) 224
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3 Air Law Rev. 453 (1932) 193
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4 Air Law Rev. 413 (1933) 100
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5 Air Law Rev. 236 (1934) 32
6 Air Law Rev. 81, 88 (1935) 852, 854
7 Air Law Rev. 115 (1936) 1142
7 Air Law Rev. 240 (1936) 1250
7 Air Law Rev. 428 (1936) 875
American Bar Assn., Report of Section on Patent, Trade-Mark and Copyright Law (1938) 1231, 1246
142 Annals 78 (American Academy of Political and Social Science, 1929) 25, 26
6 Australian L. J. 301 849
29 Bull. U. S. Tr. Mark Assn. 34 (1934, N. S.) 926
29 Bull. U. S. Tr. Mark Assn. 148 (1934, N. S.) 939
24 California Law Review 184 (1936) 19
31 Col. Law Review 447 (1931) 800
32 Col. Law Review 1255 (1932) 858
32 Col. Law Review, § 1411 (1932) 882
35 Col. Law Review 304 (1935) 802
38 Col. Law Review 181 (1938) 920
6 Corn. L. Q. 235 (1921) 736, 738, 740
5 Fordham Law Rev. 484 (1936) 882
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3 Geistiges Eigentum 105 (1937) 1038
3 Geistiges Eigentum 181 (1938) 1062
20 Geo. L. J. 215 (1932) 1134
8 Harv. Law Rev. 172 (1894) 737
35 Harv. Law Rev. 127, 130, 131 (1922) 130, 167
44 Harv. Law Rev. 992 (1931) 224, 226
45 Harv. Law Rev. 542 (1932) 800, 957
45 Harv. Law Rev. 1196, 1212 (1932) 906
46 Harv. Law Rev. 133 (1932) 857
47 Harv. Law Rev. 1419 (1934) 800
49 Harv. Law Rev. 473 (1936) 214
50 Harv. Law Rev. 667 (1937) 1092
50 Harv. Law Rev. 1071 (1937) 346
51 Harv. Law Rev. 171 (1937) 920
51 Harv. Law Rev. 520 (1938) 332
51 Harv. Law Rev. 722 (1938) 332
51 Harv. Law Rev. 755 (1938) 811
51 Harv. Law Rev. 906, 908 (1938) 1246, 1247
51 Harv. Law Rev. 906, 912 (1938) 1233
51 Harv. Law Rev. 1171 (1938) 1037
26 Ill. L. Rev. 443 (1931) 1134
30 Ill. L. Rev. 113, 115 (1935) 799
30 Ill. L. Rev. 115 (1935) 805
6 Int. Jur. Assn. Bull. 130 (1938) 345
6 Intl. Jur. Assn. Bull. 136 (1938) 335
1 Journ. Radio L. 477, 485 (1931) 211
2 Journ. Radio L. 66 (1932) 75, 76, 110, 126, 139
2 Journ. Radio L. 73 (1932) 76
2 Journ. Radio L. 75 (1932) 126
8 Mich. L. Rev. 221 (1910) 838
29 Mich. L. Rev. 339 (1931) 855
35 Mich. L. Rev. 73 (1937) 334
14 N. Y. U. L. Q. Rev. 234 (1937) 882
70 U. of Pa. L. Rev. 138 (1921) 857
80 U of Pa. L. Rev. 744 (1931) 896
84 U. of Pa. L. Rev. 251, 252 (1935) 215
86 U. of Pa. L. Rev. 217 (1937) 920, 1037
40 Yale L. J. 990 (1931) 224, 226
44 Yale L. J. 877 (1935) 802
44 Yale L. J. 1269 (1935) 956
45 Yale L. J. 495 (1936) 221
45 Yale L. J. 498 (1936) 214
47 Yale L. J. 341 (1938) 344
18 Va. L. Rev. 465 (1931) 896

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Law of
RADIO BROADCASTING

VOLUME I

Chapter I.

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§ 1. Jurisdictional Basis of the Act of 1912 as Recited Therein.

Both the legislative and executive branches of the Federal government have adopted the view that regulation of radio broadcasting is within the realm of Federal jurisdiction.

The Ship Act of 1910 and its amendment in 1912 were the first statutes enacted by Congress [1] in the field of radio communication and were concerned with maritime conditions only. The regulation of radio communication by land stations was the subject of Congressional legislation for the first time in the Radio Act of 1912.[1a] The introduction to that statute included a statement to the effect that the activity, namely, radio transmission, which Congress thereby sought to regulate was commerce. It also properly recited that the regulation was confined to the interstate aspects of that commerce.[2] This statute was the culmination of several international conventions [3] relating to radio transmission to which the United States was a party. The scope and condition of the industry of that time were such as to make it appear that the most important jurisdictional power which generated such early legislation was that of the Federal government to make and enforce treaties.[4]

The Attorney General in various opinions [5] since the passage of the Act of 1912 has consistently maintained that the power to regulate interstate and foreign radiotelephony was in the Federal government. He based his opinions upon analogy to the early telegraph cases [6] and

[1] 36 STAT. 629 (1910); amended 37 STAT. 199 (1912).

[1a] 37 STAT. 302 (1912), 47 U.S. C.A. § 54 *et seq.* (1928).

[2] *Id.*, at § 51.

[3] See Chapter II. *infra.*

[4] U. S. CONSTITUTION, ART. II., § 2, cl. 2: The President with "the Advice and Consent of the Senate" has the power to make treaties. *Id.*, ART. I., § 8, cl. 18: Congress has the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof." *Id.*, ART. VI., § 2: Treaties shall be the "Supreme Law of the Land."

[5] 24 OP. ATTY. GEN. 100 (U.S., 1902); 29 OP. ATTY. GEN. 579 (U.S., 1912); 35 OP. ATTY. GEN. 126 (U.S., 1926).

[6] Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U.S. 1, 24 L.Ed. 708 (1878); Western Union Tel. Co. *v.* Pendleton, 122 U.S. 347, 7 Sup. Ct. 1126, 30 L.Ed. 1187 (1886). See International Text Book Co. *v.* Pigg, 217 U.S. 91, 30 Sup. Ct. 481, 54 L.Ed. 678 (1909).

advised that the Federal government had such plenary jurisdiction over radio as to extend to the regulation of intrastate radio transmission which interfered with this activity in its interstate aspects.[7]

§ 2. Jurisdictional Basis of the Act of 1927 as Recited Therein.

The chaotic conditions of the industry which were the consequences of the growth of radio broadcasting and the interfering use of wave-lengths as well as the confusion resulting from the inability of the Secretary of Commerce to cope with these problems under the powers vested in him by the Act of 1912, led to the enactment of the Act of 1927.[8] The introduction to this Act clearly shows that the intent of Congress was again not only to treat radiotelephony as commerce but to exercise more fully its power to regulate interstate and foreign commerce.[9] This Act achieved for Congress in the regulation of this industry, its ultimate and maximum powers over interstate commerce generally.[10] This is evident from the following language of Section 1:

> "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State."

Congress thus assumed jurisdiction to regulate intrastate radio broadcasting where it causes interference with

[7] 35 OP. ATTY. GEN. 126 (U.S., 1926). *Accord:* United States *v.* Gregg, 5 F.Supp. 848 (D.C. Tex., 1934).

[8] 44 STAT. 1162 (1927).

[9] *Id.*, § 1.

[10] *Id.*, § 1(d). See United States *v.* Gregg, 5 F.Supp. 848 (D.C. Tex., 1934).

interstate and foreign transmission. The question of the validity of this assumption of jurisdiction is discussed in Section 8 *infra.*

§ 3. Jurisdictional Basis of the Act of 1934 as Recited Therein.

In the Act of 1934,[11] Congress reaffirmed its authority to regulate radio broadcasting by relying upon its power to regulate interstate and foreign commerce [12] and upon the Federal power to make and enforce treaties.[13] This law re-enacted the broad scope of jurisdiction defined in the Act of 1927.[14]

§ 4. Judicial Treatment of the Statutes.

While opinions were rendered by the Attorney General [15] affirming the constitutionality of the Act of 1912,[16] the United States Supreme Court had no occasion to consider the validity of this Act. Even the Act of 1927 with its broad implications made slow progress toward a judicial determination of its constitutionality. This may be explained by the fact that the early cases encountered procedural difficulties as obstacles in the path of final determination of constitutionality by the Supreme Court.[17] The weakness of such appellate procedure is discussed in Chapter IX *infra.* The subsequent amendment [18] by Congress of the Act of 1927 ended such procedural impediments and enabled the United States Supreme Court to pass upon the constitutionality of the Act of 1927.

In *Federal Radio Commission* v. *Nelson Bros. Bond and Mortgage Company,*[19] the Court upheld the consti-

[11] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151, 301 (1937).

[12] U. S. CONST., ART. I., § 8, cl. 3.

[13] *Id.*, ART. II., § 2, cl. 2.

[14] 44 STAT. 1162 (1927).

[15] 29 OP. ATTY. GEN. 579 (U.S., 1912); 35 OP. ATTY. GEN. 126 (U.S., 1926).

[16] 37 STAT. 302, 47 U.S.C.A. § 51 *et seq.* (1928).

[17] General Electric Co. *v.* Fed. Radio Comm., 58 App. D.C. 386, 31 F.(2d) 630 (1929), *cert. dismissed for want of jurisdiction,* 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

[18] 46 STAT. 844 (1930).

[19] 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

tutionality of the Act which was reviewed together with the Davis Amendment.[20] The case came to the Court on a writ of *certiorari* to review a decision of the Court of Appeals of the District of Columbia[21] which reversed an order of the Federal Radio Commission, reducing the operating time of the licensee in pursuance of the Commission's allocation powers under the Davis Amendment.[22] The United States Supreme Court upheld the powers of the Commission under the Act as constitutional on the ground that the standards contained in the statute were not too indefinite. The decision of the lower court was reversed and the original order of the Commission was adhered to. The question of the power of Congress to regulate radio broadcasting as interstate commerce was not raised directly.[23] Chief Justice Hughes did advert to the jurisdictional problems in passing, in the following *dictum:*[24]

> "No question is presented as to the power of the Congress, in its regulation of interstate commerce, to regulate radio communication. No state lines divide the radio waves, and national regulation is not only appropriate but essential to the efficient use of broadcasting facilities."

Since the *Nelson Bros.* case, no question of the constitutionality of Federal radio legislation has been presented to the United States Supreme Court. In a taxation case,[25] however, the Court considered the questions of whether broadcasting was interstate and whether it was commerce. In *Fisher's Blend Station, Inc.* v. *Tax Commission of the State of Washington,*[26] a state tax on the gross receipts

[20] 44 STAT. 1166 (1927), as amended, 45 STAT. 373 (1928), reenacted, 48 STAT. 1083, repealed, 49 STAT. 1475, 47 U.S.C.A. § 302 (1937). See § 54 *infra.*

[21] 61 App. D.C. 315, 62 F.(2d) 854 (1932).

[22] See n. 20, *supra.*

[23] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 279, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[24] *Ibid.*

[25] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[26] *Ibid.*

of a broadcast station was held unconstitutional because it imposed a burden upon interstate commerce. Mr. Justice Stone said:[27]

> "Appellant is thus engaged in the business of transmitting advertising programs from its stations in Washington to those persons in other states who 'listen in' through the use of receiving sets. In all essentials its procedure does not differ from that employed in sending telegraph or telephone messages across state lines, which is interstate commerce. . . . In each, transmission is effected by means of energy manifestations produced at the point of reception in one state, which are generated and controlled at the sending point in another. Whether the transmssion is effected by the aid of wires, or through a perhaps less well-understood medium, 'the ether', is immaterial, in the light of those practical considerations which have dictated the conclusion that the transmission of information interstate is a form of 'intercourse', which is commerce. . . ."

§ 5. Radio Broadcasting Is Commerce and Interstate.

The business of radio broadcasting is *sui generis*. There has been little argument on the proposition that radio broadcasting is commerce. In fact, it has often been assumed without investigation that radio broadcasting is within the meaning of the word "commerce" as used in the Constitution.[28] A brief survey of the authorities is advisable.

No treatment of a problem in interstate commerce can avoid the famous case of *Gibbons* v. *Ogden*.[29] The issue there was as to whether navigation came within the meaning of "commerce". In holding that it was commerce, Chief Justice Marshall uttered the famous *dictum* that "commerce . . . is intercourse."[30] This *dictum* has long since been adopted by the Supreme Court as the classic

[27] *Id.*, at 609.

[28] Note (1930) 1 AIR L. REV. 127.

[29] 9 Wheat. (U.S.) 1, 6 L.Ed. 23 (1824).

[30] Gibbons *v.* Ogden, 9 Wheat. (U.S.) 1, 189, 6 L.Ed. 23 (1824).

expression of its basic attitude toward new agencies and instrumentalities of commerce.[31]

This development is illustrated in the Court's treatment of the telegraph industry. It presents a very close analogy to radio broadcasting. In an early case, *Pensacola Telegraph Company* v. *Western Union Telegraph Company*,[32] the United States Supreme Court held that the telegraph was a means of commercial intercourse, transcending state boundaries and national in scope and that since it was an agency of interstate commerce, it was subject to the regulatory power of Congress. It was enunciated that such power was not confined to the instrumentalities of commerce known in 1790. The Court declared that the power to regulate was granted to Congress alone to aid the progress of interstate commerce by freedom from obstructive state legislation. In the *Pensacola* case, Florida attempted to create a monopoly which would prevent the entrance into that State of telegraph messages except over the wires of the monopoly. The Court held the statute to be an unconstitutional burden on interstate commerce.

Similarly, in *Western Union Telegraph Co.* v. *Texas*,[33] the United States Supreme Court held that interstate messages were interstate commerce, and therefore a state tax on messages without exclusion of interstate messages was a burden on interstate commerce.[34]

In accord with the above cases, the power of Congress to regulate wireless telegraphy was asserted by the Attorney General[35] who seemed to entertain no doubts that wireless telegraphy was commerce and interstate.

[31] See Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[32] 96 U.S. 1, 9, 24 L.Ed. 708 (1878).

[33] 105 U.S. 460, 26 L.Ed. 1067 (1881).

[34] Western Union Tel. Co. *v.* Pendleton, 122 U.S. 347, 7 Sup. Ct. 1126, 30 L.Ed. 1187 (1886). *Cf.* International Text-Book Co. *v.* Pigg, 217 U.S. 91, 30 Sup. Ct. 481, 54 L.Ed. 687 (1909).

[35] 24 OP. ATTY. GEN. 100 (U.S., 1902).

In a subsequent opinion,[36] the Attorney General held radiotelephony to be interstate commerce on the authority of *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*[37]

For various technical reasons,[38] the United States Supreme Court handed down no decision on the Congressional power to regulate radio broadcasting until 1932.[39] Meanwhile there had been several lower court decisions which affirmed this Congressional power.[40] In common, these courts[41] found the power to regulate in the "commerce clause".[42]

Where consideration was given to the reasons by which this result was achieved, the basis was established in the concept of commercial intercourse laid down in *Gibbons* v. *Ogden.*[43] The telegraph cases[44] were followed as guiding analogies.

[36] 35 OP. ATTY. GEN. 126 (U.S., 1926).

[37] 96 U.S. 1, 9, 24 L.Ed. 708 (1878).

[38] See Chapter IX. *infra.* General Electric Co. *v.* Fed. Radio Comm., 58 App. D.C. 386, 31 F.(2d) 630 (1929), *cert. dismissed for want of jurisdiction,* 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

[39] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[40] American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318 (C.C.A. 7th, 1931), *cert. denied,* 285 U.S. 538, 52 Sup. Ct. 311, 76 L.Ed. 931 (1932); General Electric Co. *v.* Fed. Radio Comm., 58 App. D.C. 386, 31 F.(2d) 630 (1929), *cert. dismissed for want of jurisdiction,* 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930); Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929); City of New York *v.* Fed. Radio Comm., 59 App. D.C. 129, 36 F.(2d) 115 (1929); White *v.* Fed. Radio Comm., 29 F.(2d) 113 (C.C.A. 7th, 1928); KFKB Broadcasting Association, Inc. *v.* Fed. Radio Comm., 60 App. D.C. 79, 47 F.(2d) 670 (1931); Durham Life Ins. Co. *v.* Fed. Radio Comm., 60 App. D.C. 375, 55 F.(2d) 537 (1931). See White *v.* Johnson, 282 U.S. 367, 51 Sup. Ct. 115, 75 L.Ed. 388 (1931).

[41] *Ibid.*

[42] U. S. CONST., ART. I., § 8, cl. 3.

[43] 9 Wheat. (U.S.) 1, 189, 6 L.Ed. 23 (1824).

[44] Western Union Tel. Co. *v.* Pendleton, 122 U.S. 347, 7 Sup. Ct. 1126, 30 L.Ed. 1187 (1886); Western Union Tel. Co. *v.* Texas,

In these lower court cases,[45] radio broadcasting was treated as an original question. In *United States* v. *American Bond and Mortgage Co.*,[46] District Judge Wilkerson made the following pertinent comments:

> "It does not seem to be open to question that radio transmission and reception among the states are interstate commerce. To be sure it is a new species of commerce. Nothing visible and tangible is transported. There is not even a wire, over which ideas, wishes, orders, and intelligence are carried. A device in one state produces energy which reaches every part, however small, of the space affected by its power. Other devices in that space respond to the energy thus transmitted. The joint action of the transmitter owned by one person and the receiver owned by another is essential to the result. But that result is the transmission of intelligence, ideas, and entertainment. It is intercourse, and that intercourse is commerce. . . ."

This point of view was also expressed by the United States Supreme Court in *Fisher's Blend Station, Inc.* v. *Tax Commission of the State of Washington.*[47]

As a practical matter, radio broadcasting by its very nature and operation is the essence of interstate commerce. The activities, location, number and extent of broadcast stations engaged in interstate commerce not only have a reasonable connection with, but in fact determine the exact nature of that commerce. The following significant words of Chief Justice Hughes in *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*[48] are illustrative of the practical situation:

105 U.S. 460, 26 L.Ed. 1067 (1881); Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U.S. 1, 24 L.Ed. 708 (1878). See International Text Book Co. *v.* Pigg, 217 U.S. 91, 30 Sup. Ct. 481, 54 L.Ed. 678 (1909).

[45] See cases cited *supra,* n. 40.

[46] 31 F.(2d) 448, 454 (N.D. Ill., 1929), *aff'd.* 52 F.(2d) 318 (C.C.A. 7th, 1931).

[47] 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[48] 289 U.S. 266, 279, 53 Sup.Ct. 627, 77 L.Ed. 1166 (1932).

"No state lines divide the radio waves, and national regulation is not only appropriate but essential to the efficient use of radio facilities."

§ 6. Profit Motive Not Essential to Commerce.

The fact that some broadcast stations are operated solely for educational or eleemosynary purposes does not serve to remove from such operations the characteristics of commerce. The *White Slavery* cases[49] together with the remarks of Mr. Justice Stone in *Fisher's Blend Station Inc.* v. *Tax Commission*[50] would seem to confirm this view.

§ 7. Where Interstate and Intrastate Operations Are Co-Mingled.

Where operations in interstate commerce also have the purely local effect of intrastate commerce, the power of Congress extends to every operation in intrastate commerce which is co-mingled with operations in interstate commerce.[51] This power of Congress is supreme.[52]

In *Houston E. and W. Texas Railway Co.* v. *United States*,[53] the United States Supreme Court upheld the rate-making power of the Interstate Commerce Commission in connection with purely intrastate operations of an interstate carrier, where the intrastate rates set up by the Texas Railway Commission were held to constitute a burden upon interstate commerce.[54] In this case, the Court said:[55]

[49] Caminetti v. United States, 242 U.S. 470, 37 Sup. Ct. 192, 61 L.Ed. 442 (1917).

[50] 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[51] Minnesota Rate Cases, 230 U.S. 352, 33 Sup. Ct. 729, 57 L.Ed. 1511 (1913).

[52] *Ibid.*

[53] 234 U.S. 342, 34 Sup. Ct. 833, 58 L.Ed. 1341 (1914).

[54] *Accord:* Colorado *v.* United States, 271 U.S. 153, 46 Sup. Ct. 452, 70 L.Ed. 878 (1925); Southern Ry. Co. *v.* United States, 222 U.S. 20, 32 Sup. Ct. 2, 56 L.Ed. 72 (1912).

[55] Houston, E. & W. Tex. Ry. Co. *v.* United States, 234 U.S. 342, 351, 34 Sup. Ct. 833, 58 L.Ed. 1341 (1914).

NOTE: The Federal Communications Commission does not possess the power to make, fix or regulate

"The fact that carriers are instruments of intrastate commerce as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter to preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

Since radio broadcast operations generally involve a co-mingling of interstate and intrastate service by the same station, Congress has the supreme power to regulate intrastate transmission insofar as it affects interstate service.[56]

§ 8. Where Purely Intrastate Operations Constitute Interference with Interstate Transmission.

Congress has entered the field of regulation of interferences with interstate radio transmission by purely intrastate operations. Section 1 of the Act of 1927 and Section 301 of the Communications Act of 1934 provide as follows:

". . . No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio. . . . (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the trans-

rates charged for facilities by radio broadcast stations.

[56] *Cf.* Houston, E. & W. Tex. Ry. Co. *v.* United States, 234 U.S. 342, 34 Sup. Ct. 833, 58 L.Ed. 1341 (1914); Colorado *v.* United States, 271 U.S. 153, 46 Sup. Ct. 452, 70 L.Ed. 878 (1925); Southern Ry. Co. *v.* United States, 222 U.S. 20, 32 Sup. Ct. 2, 56 L.Ed. 72 (1912); Minnesota Rate Cases, 230 U.S. 352, 33 Sup. Ct. 729, 57 L.Ed. 1511 (1913).

> mission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State."

This legislation was obviously designed to extend Congressional regulation to purely intrastate operations which interfere with interstate broadcasts.

This provision was considered in *United States* v. *Gregg*.[57] An action was brought by the United States to restrain a station from operating radio broadcast apparatus without a license from the Federal Radio Commission. This station was known as the "Voice of Labor" and was owned and operated by the Central Trades Council of Houston, Texas. Its broadcast operations were purely intrastate. In fact, its service area covered a radius of not more than thirty miles. The station alleged as a defense that it exerted every effort to minimize interference with interstate broadcasts and that Congress had no power to regulate intrastate operations of a broadcast station. The District Court found as a fact that "under ordinary circumstances" the defendant station could not be heard in any other state, and also that "under ordinary circumstances" the station caused no interference with broadcasts from other Texas stations to points outside the State. The Court, however, found that the defendant's transmission of radio signals interfered with the transmission by stations outside Texas to points within the State. It was held that such interferences came within the prohibition of Section 1(d) of the Act of 1927. A motion to strike out the defense was granted. The Court held that Congress may lawfully under Section 1(d) require the licensing and regulation of intrastate radio broadcast stations whose operations interfere with interstate radio transmission.

[57] 5 F.Supp. 848 (D.C. Tex., 1934).

Although *United States* v. *Gregg*[58] has never been reviewed by a higher court, the decision is sound and is amply supported.[59] Because of the inherent nature of radio transmission and the wave-length limitations, even the most limited broadcast operations, as found by the Court in the *Gregg* case, are likely to interfere with interstate radio transmission in the present state of its development. Despite the fact that such interferences may be of a minor character, there should be no doubt of the power of Congress to regulate same to achieve maximum efficiency in the use of the broadcast facilities of the country.

The power of Congress to regulate the entire field of radio broadcast transmission seems to be complete. State regulation of purely intrastate broadcast transmission should be precluded[60] because of the present technical engineering difficulties which prevent the elimination of interference with interstate transmission by such local operations. The scope of state and local regulation of radio broadcasting is more fully discussed in Chapter XI *infra*.[61]

§ 9. Regulation of Radio Broadcasting by Congress Under Treaty Making Powers.

Radio broadcasting has been the subject of many international treaties of a regulatory nature.[62] The Con-

[58] *Ibid.*

[59] Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U.S. 1, 24 L.Ed. 708 (1878); Minnesota Rate Cases, 230 U.S. 352, 33 Sup. Ct. 729, 57 L.Ed. 1511 (1913); Colorado *v.* United States, 271 U.S. 153, 46 Sup. Ct. 452, 70 L.Ed. 878 (1925); Southern Ry. Co. *v.* United States, 222 U.S. 20, 32 Sup. Ct. 2, 56 L.Ed. 72 (1912).

[60] Statutes which entrust the regulation of radio broadcasting to administrative bodies have been enacted by two states: MICH., 2 COMP. L. § 11726 *et seq.*, Acts, 131 (1927); N. J. COMP. STAT. SUPP. (1925–30) § 167–87 to § 167–94, L. 1930, C. 15.

The Michigan statute, *id.*, § 11730, contains the following provision:

". . . no order shall authorize the doing of anything in contravention of the regulations of the United States."

Such a provision does not appear in the New Jersey statute.

[61] See also §§ 200–1 *infra*.

[62] See Chapter II. *infra*.

stitution[63] imposes upon Congress the duty of enacting appropriate legislation to enforce the provisions of treaties. The Federal government may exercise this power to make treaties even though the subject matter of the treaties is generally within the scope of the powers of the states.[64]

A law of Congress in pursuance of such a treaty is constitutional although there is no express or implied grant of power to Congress to act in the field.[65] It should be noted, however, that this result has been reached where the national interest was so great that the individual states could not adequately deal with the problem. No case is known where a power peculiar to a state was specifically usurped by a treaty.[66]

Statutes which seek to enforce the terms of treaties embracing subject matter properly within the scope of Federal power are undoubtedly valid. Where it is questionable that the power sought to be exercised by means of a treaty and a law in pursuance thereof, is within the jurisdiction of the Federal government, the test of validity to be applied appears to be the national need for such legislation and the adequacy of the ability of the states to meet such need.[67]

[63] U. S. CONST., ART. II., § 2, cl. 2: The President with "the Advice and Consent of the Senate" has the power to make treaties. *Id.*, ART. I., § 8, cl. 18: Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof". *Id.*, ART. VI., § 2: Treaties shall be the "Supreme Law of the Land."

[64] Missouri *v.* Holland, 252 U.S. 416, 40 Sup. Ct. 382, 64 L.Ed. 641 (1919).

[65] *Ibid.* Cf. *Moscow Fire Ins. Co.* v. *Bank of N. Y. & Trust Co.*, 161 Misc. 903, 294 N.Y.Supp. 648, 669 (1937) where the court said: "Even a treaty cannot change or violate the Constitution and must be made subordinate thereto. The treaty-making power does not authorize the Executive to do what the Constitution forbids."

[66] *Ibid.*

[67] Missouri *v.* Holland, 252 U.S. 416, 40 Sup. Ct. 382, 64 L.Ed. 641 (1919).

This is well illustrated in the field of radio broadcasting. It became necessary that international conferences be held to allocate to the different countries of the world appropriate segments of the wave band spectrum, and treaties were effected to accomplish this purpose.[68] Such allocation was necessary to minimize international friction resulting from interfering wave lengths. To secure the enforcement of these treaties within the United States by controlling the use of the wave lengths allocated to this country, the only adequate means would be national legislation centralizing the responsibility and control in a strong administrative body created for that purpose. Radio inherently presents a national problem with respect to its enjoyment by the whole nation, and as such ought properly to be subject to treaty or Congressional law.[69]

In any event, the constitutionality of Federal regulatory legislation over radio broadcasting rests upon a strong basis in the power of Congress to regulate interstate and foreign commerce.[70]

§ 10. Federal Radio Legislation and the Fifth Amendment.

The Fifth Amendment[71] which contains the prohibition against deprivation of property without due process of law has been invoked unsuccessfully against the exercise of Federal power to regulate radio broadcasting.

This assertion has been made in two typical situations:

1. Where the United States sought to deny the use of broadcast facilities to a station already set up and in operation.[72]

[68] See Chapter II. *infra.*

[69] See American Bond & Mtge. Co. *v.* United States, 31 F.(2d) 448 (D.C. Ill., 1929), *aff'd.* 52 F.(2d) 318 (C.C.A. 7th, 1931), *cert. denied,* 285 U.S. 538, 52 Sup. Ct. 311, 76 L.Ed. 931 (1932). See also Missouri *v.* Holland, 252 U.S. 416, 40 Sup. Ct. 382, 64 L.Ed. 641 (1919).

[70] See § 5 *supra.*

[71] U. S. CONSTITUTION:

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[72] United States *v.* Gregg, 5 F. Supp. 848 (D.C. Tex., 1934).

2. Where there has been a refusal to renew a license granted to a broadcast station under the Act of 1927.[73]

In both these situations, it has been held that there is no unlawful deprivation of property rights.[74]

A third situation [75] is similar both as to facts and result to the foregoing typical cases:

3. Where the complainant has erected and operated a station before the passage of the Act of 1927 and asserts that there is an unlawful deprivation in the requirement by said Act [76] that an applicant for a license thereunder shall waive all claims or rights to any channel.

There are certain general rules which are applicable to all three situations. It is well settled that the test as to whether an act of Congress is within the field of a constitutional power is the determination of whether there is a reasonable and substantial relation between the effect sought to be accomplished and the power to be exercised. After such determination, the test is whether the deprivation results as a direct exercise of the power of Congress, and this for a public use, or whether it is an incident of the exercise of the power. If the former is the case, then it is within the purview of the Fifth Amendment.[77] The preliminary question is always whether there are any property rights involved.

[73] American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318, 321 (C.C.A. 7th, 1931); Trinity Meth. Church South *v.* Fed. Radio Comm., 62 F.(2d) 850 (App. D.C., 1932).

[74] United States *v.* Gregg, 5 F. Supp. 848 (D.C. Tex., 1934); American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318, 321 (C.C.A. 7th, 1931); Trinity Meth. Church South *v.* Fed. Radio Comm., 62 F.(2d) 850 (App. D.C., 1932).

[75] White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D. Ill., 1928).

[76] 44 STAT. 1164 (1927), § 5. See § 39 *infra.*

[77] Trinity Meth. Church South *v.* Fed. Radio Comm., 62 F.(2d) 850 (App. D.C., 1932).

§ 11. Same: Estoppel to Set Up Unlawful Deprivation.

Consideration of this whole problem may be avoided by the estoppel of the complainant to assert an unlawful deprivation. Such was the case in *American Bond and Mortgage Co.* v. *United States*[78] where it was held that one who has voluntarily sought and acquired a government permit or license with its attendant benefits cannot later assert rights which were surrendered in order to secure the permit.[79] Nor can one who has received rights by virtue of a statute, under which the power of revocation is exercised, claim its unconstitutionality.[80]

It is essential, however, that the true elements of estoppel be present. These elements are (a) the existence of a statute and (b) the acceptance by the party charged of the benefits thereunder.[81]

§ 12. Same: No Unlawful Deprivation.

Congress is not bound to maintain existing arrangements and contracts. Its power to regulate interstate and foreign commerce is not subject to a prohibition against impairment of the obligations of a contract.[82] Nor does the absence of an express reservation in the grant preclude Congress from the exercise of this power.[83]

The investment in property under a regulatory provision of a Federal statute does not create a vested right

[78] 52 F.(2d) 318 (C.C.A. 7th, 1931).

[79] *Cf.* Frost *v.* Commissioner, 278 U.S. 515, 49 Sup. Ct. 235, 73 L.Ed. 483 (1928); 1. COOLEY ON CONSTITUTIONAL LIMITATIONS (8th ed., 1927) 369.

[80] Frost *v.* Commissioner, 278 U.S. 515, 49 Sup. Ct. 235, 73 L.Ed. 483 (1928); St. Louis Malleable Casting Co. *v.* Prendergast Const. Co., 260 U.S. 469, 43 Sup. Ct. 178, 67 L.Ed. 351 (1923); Hurley *v.* Commissioner of Fisheries, 257 U.S. 223, 225, 42 Sup. Ct. 83, 66 L.Ed. 95 (1921); American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318 (C.C.A. 7th, 1931).

[81] Buck *v.* Kuykendall, 267 U.S. 307, 45 Sup. Ct. 324, 69 L.Ed. 623 (1925).

[82] Philadelphia, etc., R. Co. *v.* Schubert, 224 U.S. 603, 32 Sup. Ct. 58, 56 L.Ed. 911 (1911); Continental Ins. Co. *v.* United States, 259 U.S. 156, 171, 42 Sup. Ct. 540, 66 L.Ed. 871 (1921).

[83] Louisville Bridge Co. *v.* United States, 242 U.S. 409, 37 Sup. Ct. 158, 61 L.Ed. 395 (1916).

impervious to deprivation by a change in regulation or a refusal to renew the permission contained in the statute. Thus, "the construction of plaintiff's plant and its operation under the licenses obtained prior to the Act of . . . 1927, did not create property rights which may be asserted against the regulatory power of the United States. . . ."[84] Moreover, the refusal to renew a license which had been granted under the Act of 1927 is not a deprivation of property without due process of law.[85] It is submitted that the same result should obtain under the Act of 1934.

It should be noted that where a property right is asserted under a license, permit or franchise, the rule is that such special grants are strictly construed in favor of the public.[86]

The power of Congress to regulate interstate and foreign commerce is a continuing one. It is not exhausted by any partial exercise. Nor may the field of interstate and foreign commerce be occupied prior to any regulation by Congress so as to create property rights in preclusion thereof.

The property investment in the broadcasting business, made before Congress acted in the field, creates no rights against the exercise of the power to regulate.[87]

[84] White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D. Ill., 1928); Chicago Fed. of Labor *v.* Fed. Radio Comm., 41 F.(2d) 422 App. D.C., 1930).

[85] Trinity Meth. Church South *v.* Fed. Radio Comm., 62 F.(2d) 85 (App. D.C., 1932).

[86] Louisville Bridge Co. *v.* United States, 242 U.S. 409, 37 Sup. Ct. 158, 61 L.Ed. 395 (1916); Union Bridge Co. *v.* United States, 204 U.S. 364, 401, 27 Sup. Ct. 627, 51 L.Ed. 523 (1907); United States *v.* Chandler, *etc.,* Water Power Co., 229 U.S. 53, 33 Sup. Ct. 667, 52 L.Ed. 881 (1912).

[87] Greenleaf-Johnson Lumber Co. *v.* Garrison, 237 U.S. 251, 35 Sup. Ct. 551, 59 L.Ed. 939 (1914); Union Bridge Co. *v.* United States, 204 U.S. 364, 401, 27 Sup. Ct. 627, 51 L.Ed. 523 (1907). *Contra:* Tribune Co. *v.* Oak Leaves Broadcasting Station, 68 CONG. REC. (C.C. Cook County, Ill.) 266. But *cf.* Great Lakes Broadcasting Co. *v.* Fed. Radio Comm., 37 F.(2d) 993 (App. D.C., 1930). See also White *v.* Fed. Radio Comm., 29 F.(2d) 113 (C.C.A. 7th, 1928). See § 39 *infra.*

Consequently, any right which exists in the field of radio broadcasting is subject to the exercise of reasonable and necessary regulation by Congress. As against such possible regulation, there exists no vested right in favor of the licensee.[88] The opinion of Chief Justice Hughes in *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.* is controlling:[89]

> "That the Congress had the power to give this authority to delete stations, in view of the limited radio facilities available and the confusion that would result from interferences, is not open to question. They necessarily make their investments and their contracts in the light of, and subject to, this paramount authority. This Court has had frequent occasion to observe that the power of Congress in the regulation of interstate commerce is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy, as such a restriction would place the regulation in the hands of private individuals and withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their enterprise."

§ 13. Validity of Communications Act of 1934 as a Delegation of Legislative Power.

Inherent in the doctrine of separation of governmental powers is the dogma that the power to make laws is not delegable. Yet the United States Supreme Court has at no time felt itself restrained by this dogma. Until its invalidation of the so-called Industrial Recovery laws, the Court had not held unconstitutional any law involving a delegation of legislative power.[90]

May Congress, possessed of the interstate commerce power to regulate radio transmission and broadcasting, delegate this power to the Federal Communications Commission as attempted in its radio legislation?

[88] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[89] *Id.*, at 282.

[90] Comment (1936) 24 CALIF. L. REV. 184.

§ 14. Same: Radio Act of 1927 as a Valid Delegation of Power.

In 1932, the United States Supreme Court upheld the Radio Act of 1927 as constitutional and a valid delegation of power, so far as those portions of the Act before it were concerned.[91] The Act of 1927 established as a standard for the grant and renewal of licenses by the Federal Radio Commission, "the public interest, convenience or necessity".[92] This standard was held not to be too indefinite or to confer legislative discretion or law-making power upon the Federal Radio Commission.[93]

The Court also considered[94] the Davis Amendment[95] which required that there shall be "a fair and equitable allocation of licenses, wave lengths, time for operation and station power to each of the States within each zone". In addition to the maintenance of the standard of "public interest, convenience or necessity", the Commission was under a duty fairly and equitably to allocate radio broadcast facilities. The question raised by the latter provision was whether the standard was so indefinite as to confer upon the Federal Radio Commission an arbitrary and capricious power. On this question the Supreme Court held in the negative.[96]

§ 15. Same: Communications Act of 1934.

The problem in the Communications Act of 1934 as with its predecessor statute, is whether the standards laid down by Congress are sufficient to sustain the grant to the Federal Communications Commission of power to regulate radio broadcasting.

[91] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[92] 44 STAT. 1166 (1927).

[93] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[94] *Ibid.*

[95] 45 STAT. 373 (1928).

[96] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

In substance, there is little difference between the Act of 1927 and the Act of 1934. It may be correctly assumed that the ruling in *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*[97] supports the validity of the same provisions in the Communications Act of 1934. It is nevertheless advisable to pursue the problem further in view of later decisions invalidating grants of power to administrative bodies on the ground that the standards were too indefinite.

The Act of 1934 embodies the same powers and provides for their exercise according to the same standards as the Act of 1927. In Section 303, the general powers of the Federal Communications Commission are to be exercised as "public convenience, interest or necessity requires". Section 307 of the Act of 1934 also provides for the granting of licenses by the same standard, and again charges the Communications Commission with the duty fairly and equitably to allocate radio broadcast facilities. Section 309 also embodies the standard of "public convenience, interest and necessity".

After defining certain standards according to which the Commission is to perform its administrative functions, the next step is to determine their sufficiency. It must be ascertained whether the standards give the Commission an arbitrary or capricious power. It is also necessary to determine whether the standards are so indefinite as to give the Commission the power to make laws.

§ 16. Same: Sufficiency of Standards.

There are generally two types of standards which meet the test of sufficiency:

1. Where certain future conditions are anticipated, Congress may authorize an administrative body to act in a certain way upon the happening of the event.
2. Where the field of regulation is so vast and replete with a myriad of subjects, Congress may lay

[97] *Ibid.*

down general broad standards in pursuance of which the administrative body may act.[98]

Both types must be in accord with the general doctrine established in *Cincinnati, etc. Railway Co.* v. *Commission*[99] and approved in *Hampton Co.* v. *United States:*[100]

> "The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

§ 17. Same: Sufficiency of Standards: Public Convenience, Interest and Necessity.

The standard of "public convenience, interest and necessity" is sufficient, or in the words of the United States Supreme Court,[101] "not too indefinite".

In *New York Central Securities Co.* v. *United States,*[102] it was held that a similar provision in the Transportation Act of 1920 constituted a valid delegation of power. The Supreme Court agreed that this phrase was not a grant of a roving commission and that it did not mean general welfare. It also agreed that it was not "a concept without ascertainable criteria, but has direct relation to the adequacy of transportation service, to its essential conditions of economy and efficiency, and to the appropriate provisions and the best use of transportation facilities."[103] In the same case, comparison and approval were also made of similar provisions dealing with reasonableness of rates, discrimination, and the issuance of certificates of public convenience and necessity.

This proposition is further sustained in *Federal Radio*

[98] Hampton & Co. *v.* United States, 276 U.S. 394, 48 Sup. Ct. 348, 72 L.Ed. 624 (1927).

[99] 1 Ohio 77, 88 (1852).

[100] 276 U.S. 394, 48 Sup. Ct. 348, 72 L.Ed. 624 (1927).

[101] New York Cent. Sec. Co. *v.* United States, 287 U.S. 12, 54 Sup. Ct. 471, 77 L.Ed. 138 (1932).

[102] *Ibid.*

[103] *Id.,* at 24.

Commission v. *Nelson Bros. Bond & Mortgage Co.*[104] where the Supreme Court said:

> "The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services, and where an equitable adjustment between States is in view, by the relative advantages and service which will be enjoyed by the public through the distribution of facilities."

§ 18. Same: Sufficiency of Standards: Fair and Equitable Allocation.

The standard of fair and equitable allocation has been held sufficient by the United States Supreme Court.[105] The holding is based upon the principles stated *supra*.[106]

[104] 289 U.S. 266, 285, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[105] *Ibid.*

[106] Interstate Commerce Comm. *v.* Goodrich Transit Co., 224 U.S. 194, 214, 32 Sup. Ct. 436, 56 L.Ed. 729 (1912). In this case, the Court stated the rule as follows:

"Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of the facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

Chapter II.

INTERNATIONAL REGULATION OF TELECOMMUNICATION.

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§ 19. History.

The early importance of radio-telegraph transmission lay in the means it provided for communication between ships at sea and other points on land and sea. The inventions of Marconi served as a basis for the development of this new industry. He and his associates made it a custom to install their apparatus solely upon the condition that it be used exclusively for communication with similarly installed apparatus.[1] It was soon apparent that such business practices imposed great limitations upon the development of radio-telegraph communication generally. To remedy this, representatives of several nations met in Berlin in 1903 and agreed to recommend certain proposals to their respective governments for examination.[2]

The proposals dealt mainly with communication between coast stations and ship stations. Priority for distress calls was provided. It was proposed that rates be so fixed as to provide an equitable return for the services rendered.

[1] Davis, *International Radio Telegraph Conventions and Traffic Arrangements,* (1930) 1 AIR L. REV. 349; Donovan, *Origin and Development of Radio Law,* (1931) 2 AIR L. REV. 107, 126.

[2] *Ibid.*

The most important accomplishment was the agreement of the delegates to examine the proposal that the radio-telegraph services of each nation be so organized as to avoid interference with others.[3] The British made a specific reservation as to the latter proposal. The Italians, because of their committments to Signor Marconi, reserved their rights to refrain from making public radio information of a technical nature.[4]

§ 20. The Berlin Convention of 1906.

On October 3, 1906, there convened in Berlin at the call of the German Government another radio conference. A convention was agreed upon and signed on November 3, 1906. Of thirty nations present, twenty-seven signed the convention.[5]

[3] *Ibid.*

[4] Davis, *International Radio Telegraph Conventions and Traffic Arrangements,* (1930) 1 AIR L. REV. 349; Donovan, *Origin and Development of Radio Law,* (1931) 2 AIR L. REV. 107, 126. On the general subject, see Stewart, *The International Regulation of Radio in Time of Peace,* Radio Supp. 142 ANNALS 78 (American Academy of Political & Social Science, 1929).

"There is an interesting story in back of the calling of this convention (Berlin). In 1902, Prince Henry of Prussia visited the United States. On his return voyage he wished to send a radiogram to President Theodore Roosevelt, thanking him for the many courtesies and honors he had received during his visit. Since the radio equipment of the ship was not powerful enough to communicate with radio stations in the United States, an English station was asked to receive the message and transmit it to the United States by cable at the expense of the German ship.

"The shore station in England was equipped with Marconi apparatus and the ship station with a Sloby-Arco apparatus, the product of a German corporation—a rival of the Marconi Company. The English station declined to transmit the message. On his return to Germany, Prince Henry took the matter up with Emperor Wilhelm, who with President Roosevelt's cooperation, arranged to have the first International Radio Conference at Berlin in August, 1903." BROWN, THE FEDERAL COMMUNICATION LAW (Address, May 11, 1937), Federal Communications Commission Press Release, No. 21207.

[5] *Ibid.*

Mr. Stewart sets forth the primary objectives of the Berlin Convention, as follows: [6]

"(1) establishment of the principle of inter-communication without regard to system employed; [7]
(2) the greatest practical elimination of interference between stations; [8]
(3) opening of radio services to the public upon reasonable terms; [9] and
(4) adequate provision for the assistance of vessels in distress." [10]

The Berlin conference also adopted at the same time a series of supplemental service regulations. These were designed generally to achieve the objectives of the Convention. The Service Regulations required that the signatories keep pace with the scientific and technical adance of the art in the installation of apparatus.[11] Two wave-lengths were designated for the exclusive use of all ship-to-shore stations.[12] For other than general message service, operators were permitted to use any wave-length below 600 meters or above 1600 meters.[13] The normal wave length for ship use was set as 300 meters.[14] It was

[6] Stewart, *The International Regulation of Radio in Time of Peace,* Radio Supp.; 142 ANNALS 78 (American Academy of Political & Social Science, 1929).

[7] Article 3 of the Berlin Convention of 1906 which appears in FOREIGN RELATIONS OF THE UNITED STATES (1906), At. 2, 1513 *et seq.* A summary of the important provisions of this Convention, article by article, may be found in DAVIS, *op. cit. supra* n. 1. Because of reservations, Article 3 did not bind Great Britain, Italy, Japan, Mexico, Persia and Portugal. The United States did not ratify the Berlin Convention until April 13, 1912. It did so then in order to participate in the London Conference of that year. DAVIS, *op. cit. supra,* n. 1, at 356.

[8] Articles 8 & 10 of Berlin Convention of 1906.

[9] *Id.* at Articles 10 & 17.

[10] *Id.* at Article 9.

[11] Article I, Service Regulations, Berlin Convention of 1906, FOREIGN RELATIONS OF THE U. S. (1906), Pt. 2, 1513 *et seq.*

[12] *Id.* at Article II.

[13] *Ibid.*

[14] *Id.* at Article III.

required that each government undertake to license all operators of ship and shore stations within its jurisdiction.[15] Superfluous signals were prohibited.[16]

§ 21. The London Conference of 1912.

The London Convention of 1912 was the product of a conference of forty-eight countries. The United States was present by virtue of its ratification in 1912 of the Berlin Convention of 1906. The provisions of the London Convention were similar in scope to those of the Berlin Convention and dealt principally with the maritime problems of radio-telegraphic communication. Nevertheless, the "London Radio Conference of 1912 was far-seeing, taking cognizance of the probable importance of radio on aircraft and of other uses then in the future. It could not predict the worldwide importance of broadcasting." [17]

By 1912, the chief impediment to the progress of radio-telegraphy as a means of international communication appears to have been eliminated. There were no reservations as to the requirement that all stations intercommunicate without regard to the apparatus in use by each.[18] This requirement was ameliorated, however, in Article III.[19] The latter provided that where the incapacity of a radio-telegraph apparatus to connect with another type was due to the nature of the system, such a system would not be prohibited, unless the result was a consequence of a device purposely attached to prevent intercommunication.

The general objectives of the London Convention of 1912 were similar to those of the Berlin Convention of 1906. In addition to the provisions already described, it was further provided[20] that "The working of the radio sta-

[15] *Id.* at Article VI.

[16] Article V, Service Regulations, *op. cit. supra* n. 11.

[17] W. J. DAVIS, RADIO LAW, (1929) 145.

[18] Article I, London Convention of 1912, 38 STAT. Pt. 2, 1707. (English translation) FOREIGN RELATIONS OF THE U. S. (1913), 1375 *et seq.*

[19] London Convention of 1912, *supra* n. 18.

[20] *Id.* at Article 8.

tions shall be organized so far as possible in such manner as not to disturb the service of other radio stations." Stations were again required to give priority to distress signals.[21]

Minor changes were enacted in the Service Regulations.[22] The normal ship wave-length was designated as 600 meters, but small ships whose power was inadequate for operations upon 600 meters were permitted to transmit on 300 meters though required to receive on 600 meters.[23] The wave-lengths below 600 meters or above 1600 meters were again reserved for service other than general message communication.[24]

All stations were obliged to carry on service with the minimum energy necessary to insure safe communication.[25] This was designed to prevent interference. In 1912, although interference was greater, the causes and remedies were better known. Consequently, in addition to this power restriction, the London Convention provided that the use with a spark set of a direct coupled aerial was prohibited except in certain limited situations.[26]

The United States specifically abstained from all message rate provisions of the London Convention. Its position was predicated on the fact that the business of radiotelegraphy in this country was strictly a private enterprise, insofar as the transmission of messages by radio was concerned.[27]

In ratifying the London Convention on January 22, 1913, the Senate made a further reservation.[28] This reservation was to Article IX of the Service Regulations[29]

[21] *Id.* at Article 9.

[22] By Article II of the London Convention of 1912, the Service Regulations supplement the Convention and are of the same force.

[23] Article III, Service Regulations, London Convention of 1912, *op. cit. supra* n. 18.

[24] *Id.* at Article II, Service Regulations.

[25] *Id.* at Article VII, Service Regulations.

[26] *Id.* at Article VII, Service Regulations.

[27] Davis, *International Radio-Telegraph Conventions,* (1930) 1 AIR L. REV. 349, 358.

[28] *Id.* at 359.

[29] Service Regulations, London Convention of 1912, *op. cit.* n. 18.

and preserved the enforcement of the Federal inspection laws upon ships which came within the jurisdiction of the United States. Article IX had established that a license issued by a signatory was a presumption of compliance with the Convention and its Service Regulations with respect to radio installations on the licensed ship.

The London Convention of 1912 was proclaimed to be in effect by the President on July 8, 1913.[30]

§ 22. Washington Radio-Telegraph Convention of 1927.

Because of the World War, no general international conference dealing with radio communication was held between 1912 and 1927. Representatives of eighty-one countries met in the United States at Washington, D. C. in the latter year to remedy the instability of the international situation of radio-telephony.

Before the 1927 conference, the United States had entered into two international agreements dealing with radio communication. Its agreement with Italy, executed on March 27, 1918, purposed to effect direct radio communication between the two countries which had no direct submarine cable connection.[31]

In 1925 another agreement was effected by the exchange of notes between Great Britain, Canada, Newfoundland and the United States.[32] The purpose of this arrangement was to prevent interference with radio broadcasting by ships off the coasts of these countries. It was provided that ships of any of said countries signatory to the pact would not use the wave-lengths of 300 or 400 meters when within 250 miles of the respective coasts.

In general, however, radio broadcasting had so developed by 1927 that the Washington conference had many new problems to consider. Broadcasting had acquired many international aspects. Facsimile transmission by

[30] Davis, *op. cit. supra* n. 27, 359.

[31] Treaty Series No. 631-A.

[32] Treaty Series No. 724-A.

radio had become commercially significant.[33] All the important communications systems of the world were represented. Soviet Russia alone did not participate.[34]

The Convention[35] was similar in text to the London Convention of 1912. The Service Regulations were expanded and changed. Since the scope of this work is limited to radio broadcasting, consideration shall be given only to those features of the Convention and Service Regulations which affect or may affect this aspect of radiotelephony.[36]

Under Article X. of the Convention, all public and private stations are to be maintained and operated so as to avoid interference with other radio stations.[37] Under Article V., Section I.–VII. of the Service Regulations,[38] the signatories may "assign any frequency and any type of wave to any radio station within their jurisdiction upon the sole condition that no interference with any service of another country will result therefrom."

The various wave-lengths were not allocated among the countries on any working plan, but were divided among the various services, to be allocated by each country as it saw fit. The only limitation on the rights of the countries was the obligation so to allot their respective frequencies as to avoid interference.[39]

Section 8 of Article V of the Service Regulations[40] was intended to discontinue the use of damped waves. Land stations were permitted to use damped waves after Jan-

[33] Davis, *International Radiotelegraph Conventions,* (1930) 1 AIR L. REV. 349, 359.

[34] W. J. DAVIS, RADIO LAW, (1929) 146.

[35] Radio-Telegraph Convention & General Regulations, Washington, (1927) TREATY SERIES No. 767.

[36] For a short but complete analysis of all features of the 1927 Convention, see Davis, *op. cit. supra* n. 33.

[37] Article 10, Radio-Telegraph Convention, TREATY SERIES No. 767.

[38] *Id.* at Article 5, §§ 1–7.

[39] Article 5, §§ 1–7, Service Regulations, Radiotelegraph Convention & General Regulations (1927) Washington, TREATY SERIES No. 767.

[40] *Ibid.*

uary 1, 1935.[41] New stations were to be granted wavelengths only where practicable, so as to prevent interference with stations already in operation.[42] Each government was required to license all its stations.[43] The priority of distress calls was continued.[44]

Section 14 of the Washington Convention provided that signatories could make "special arrangements in matters of service which do not interest the governments generally."[45] Under this provision a North American Conference was held at Ottawa in 1929 to distribute among the North American countries the "continental bands" from 1500 to 6000 kc.[46] On a separation basis of .2%, the Conference found that there were 228 channels available for general communication service, that the interference range of those between 3500 and 6000 kc. was such that duplicate use of them could not be made on the continent, and that as to the frequencies between 1500 and 3500 kc., their use might be duplicated in stations located as much as 1000 miles apart. Frequencies between 3500 and 6000 are therefore commonly designated as "exclusive", while those between 1500 and 3500 are commonly referred to as "shared".[47]

Of the shared channels Canada and Newfoundland received sixty-five, the United States received thirty-four, Cuba was granted fifteen, and other countries were given a total of sixteen. The exclusive channels were divided as follows: United States, one hundred and twelve; Canada and Newfoundland, thirty-eight; Cuba, five; other countries, eight.[48]

[41] *Ibid.*

[42] Article 5, § 16, *op. cit. supra* n. 39.

[43] Article 2, Service Regulations, Radiotelegraph Convention & General Regulations (1927) Washington, TREATY SERIES No. 767.

[44] *Id.* at Article 11.

[45] *Id.* at Article 14.

[46] Davis, *International Radiotelegraph Conventions,* (1930) 1 AIR L. REV. 349, 369.

[47] *Id.* at 369.

[48] *Id.* at 370.

§ 23. The Madrid Telecommunication Convention of 1932.

Another international conference was held at Madrid in 1932. By this date the communications industry had developed to such a point as to require the amalgamation of radio-telephonic and radio-telegraphic regulation.[49] At Madrid, such joint consideration was given as is reflected by the use of the new word "Telecommunication" in the title of the Convention.[50] The President of the United States proclaimed the Convention to be in effect on June 27, 1934.

Unlike the previous Conventions, the Madrid Telecommunication Convention expressly abrogated the prior treaties covering this new field.[51] The contracting parties agreed not only to observe the provisions of the Convention but also to impress the duty of compliance upon private operators irrespective of whether the latter rendered a general message service.[52] The Madrid Convention contains a provision similar to Article XIV. of the Washington Convention.[53] This Article[54] permits "special arrangements on service matters which do not concern the governments in general. However, such arrangements must remain within the terms of the Convention and of the Regulations . . . as regards interference which their application might be likely to cause with the services of other countries."

The Special Provisions for Radio[55] also contain provisions similar to the Washington Convention.[56] There is imposed a duty of general intercommunication.[57] All

[49] TREATY SERIES No. 867. For a discussion of the actual conference by a participant see Stewart, *The Madrid Telecommunication Convention,* (1934) 5 AIR L. REV. 236.

[50] Stewart, *op. cit. supra* n. 49.

[51] Article 8, Madrid Telecommunication Convention, TREATY SERIES No. 867.

[52] *Id.* Article 9.

[53] *Id.* at Article 13.

[54] *Id.* at Article 13.

[55] *Ibid.*

[56] Radio-Telegraph Convention and General Regulations (1927) Washington, TREATY SERIES No. 767.

[57] Article 34, Madrid Telecommunication Convention, TREATY SERIES No. 867.

stations must be established and operated to avoid interference.[58] The mandate was continued that distress calls be given priority.[59]

General Radio Regulations [60] are annexed to the Madrid Convention. Article III. of these Regulations requires that all radio transmitting stations operate only under licenses issued by the respective governments.[61]

Article VII. continues to allow the allocation of any wave length by any country to any station. The allocating country is restricted by its duty not to allocate in such a way as to cause interference.[62] The General Radio Regulations of the Madrid Convention again allocate the various frequencies among the several radio services.[63] Definite rules for allocation of wave-lengths to stations are set forth in Article VII.[64]

The Madrid Convention *in toto* represents an effort to solve the problems of interference and crowded air waves by the application of all known information concerning the radio medium in the sphere of modern communication. It is still an open question whether international regulation of radio broadcasting by convention can succeed without a definite allocation of frequencies among the countries rather than the services.

§ 24. The North American Conference in Havana in 1938.

Representatives of the major countries in North America met in Havana in March, 1938 for the purpose of drafting a treaty covering the frequency allocation problems of this region. The delegates from the United States, Canada, Mexico and Cuba determined upon a reallocation of broadcast frequencies to eliminate interferences from border stations. The proposed treaty also provides that the

[58] *Id.* at Article 35.

[59] *Id.* at Article 36.

[60] Madrid Telecommunication Convention, TREATY SERIES No. 867, 182.

[61] *Id.* at Article 3, General Radio Regulations.

[62] *Id.* at Article 7, General Radio Regulations.

[63] *Ibid.*

[64] *Ibid.*

United States shall have thirty-two exclusive broadcast frequencies, twenty-five of which shall be used for Class 1-A or clear-channel operation.

Prior to the Havana treaty, the United States had made a domestic allocation of all channels among the various services. Forty channels were allocated to clear-channel operation.[65] In practice, eleven of these channels were used for duplicate operation.

[65] In Caldwell, *Regulation of Broadcasting by the Federal Government*, VARIETY RADIO DIRECTORY (1st annual ed., 1937) 269, 278, the four major classes of broadcast channels are defined as follows:

"1. CLEAR CHANNELS. The Commission's regulations designate 40 of the 90 channels as clear channels. A clear channel is a channel on which only one station in the United States (and, in principle, in the entire continent of North America) operates at nighttime, such station to operate with substantial power. Two or more stations may operate on these channels in the daytime, if sufficiently separated, since the interference range of radio waves by day is much less than at night. The minimum power of clear channel stations, under the Commission's regulations is 5 kilowatts (abbreviated 'kw.') and the maximum is 50 kw. Clear channel stations operating with high power are, in a general way, the only method of assuring broadcast reception to rural and remote areas, that is, regions which are not within the immediate vicinity of a broadcast station. The moment two or more stations are permitted to operate on the same channel after sunset, each station severely limits the service rendered by the other, by interference.

"2. HIGH POWER REGIONAL CHANNELS. The Commission's regulations designate 4 of the 90 channels as high power regional channels. Two or more stations may be licensed to operate simultaneously on these channels, with a power of not less than 5 kw. As the word 'regional' suggests, these stations are designed to serve limited regions, each of them restricting the service areas of others on the same channel by interference, particularly at night.

"3. REGIONAL CHANNELS. Of the 90 channels, 40 are designated as regional, with nighttime power ranging from 1 kilowatt down to 250 watts and with daytime power up to a maximum of 5 kw. On these channels several stations (from 3 to 6 or 7) are permitted to operate simultaneously at night, each of them being severely restricted by the others but still capable of rendering service over an area equivalent to a fairly large city and its immediate environs.

"4. LOCAL CHANNELS. The remaining 6 channels are designated as local, with nighttime power not

The Havana treaty provides that the dominant station must operate on a clear channel with at least fifty thousand watts power. The opposition to the clear-channel provisions of the Havana treaty is a reflection of the controversy in the United States between super-power advocates and their opponents. Those opposed to super-power broadcast stations fear that the clear-channel stations by using power well in excess of fifty thousand watts will dominate broadcasting since they will be heard in every part of the country and thereby end the need of duplicate operation by stations of smaller wattage.

The proposal is made to limit clear-channel stations to fifty thousand watts as a maximum of operation power. The proponents of this restriction differ as to whether it should be made as a reservation to the treaty or effectuated by statute or by administrative action.

The Havana treaty was ratified by the United States on June 15, 1938.[66]

§ 24A. International Telecommunications Conferences at Cairo in 1938.

Delegates met at Cairo, Egypt in 1938 to revise and modify the Madrid Convention of 1932.[67] The United States delegation, headed by Senator Wallace H. White, Jr., took an important role therein and acted as the spokesmen for the Pan American nations represented at the Havana Conference earlier in 1938.[68]

The two major problems which confronted the Cairo

in excess of 100 watts and daytime power not in excess of 250 watts. A large number of such stations (about 50) are assigned to each such channel and, needless to say, each of them serves a comparatively small area, roughly corresponding to a smaller city or town."

See Berks Broadcasting Co., *et al.*, 3 F. C. C. Rep. 54 (1936).

[66] See BROADCASTING, July 1, 1938, p. 17.

[67] See § 23 *supra.*

[68] REPORT TO THE SECRETARY OF STATE BY THE CHAIRMAN OF THE AMERICAN DELEGATION TO THE INTERNATIONAL TELECOMMUNICATIONS CONFERENCES OF CAIRO, EGYPT (June 16, 1938) 12 (Hereinafter referred to as "REPORT").

Conference were the allocation of frequencies to the aeronautical services and to high frequency broadcasting. The conference widened the high frequency broadcasting band to 300 kilocycles.[69]

The Cairo Conference took no action to change the existing regular broadcasting band of 550–1500 kilocycles, except that the European region received the privilege of using the frequencies from 550–1560 kilocycles for regular broadcasting in that territory. Successful objection was made to the American proposal that the regular broadcasting band for all regions be extended to 1600 kilocycles. It should be observed, however, that the Havana treaty set aside the frequencies from 1500–1600 kilocycles as an exclusive regional broadcasting band.[70]

The Cairo Conference continued the allocation for the European region of the band 160–265 kilocycles for long-wave broadcasting.[71] Although the latter frequencies are considered desirable because they give a greater service area for a given amount of power, there has been much effective opposition in the United States to the use of this long-wave band for broadcasting.[72]

The Cairo Conference also considered the problem of the allocation of frequencies to the television service. The United States delegation recommended that the whole world use the frequency band allocated thereto by the Havana treaty. Since some European nations were operating permanent television stations on different frequencies, it was decided that such allocation be made on a regional basis.[73]

69 REPORT, 15, 24 *et seq.*

70 REPORT, 21.

71 REPORT, 20.

72 See Caldwell. *Developments In Federal Regulation of Broadcasting*, VARIETY RADIO DIRECTORY (2d annual ed., 1938) 546, 547.

73 REPORT, 28.

Chapter III.

FEDERAL LEGISLATION DEALING WITH RADIO BROADCASTING.

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§ 25. Early Legislation.

The Ship Act of 1910 [1] was the earliest Congressional legislation concerning radio communication. This statute made it mandatory that passenger ships be equipped with radio apparatus. Another act passed in the same year [2] vested in the Interstate Commerce Commission authority to regulate radio communication by public carriers.

This Act was soon followed by the Act of 1912 [3] which was passed by Congress in pursuance of the International Radiotelegraph Conventions of Berlin [4] and London.[5] The Act of 1912 was a governmental regulation to enforce these treaties to which the United States was a party. The chief concern of the Conventions and of Congress was the business of communication by radiotelegraph. Since radio broadcasting did not have commercial significance in 1912, this Act was designed principally to foster radiotelegraphy. Radiotelephony was only incidentally provided for in that statute.

The Act of 1912 vested in the Secretary of Commerce jurisdiction to administer its provisions. It provided that application be made to the Secretary of Commerce for a license to operate a radiotelephone station. Such license was to be granted by him and was revocable for cause. Appropriate penalties were also provided for violations of the license and of the Act.[6] This legislation expressly

[1] 36 STAT. 629 (1910), 37 STAT. 199 (1912), 46 U.S.C.A. § 484 (1928).

[2] 36 STAT. 544 (1910), 49 U.S. C.A. § 1 (1928).

[3] 37 STAT. 302 (1912), 47 U.S. C.A. §§ 51–54 (1928).

[4] International Wireless Telegraphy Conference, Berlin, 1906, to which 26 countries were signatory. III. MALLOY'S TREATIES 2889, 37 STAT., Part 2, 1565 (1912).

[5] 38 STAT., Part 2, 1672 (1912), III. MALLOY'S TREATIES 3048.

[6] 37 STAT. 302 (1912), 47 U.S. C.A. § 51 *et seq.* (1928). Section 51, where there had been operation without a station license; § 53, where an unlicensed operator had been employed; § 54, where there had been a violation of the Regulations contained therein; § 55, where there had been willful or malicious interference with radio communication; § 57, where false or fraudulent signals had been uttered or transmitted.

excluded jurisdiction over intrastate transmission of radio communication.[7]

§ 26. The Grant of Licenses by the Secretary of Commerce.

An applicant was required to be a citizen of the United States or a corporation formed under the laws of any state or territory thereof.[8] In addition, the station had to designate "a certain definite wave-length as the normal sending and receiving wave-length".[9] The license itself had to state the purpose of the station, the wave-length authorized for use and the hours of operation allowed.[10]

§ 27. Limitations on the Power of the Secretary of Commerce.

No discretion to make general regulations was given by the Act of 1912 to the Secretary of Commerce.[11] Where compliance had been made with the requirements of the Act and the Regulations therein, *mandamus* could issue to compel the Secretary to grant the license.[12] The Secretary possessed no power outside of the Act and Regulations[13] to fix the time at which stations might operate, nor could he specify in advance the minimum amount of power. Consequently, the Secretary could not insert such essentials in the license, even though the statute expressly required[14] all stations to use "the minimum amount of power necessary to carry out any communication desired".[15]

Where the Secretary had issued a license which restricted the operations of a station to a specified time and wave-length, the Government was unsuccessful in a crim-

[7] 37 STAT. 302 (1912), 47 U.S. C.A. § 51 (1928).

[8] *Id.* at § 52.

[9] *Id.* at § 54, Regulations 1.

[10] *Id.* at § 52.

[11] 62nd Congress, 2nd Sess., S. REP. 698; 62nd Congress, 2nd Sess., H.R. REP. 582; 35 OP. ATTY. GEN. 126 (U.S., 1926); United States *v.* Zenith Radio Corp., 12 F.(2d) 614 (N.D.Ill., 1926).

[12] Hoover *v.* Intercity Radio Co., 52 App. D.C. 339, 286 Fed. 1003 (1926).

[13] 37 STAT. 302 (1912), 47 U.S. C.A. § 54, Regulations 12, 13 (1928).

[14] *Id.* at Regulation 14.

[15] 35 OP. ATTY. GEN. 126 (U.S., 1926).

inal prosecution [16] for broadcasting at a time and over a wave-length unauthorized by the license. The United States District Court held [17] that adherence to any such limitation contained in a license could not be compelled by the Secretary of Commerce since he had no power to prescribe or enforce additional regulations under the Act.

The Attorney-General was at an early time of the opinion that the Secretary could exercise no discretion and could not impose conditions precedent to the issuance of licenses unless same were provided for in the Act.[18] As a result, the Secretary had no authority or power to meet new situations created by the development of radiotelephony. The advent of radio broadcasting found the Secretary powerless to cope with the practical problems of the industry.

§ 28. Conflicts Between Licensees.

The task of the Secretary in controlling and regulating broadcast stations was lightened somewhat by voluntary submission. This was achieved by agreements between applicants for licenses to observe restrictions imposed by the license. Such agreements dealt with division of time on the same wave-length. Licenses were issued only upon the filing of schedules of hours agreed upon by applicants in their previous contracts to share time. Such an agreement was held enforceable in an action between the contracting parties. The licensee who violated the agreed restrictions was enjoined from interfering with the plaintiff's broadcast during specified hours.[19]

The Act of 1912 did not concern itself with the relationship between licensees so as to govern claims of priority of use of wave-lengths. However, a state court did enjoin one broadcaster from operating its station over a wave-length which resulted in interference with plaintiff's broad-

[16] United States *v.* Zenith Radio Corp., 12 F.(2d) 614 (N.D.Ill., 1926).

[17] *Ibid.*

[18] 29 OP. ATTY. GEN. 579 (U.S., 1912).

[19] Carmichael *v.* Anderson, 14 F.(2d) 166 (W.D.Mo., 1926).

casts. The Circuit Court of Cook County, Illinois, exercised its equity jurisdiction in the protection of a property right which it held to have been created by the plaintiff broadcast station. The expenditure of money, the investment of time, the operation of plaintiff's broadcast station for several years without interference and the consequent acquisition of a large clientele all motivated the Court to find a property right in the prior use by the station of its frequency.[20]

Although the Secretary could not compel adherence to a wave-length to which his license purported to limit the station,[21] a State Court held that in the absence of the exercise of any regulatory powers by Congress, priority of time gives priority of right as between stations.[22] This lower court decision is unofficially reported and has not been appealed. It is submitted that the case is erroneously decided and should not be followed.

§ 29. The Revocation of Licenses by the Secretary.

It is to be noted that under the Act of 1912 licenses could be revoked by the Secretary of Commerce for cause only.[23] The Act imposed no restrictions upon the term or duration of the licenses. Various regulations were set forth in the Act which served as a basis for the exercise

[20] Tribune Co. v. Oak Leaves Broadcasting Station, 68 CONG. RECORD 266 (C.C. Cook County, Ill., 1926). *Cf.* Great Lakes Broadcasting Co. *v.* Fed. Radio Comm., UNITED STATES DAILY, Jan. 14, 1930, 3101 (This case arose under the Radio Act of 1927.); Pulitzer Pub. Co. *v.* Fed. Communications Comm., 94 F.(2d) 249 (App. D.C., 1937) (This case arose under the Communications Act of 1934.).

[21] United States *v.* Zenith Radio Corp., 12 F.(2d) 614 (N.D.Ill., 1926).

[22] Tribune Co. v. Oak Leaves Broadcasting Station, 68 CONG. RECORD 266 (C.C. Cook County, Ill., 1926). *Cf.* Great Lakes Broadcasting Co. *v.* Fed. Radio Comm., UNITED STATES DAILY, Jan. 14, 1930, 3101 (This case arose under the Radio Act of 1927.); Pulitzer Pub. Co. *v.* Fed. Communications Comm., 94 F.(2d) 249 (App. D.C., 1937) (This case arose under the Communications Act of 1934.).

[23] 37 STAT. 302, 47 U.S.C.A. § 51, also § 54 (penalties) (1928).

of powers of revocation by the Secretary.[24] Beyond the express provisions of the Act, the Secretary had no power to revoke his licenses.

§ 30. Necessity for Additional Regulatory Powers Over Broadcasting.

The decision in *United States* v. *Zenith Radio Corp.*[25] made it decidedly apparent that the Secretary was not vested with sufficient power to regulate commercial radio broadcasting which had developed at so rapid a pace since 1920. The lack of administrative authority was emphasized by an opinion of the Attorney General from whom the Secretary sought definitive advice. This opinion, rendered July 8, 1926,[26] held that the Act of 1912 was a "direct legislative regulation of the use of wave-lengths" and did not confer upon the Secretary any general power to establish time limitations within which stations might operate, or to fix the amount of power which licensees might use, or to designate specifically upon which frequency band they might broadcast.[27]

These shortcomings of the Act of 1912 made it obvious that without new legislation by Congress embodying new methods and machinery for the constructive regulation of commercial radio broadcasting, there could be no elimination of the chaotic conditions of the industry and the consequent frustrated development of radio broadcasting.

§ 31. The Radio Act of 1927.

The necessity for more adequate regulation of the growing radio broadcasting industry was met by Congress in the passage of the Radio Act of 1927.[28] An administrative body known as the Federal Radio Commission was created

[24] *Id.* at § 54.

[25] 12 F.(2d) 614 (N.D.Ill., 1926).

[26] 35 OP. ATTY. GEN. 126 (U.S., 1926).

[27] *Ibid.*

[28] Act of Feb. 23, 1927, 44 STAT. 1162.

by the Act [29] to regulate radio broadcasting. The Secretary of Commerce was authorized, in the interests of efficiency, to exercise the powers of the Commission except as to revocation of licenses, during the first or formative year of its existence.[30]

§ 32. Powers Reposed in the Secretary of Commerce by the Act of 1927.

In the division of power between the Federal Radio Commission and the Secretary of Commerce, the latter received mostly supervisory powers. He supervised station operators, issued call letters, published various data including call letters, and reported all violations to the Commission. All applications were filed with him and forwarded by him to the Commission. The Secretary had power to inspect all transmitting apparatus to determine whether there was conformity to all requirements.[31]

§ 33. Purposes of the Act of 1927.

It was the express purpose of this Act to regulate interstate and foreign radio transmission. This included communication within the United States and its dependencies. The Act declared that such regulation would be for the purpose of maintaining the control of the United States over all channels of interstate and foreign radio transmission and communication.

The statute expressly provided that these channels would be made available for use only, and were not subject to ownership. Moreover, such use would not be permitted unless there was first satisfied the absolute requirement that a license for such use be granted by the Federal licensing authority.[32] To effectuate this purpose, it was provided that such compulsory licenses be issued for a limited period only.[33]

[29] *Id.*, at § 3.
[30] *Id.*, at § 5.
[31] *Id.*, at § 5.
[32] 44 STAT. 1162, § 1.
[33] *Id.*, at § 9.

§ 34. The Federal Radio Commission.

Jurisdiction to regulate and license radio broadcasting under the Act of 1927 was lodged in the Federal Radio Commission.[34] This administrative body was created by the statute and was composed of five members who were appointed by the President with the advice and consent of the Senate. The Act divided the territory of the United States into five zones[35] and required that each member of the Commission represent and be an actual resident of one of the zones.[36] The membership of more than three commissioners in one political party was forbidden, and each term was for a period of six years.[37]

In addition, each Commissioner was required to be a citizen of the United States and to be free from any financial interest in the industry. Congress desired to keep pace with the growth of radio broadcasting and required the Commission to file annual reports.[38]

§ 35. Licensing Powers of Federal Radio Commission: Standard of Public Interest, Convenience or Necessity.

This Act brought into the field of radio broadcasting a new concept which was taken from the law of public utilities. It provided that to secure a license from the Federal Radio Commission to operate a broadcast station, the applicant had to show that "public interest, convenience or necessity" would be served thereby.[39] Although this phrase may appear to be vague and general and may be considered as setting up no limitations, it is well established that it has definitely ascertainable criteria.[40]

This phrase was also used in the Transportation Act of

[34] *Id.*, at § 3.
[35] *Id.*, at § 2.
[36] *Id.*, at § 3.
[37] *Ibid.*
[38] *Ibid.*
[39] 44 STAT. 1166 (1927), § 9.
[40] N. Y. Central Securities Co. *v.* United States, 287 U.S. 12, 54 Sup. Ct. 471, 77 L.Ed. 138 (1932). See DILL, RADIO LAW (1938) 89 for an account of how the phrase "public convenience, interest or necessity", became part of the Radio Act of 1927.

1920[41] and serves as a basis of the powers of the Interstate Commerce Commission to regulate the acquisition by one carrier of the facilities of another.[42] When this phrase was attacked as being too indefinite, the United States Supreme Court in *New York Central Securities* v. *United States*[43] said:

> "It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation services . . . the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provisions and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of authority conferred."

The doctrine of this decision may easily be transposed to the field of radio broadcasting. In the leading case of *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*,[44] the United States Supreme Court evaluated this concept and said:[45]

> "This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. . . . The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services. . . ."

The Federal Radio Commission in the exercise of its licensing powers had well-defined areas of inquiry. Only

[41] 41 STAT. 481 (1920), 16 U.S. C.A. § 5(2) (1928).

[42] *Ibid.*

[43] 287 U.S. 12, 24, 54 Sup. Ct. 471, 77 L.Ed. 138 (1932).

[44] 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1933).

[45] *Id.*, at 285.

from such inquiry could its determination of public interest, convenience and necessity be made.

§ 36. Same: Preservation of Competition in Commerce and the Application of Anti-Trust Laws.

Section 13 of the Radio Act of 1927[46] directed the Commission to refuse the grant of a license to any person, firm or corporation against whom a final judgment had been rendered by a United States court that such person, firm or corporation had unlawfully monopolized, or attempted to monopolize, radio communication directly or indirectly. The Commission was also directed to refuse a license to an applicant found guilty of an unfair method of competition. This provision was entirely mandatory without differentiation as to the degree of the offense.[47]

In 1929, a final decree was rendered against the Radio Corporation of America on the ground that the contracts entered into by the defendant for the sale of radio vacuum tubes tended to create a monopoly in the commerce in such products and violated Section 3 of the Clayton Act.[48]

Proceedings were then had before the Federal Radio Commission to determine whether or not applications by subsidiaries of the Radio Corporation of America for renewals of transmitting licenses should be refused by reason of such final decree. Renewals of the licenses were allowed on the ground that the decree was not a judgment within the meaning of Section 93.[49]

The reasoning of the majority of the Commission was that the decree did not adjudge, as Section 93 required, that the Radio Corporation of America had tended to

[46] 44 STAT. 1167 (1927).

[47] See (1929) 54 A.B.A. REP. 480.

[48] Lord, Receiver *v.* Radio Corp. of America, 35 F.(2d) 962 (D. Del., 1929). See Cooper, *Radio and the Anti-Trust Laws* (1931), NATIONAL CONFERENCE ON THE RELATION OF LAW AND BUSINESS (1st Sess., 1931) 146, wherein is found the pertinent extract from the decree of the District Court and a short history of the litigation.

[49] UNITED STATES DAILY, June 25, 1931, 965, 972; Cooper *op. cit. supra* nn. 48, 155.

create an unlawful monopoly of radio communication. An effort to mandamus the Commission to refuse the renewals failed when a demurrer by the Commission to the petition was sustained.[50]

§ 37. Same: To Avoid Interferences by Conflicting Wave-Lengths.

One of the problems with which the Secretary of Commerce was unable to cope under the Act of 1912 was the interference caused by conflicting wave-lengths. This resulted in considerable inconvenience to the reception instrument and destroyed the efficiency of the licensees who were broadcasting on the same wave-length. The Act of 1927 imposed the duty on the Federal Radio Commission to issue licenses to broadcast stations in such a manner as to eliminate interferences caused by conflicting wave-lengths.[51]

The Act of 1927 required the applicant to state the frequencies or wave-lengths and the power to be used, the proposed hours of operation, and any other information which the Commission deemed desirable.[52] In addition, the Commission adopted for its procedure the requirement that a license application specify a definite frequency upon which the proposed station was to be operated.

This procedure was adopted under the power of the Commission to make such regulations as were not inconsistent with law to prevent interference between stations and to carry out the provisions of the Act.[53] It would seem also that in the absence of these specific provisions, the Commission would have had the power to achieve the same result under its general power to grant licenses in the "public interest, convenience and necessity".[54]

It was contended that the policy of the Commission

[50] United States *ex rel.* Moore *v.* Fed. Radio Comm. (Sup. Ct., D.C., 1931) No. 83906 at Law; cited in BERRY, COMMUNICATIONS (1937), §§ 704–706.

[51] 44 STAT. 1163 (1927), § 4.

[52] *Id.*, at § 10.

[53] *Id.*, at § 4.

[54] *Id.*, at § 9.

requiring the applicant to designate a specific frequency was unfair in that it created a contest between the applicant and the licensees who already operated on that wave-length.[55] The Court of Appeals of the District of Columbia sustained the Commission in its requirement that the application contain a designation of a specific frequency.[56]

§ 38. Same: Definite Term of License.

The Act of 1927 required the Commission to issue licenses to radio broadcast stations for a term not exceeding three years.[57] This limitation related to the maximum term of the license, and did not require the Commission to issue licenses for a term of three years. The Commission maintained its regulatory control over broadcasting by granting licenses for a period of six months only. This resulted in more active control by the Commission over its licensees by reason of the frequency with which broadcasters were compelled to subject their operations to the scrutiny of the Commission. This was accomplished by the semi-annual applications for the renewal of licenses. This practice of the Commission has been defended on the ground that the operations of the licensees' broadcast stations are thus more effectually carried out in the public interest, convenience and necessity.

§ 39. Same: Licensees Have No Vested Interest in Wave-Lengths.

The short term licenses issued by the Commission were designed also to prevent the claim by the licensee to a vested interest in the allocated wave-length. The Act of 1927 expressly provided that radio channels were to be made available to licensees for use only, and were not subject to ownership.[58] This Act also required that all licenses contain the express statement that the license shall

[55] Chicago Fed. of Labor *v.* Fed. Radio Comm., 59 App. D.C. 333, 41 F.(2d) 422 (1930).

[56] *Ibid.*

[57] 44 STAT. 1162, 1166, § 1, 9 (1927).

[58] *Id.*, at § 1.

not vest in the licensee any rights to operate the station or use the designated frequencies beyond the term of the license or in any other manner than authorized therein.[59]

These express provisions of the Act of 1927 would seem to negate directly the decision of the Illinois court in the case of *Tribune Company* v. *Oak Leaves Broadcasting Station*[60] which cannot correctly be followed. In a later case the Court of Appeals of the District of Columbia declared that regardless of priority of time, licenses will be modified or refused if the public interest, convenience, or necessity will be served thereby.[61] It was held that even in the case of a license obtained prior to the Act of 1927, no property rights were created which may be asserted against the regulatory power of the United States if that power is properly exercised.[62] The refusal of the Commission to renew a license under the Act of 1927 was held not to be a wrongful deprivation of property rights.[63]

§ 40. Same: Application for License.

The Act of 1927 provided that the applications to the Commission be in writing and be filed with the Secretary of Commerce. It was necessary that the application be signed and sworn to by the applicant.[64] The Act gave the Commission the right to make requirements of facts to be

[59] *Id.*, at § 11.

[60] 68 CONG. RECORD 266 (C.C. Cook County, Ill., 1926). See § 10 *supra*.

[61] Great Lakes Broadcasting Co. *v.* Fed. Radio Comm., UNITED STATES DAILY, Jan. 14, 1930, 3101.

[62] White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D.Ill., 1928).

[63] General Electric Co. *v.* Fed. Radio Comm., 58 App. D.C. 386, 31 F.(2d) 630 (1929); City of New York *v.* Fed. Radio Comm., 59 App. D.C. 129, 36 F.(2d) 115 (1929).

In *Pulitzer Pub. Co.* v. *Federal Communications Commission*, 94 F.(2d) 249 (App. D.C., 1937), the Court said, at page 251:

"And so we hold that the commission as a matter of positive duty is not required to give the owner of an existing station priority to enlarge or extend its facilities because alone of the primacy of its grant."

[64] 44 STAT. 1166 (1927), § 10.

included in the application. It was early established [65] that the Commission may require the applicant to designate the specific frequency upon which the proposed station was to be operated.

§ 41. Same: Qualifications of Applicant.

It has already been indicated that the statute provided that the applicant should not be granted a license if he has been guilty of unlawful monopoly or of an attempt to accomplish such purpose in radio communication directly or indirectly.[66] The Commission was also directed to refuse a license if the applicant had been held guilty of unfair methods of competition.[67] The applicant had to be a citizen of the United States.[68] The applicant could be either an individual or a corporation. It was not necessary that the applicant operate the station as a commercial enterprise. It was necessary only that the applicant satisfy the Commission that his operation under the license would be in the public interest, convenience and necessity.

§ 42. The Davis Amendment—Equal Allocation of Wave-Lengths Within the Five Zones.

One year later Congress passed the famous Davis Amendment [69] to the Act of 1927. This placed a limitation on the licensing powers of the Commission by restricting the application of the standards of public interest, convenience and necessity within definite territories, namely the five zones established in the Act of 1927.[70]

Reciting that people of all zones were entitled to equal broadcasting service, the Commission was authorized to effect this by equal allocation of licenses, wave-lengths, periods of operation and station power to each zone. This legislation also required the Commission to make fair and equitable allocation to each state according to population.

[65] Chicago Fed. of Labor *v.* Fed. Radio Comm., 59 App. D.C. 333, 41 F.(2d) 422 (1930).

[66] 44 STAT. 1167 (1927), § 13.

[67] *Ibid.*

[68] 44 STAT. 1167 (1927), § 12.

[69] 45 STAT. 373 (1928).

[70] 44 STAT. 1166 (1927), § 9.

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The Commission was authorized to modify existing licenses so as to effect such equality. Allocation was determined according to the location of the studio rather than of the transmitter.[71]

This amendment was considered in *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*[72] where it was held to be constitutional by the United States Supreme Court.

§ 43. Permits to Construct Stations.

Where the construction of a station had commenced or continued after February 23, 1927, the issuance of a license to operate was conditional upon possession by the builder of a permit from the Federal Radio Commission.[73] Such permit was granted where the public interest, convenience and necessity would be served by construction of the station.

The application for a construction permit had to state generally the facts required in the application for a license, the date upon which the station was to be completed and ready for operation and any other information the Commission might require.[74]

Where the permit was granted, it had to specify the earliest and latest dates for commencement of operation. The permit recited that it was subject to forfeiture unless the station was ready for operation at the latest date or at such time to which the Commission might have extended the permit, subject, of course, to the exception where the causes for delay were not under the grantee's control.[75] The Commission was required to grant additional reasonable extensions of time for construction where the applicant had expended large sums, acted in good faith and was unable with due diligence to complete construction within

[71] 45 STAT. 373 (1928).

[72] 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1933).

[73] 44 STAT. 1170 (1927), § 21.

[74] *Ibid.*

[75] *Ibid.*

the required time.[76] The permit to construct a station was not transferable.[77]

In order to secure a license upon the completion of the station, there were two provisions of the Act to be met: (1) that all terms, obligations and conditions of the permit had been observed; (2) that there was no factor, new or old, to persuade the Commission that the operation would not be in the public interest.[78]

§ 44. Restrictions on Grants and Transferability of Licenses.

Licenses granted by the Commission were personal and not transferable without the written permission of the Commission.[79] In no event were licenses to be granted or transferred to an alien person or corporation or to a foreign government. No domestic corporation could hold a license by grant, transfer or otherwise, if any officer or director were an alien or if one-fifth of the voting stock "may" be voted by alien interest.[80]

The Commission was forbidden to grant a station license where the applicant had not executed a waiver of any claim to the use of any particular frequency, wave-length or the ether, "as against the regulatory power of the United States". Such a waiver was a mandatory condition precedent, whether the claim arose out of the use under a license or otherwise.[81]

§ 45. Revocation of Licenses by the Federal Radio Commission.

The Commission had the power to rovoke its license by reason of false statements contained in the application for license or accompanying statement of facts. The Commission could revoke a license on the ground of breach of law, license or treaty. Where a licensee's statement of facts revealed conditions warranting the revocation of

[76] Richmond Development Corp. *v.* Fed. Radio Comm., 36 F.(2d) 883 (App. D.C., 1929).

[77] 44 STAT. 1170 (1927), § 21.

[78] *Ibid.*

[79] 44 STAT. 1167 (1927), § 12.

[80] *Ibid.*

[81] 44 STAT. 1164 (1927), § 5.

the license, the Commission possessed the power to do so. These conditions had to be such as would justify the Commission in refusing to grant a license. The failure of the licensee to operate substantially as set forth in the license was a further ground for revocation thereof.[82]

A license could also be revoked whenever any Federal body "in the exercise of authority conferred upon it by law, shall find and shall certify to the Commission that any licensee bound so to do" had failed to provide reasonable facilities or service at reasonable rates, or had been guilty of discrimination as to services or rates, or of violation of any other regulation of radio communication.[83] This provision applied only to those stations engaged in point-to-point radiotelephonic communication and not to radio broadcast stations.[84]

§ 46. General Powers of the Federal Radio Commission.

The Act of 1927 gave the Commission the following general powers:[85]

> "(a) Classify radio stations;
>
> (b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;
>
> (c) Assign bands of frequencies or wave-lengths to the various classes of stations, and assign frequencies or wave-lengths for each individual station, and determine the power which each station shall use and the time during which it may operate;
>
> (d) Determine the location of classes of stations or individual stations;
>
> (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;
>
> (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations

[82] 44 STAT. 1163 (1927), § 4.

[83] *Ibid.* See §§ 212, 213, 215 *infra.*

[84] Sta-Shine Products Co. *v.* Station WGBB, *et al.*, 188 I.C.C. Rep. 271 (1932).

[85] 44 STAT. 1163 (1927), § 4.

and to carry out the provisions of this Act: Provided, however, That changes in the frequencies, authorized power, in the character of emitted signals, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, in the judgment of the Commission, such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Have authority to establish areas or zones to be served by any station;

(h) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(i) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications or signals as it may deem desirable;

(j) Have authority to exclude from the requirements of the regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(k) Have authority to hold hearings, summon witnesses, administer oaths, compel the production of books, documents and papers and to make investigations necessary in the course of duty. . . ."

§ 47. Communications Act of 1934.

Further legislation by Congress in the field of radio broadcasting was the Communications Act of 1934.[86] In this statute all branches of the communications business are dealt with, including telephone, telegraph, and point-to-point radiotelephony as well as commercial radio broadcasting. A new administrative body known as the Federal Communications Commission was created to regulate the entire field of communications and to enforce the provisions of the Act.

[86] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).

§ 48. Purposes of the Act of 1934.

It was the purpose of Congress more effectively to centralize control over the various branches of the communications business which had theretofore been lodged in the hands of several governmental agencies. It was intended thus to make available so far as possible to all the people of the United States a rapid, efficient, nation-wide and worldwide wire and radio communications service with adequate facilities and reasonable charges.[87] Insofar as radio broadcasting is concerned, by merging the powers of the Federal Radio Commission into the Federal Communications Commission, the Act of 1934 incorporated all of the purposes of the Act of 1927.[88]

§ 49. The Federal Communications Commission.

The newly created administrative body known as the Federal Communications Commission is constituted along different lines from the Federal Radio Commission. It is composed of seven members, each of whom serves for seven years and all of whom are appointed by the President with the advice and consent of the Senate.[89] The Act provides that no more than four members of the Federal Communications Commission shall be of the same political party.[90] The Federal Communications Commission is authorized to divide itself into no more than three divisions, each to consist of not less than three Commissioners.[91] Like the Federal Radio Commissioners, the members of the Federal Communications Commission are required to have no financial interest in the industry.[92]

§ 50. The Broadcast Division of the Federal Communications Commission.

Without divesting the Federal Communications Com-

[87] *Id.*, at § 151.

[88] See § 33 *supra*.

[89] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(a), (c) (1937).

[90] *Id.*, at § 154(b).

[91] *Id.*, at § 155(a).

[92] *Id.*, at § 154(b). *Cf.* 44 STAT. 1162 (1927), § 3.

mission of its powers, the Act enables the Commission to delegate to the Broadcast Division "any of its work, business or functions arising under this Act or under any other act of Congress".[93] Such delegation may also be made to individual Commissioners or Examiners except as limited by the Act.[94] Any action taken, including any order, decision or report, by the Broadcast Division, individual Commissioner or Board is of the same force and effect and is made and enforced in the same manner as if made or taken by the Commission itself.[95] A majority of the Division or Board is necessary to control its hearings and determinations.[96]

The Act provides that any order, decision or report by the Broadcast Division, Commissioner or Board may be subject to a re-hearing by the Commission in accordance with the procedure outlined in Section 405 of the Act.[97] Likewise, any order, decision or report by a Commissioner or Board may be subject to a rehearing by the Broadcast Division [98] and its action upon such petition is subject to rehearing by the full Commission.[99] A detailed analysis of this administrative procedure will be found in Section 112 *et seq. infra.*

As a consequence of these provisions, the immediate control over radio broadcasting was vested within the jurisdiction of the Broadcast Division of the Federal Communications Commission, as formerly constituted.[100]

§ 51. Geographical Division into Zones.

The Act of 1934 also divided the United States into zones, five in number. Unlike the structure under the Act of 1927, the territories and dependencies, including Hawaii, Alaska, Puerto Rico, Virgin Islands, Guam and

[93] 48 STAT. 1066 (1934), 47 U.S.C.A. § 155(b) (1937).
[94] *Id.*, at § 155(e).
[95] *Id.*, at § 155(b), (c), (e).
[96] *Id.*, at § 155(c), (e).
[97] *Id.*, at § 155(c), (e).
[98] *Id.*, at § 155(e).
[99] *Id.*, at § 155(e).
[100] See §§ 70–75 *infra.*

American Samoa were expressly excluded from the zones.[101] Such division into zones has since been repealed by an amendment to the Act of 1934.[102]

§ 52. Modifications of the Act of 1927 by Communications Act of 1934.

The standards, "public interest, convenience and necessity", are re-enacted by the Act of 1934.[103] Similarly, other grounds for refusal or grant of a license are re-enacted by the present Act.

However, more restrictive provision is made as to the licensing of alien corporations and corporations under alien control. Under the Act of 1934, the alien ownership of one-fifth of the capital stock of an applicant corporation necessary to render it ineligible must be such that it is "owned of record or voted".[104] Previously, the language of the Act of 1927 applied only to shares of stock which "may be voted" by aliens or alien corporations.[105]

The Act of 1934 is more stringent in that it reaches the holding company. In Section 310(a), sub-section (5), the Act of 1934 expressly declares:

> "The station license . . . shall not be granted to or held by . . . (5) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-quarter of the directors are aliens, or of which more than one-quarter of the capital stock is *owned of record or voted,* after June 1st, 1935, by aliens, their representatives, or by a foreign government or representatives thereof, or *by any corporation organized under the laws of a foreign country,* if the Commission finds that the public interest will be served by the refusal or the revocation of such licenses." *(italics supplied).*

[101] 48 STAT. 1081 (1934), 47 U.S.C.A. § 302 (1937).

[102] 49 STAT. 1475 (1936), 47 U.S.C.A. § 302 (1937).

[103] 48 STAT. 1083 (1934), 49 STAT. 1475 (1936), 47 U.S.C.A. § 307 (1937).

[104] *Id.*, at § 310(a)(4).

[105] 44 STAT. 1167 (1927), § 12.

A further restriction on transferability of licenses is established by declaring that transfer of licenses cannot be made indirectly by change of stock control unless upon full information the Commission decides that the transfer is in the public interest and written consent is given.[106]

[106] 48 STAT. 1086 (1934), 47 U.S.C.A. § 310 (1937). See DILL, RADIO LAW (1938) 208. See § 44 *supra.*

NOTE on Transfer of License, Control of Broadcast Station Operation and Employees under § 310, 48 STAT. 1086 (1934), 47 U.S.C.A., § 310 (1937):

"The power and control of the licensee over the programs broadcast and all equipment usually incident to the operation of a station must not be limited by contract. Likewise, the power, authority or control of the licensee over the employees should not be restricted." *Fed. Radio Comm. ruling on lease of Station WMCA to Federal Broadcasting Corp.* (Dec. 15, 1933); BERRY, COMMUNICATIONS (1937), 160.

In the so-called *Brooklyn Cases,* 2 F.C.C. Rep. 208 (1935), the Commission refused to renew the broadcast stations' licenses on the ground that the licensees had transferred, in violation of § 310, *supra,* rights incident to the license. In one of these cases, the licensee corporation through its board of directors, by an unlimited power of attorney, gave full and complete direction and control of the broadcast station to another person. The directors and stockholders took no share in the management, control, supervision or operation of the broadcast station. The grantee of the power of attorney was held to be the transferee of the rights in the station license, to all intents and purposes. The transaction, therefore, violated § 310 *supra.*

In another of these cases, the licensee allotted broadcast time for a program to a person who had complete charge of the program, provided and paid the talent and the announcer, and secured commercial announcements, for broadcast in the program. This was held to be a divestment of the licensee's control over the program. *The Brooklyn Cases,* 2 F.C.C. Rep. 208 (1935). The same result was reached where for performing such extensive services, this person received broadcast time and was allowed to sell it for the transmission of commercial announcements. Cases *supra.*

This delegation of time was held to be a transfer of rights incident to the license in violation of § 310 *supra.* The rendition of a public service is directly affected by the supervision and control of programs, even as to content. The privileges conferred by the license have as an inherent incident, the power to determine, select, supervise and control broadcast programs. Inasmuch as the licensee is directly accountable for the service rendered, it is his responsibility. Such a delegation of

Under Section 311 of the Communications Act of 1934, the Commission now possesses discretionary power to revoke licenses or deny applications where the applicant has been finally adjudged guilty of monopolistic practices.[107] But where the court has incorporated in its decree under Section 313[108] a provision which revokes the defendant's license, it is mandatory that the Commission refuse all applications by the defendant.[109]

§ 53. New Provisions of the Act of 1934.

The Federal Communications Commission is given all the powers formerly vested in the Secretary of Commerce.[110] In addition, it is directed to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest".[111] The Commission is given power to require the painting or illumination of radio towers to eliminate this danger to air navigation.[112]

The Commission may now modify a license or construction permit issued after June 19th, 1934, "if in the judgment of the Commission such action will promote the public interest, convenience and necessity, or the provisions of this chapter or of any treaty . . . will be more fully complied with." Such modification may be made for a limited time or for the duration of the term of the license or permit.[113]

Wider power is given to the Commission in that it may now control studios which are located in the United States and used by broadcast stations situated in foreign countries, the programs of which are broadcast into the United States. Such studios must be operated only with the permission of the Commission. Permission is to be

broadcast facilities violates § 310 *supra*.

[107] 48 STAT. 1086 (1934), 47 U.S.C.A. § 311 (1937).

[108] *Id.*, at § 313.

[109] *Id.*, at § 311.

[110] 48 STAT. 1082 (1934), 47 U.S.C.A. § 303(l), (m), (o), (p) (1937).

[111] *Id.*, at § 303(g).

[112] *Id.*, at § 303(q).

[113] 48 STAT. 1086 (1934), 47 U.S.C.A. § 312(b) (1937).

granted, refused or renewed in accordance with the provisions concerning the grant or refusal of licenses to domestic stations.[114]

Under Section 325(a)[115] it is forbidden to rebroadcast a program or any part thereof of another station without express authorization by the originating station. Rebroadcasting is defined to mean,[116] "that the station engaged therein actually reproduced the signal of another station mechanically or by some other means, such as feeding the program received directly into a microphone. From a strict standpoint, the receiving of a program of another station over an ordinary receiving set and then restating the information thus received over the microphone does not constitute a violation of Section 325 of the Communications Act."

The Act of 1934 prohibits the broadcast by means of the facilities of any station of information concerning any lottery, gift enterprise or a similar scheme offering prizes dependent in whole or in part upon lot or chance.[117] The entire problem of the broadcast of programs containing such information is discussed in Chapter XXXI. *infra.*

§ 54. The Davis Amendment—Repealed in 1936.

The Act of 1934 re-enacted the original Davis Amendment[118] with one important additional proviso:[119]

[114] 48 STAT. 1091 (1934), 47 U.S.C.A. § 325(b), (c) (1937).

In *Norman Baker* et al. v. *United States,* 93 F.(2d) 332 (C.C.A. 5th, 1937) on appeal from the United States District Court (Southern) for Texas, the Fifth Circuit Court of Appeals held that § 325(b) of the Communications Act of 1934, *ibid.,* did not make it a penal offense for a person to use a studio to manufacture an electrical transcription in the United States and to deliver the mechanical reproduction to a foreign broadcast station for transmission of a program which could be received and publicly performed in the United States.

[115] *Ibid.*

[116] Newton, 2 F.C.C. Rep. 281, 284 (1936).

[117] 48 STAT. 1088 (1934), 47 U.S.C.A. § 316 (1937).

[118] See § 42 *supra.*

[119] 48 STAT. 1083 (1934), 47 U.S.C.A. § 307(b) (1936).

"The Commission may also grant applications for additional licenses for stations not exceeding 100 watts of power if the Commission finds that such stations will serve the public convenience, interest or necessity, and that their operation will not interfere with the fair and efficient radio services of stations licensed under the provisions of this section."

The Davis Amendment had proved a most fruitful source of litigation. Moreover, it was difficult to administer. Much confusion was created as to the interpretation of its exact meaning. In 1936, Congress repealed the whole text of the Davis Amendment and enacted a new section.[120]

The provisions of the Davis Amendment to the Act of 1927 and its incorporation in the Act of 1934 had been based upon the division of the United States into zones.[121] The newly enacted section seeks to achieve the desired fair and equitable allocation of the distribution of radio broadcast facilities among the several states and communities. To that end, Section 302 of the Act of 1934 which divided the country into zones is repealed.[122]

The new section seeks to accomplish fair and equitable allocation of radio broadcast facilities by the following provision:[123]

"(b) In considering applications for licenses and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same."

[120] 49 STAT. 1475 (1936), 47 U.S.C.A. § 307(b) (1937).

[121] 48 STAT. 1081 (1934), 47 U.S.C.A. § 302 (1936).

[122] 49 STAT. 1475, 47 U.S.C.A. § 302 (1937).

[123] *Id.*, at § 307(b). On the whole question of allocation under the Davis Amendment and its successor provisions, see DILL, RADIO LAW (1938) 180 *et seq.*

Chapter IV.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION *— APPLICATIONS.

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* The Federal Communications Commission publishes its decisions, reports and orders periodically. Volume I. of the series of Federal Communications Reports (cited as 1 F.C.C.Rep.) covers the period from July, 1934 to July, 1935. Volume II. of this series (cited as 2 F.C.C.Rep.) includes such action from July, 1935 to June, 1936. Volume III. (cited as 3 F.C.C.Rep.) embraces the period from July, 1936 to February, 1937. Volume IV. (cited as 4 F.C.C.Rep.) contains a report of the Commission's action from March, 1937 to November 15, 1937.

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§ 55. Applications for Instruments of Authorization.

Applications[1] for broadcast station licenses or renewal of existing station licenses or modifications thereof must be made in writing,[2] in the form prescribed and furnished by the Federal Communications Commission.[3] The appli-

[1] The Federal Communications Commission may grant licenses, renewals or modifications thereof, only upon such applications therefor as are received by it. 48 STAT. 1084 (1934), 47 U.S.C.A. § 308(a) (1937).

[2] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.6; 48 STAT. 1084 (1934), 47 U.S.C.A. § 308(a) (1937).

[3] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.6; Telegraph

cation must be executed by the real party in interest.[4] By its regulation, the Commission requires a separate application for each authorization sought:[5] *"Provided, however*, that in cases where a single licensee holds a number of licenses identical in their terms with the exception of locality, a single application may be filed for renewal or modification of such licenses, where such single application sets forth in detail and in unmistakable terms, an accurate description of the individual licenses sought to be renewed or modified."[6]

The Federal Communications Commission has the power to prescribe by regulation the facts and information which should be set forth in the application.[7] The Communications Act of 1934 authorizes the Commission to request information as to specific items[8] and also such other data as it may require.[9]

§ 56. Same: Contents of Applications.

All applications must set forth, subject to the regulations of the Commission, facts as to the following:

1. The qualifications of the applicant, including his citizenship, character, financial ability and position, and technical knowledge and equipment
2. The ownership and location of the broadcast station
3. The frequencies, power, and time of operation sought to be utilized.

Herald Co. *v.* Fed. Radio Comm., 62 App. D.C. 240, 66 F.(2d) 220 (1933). See Merrimac Broadcasting Co., Inc., 4 F.C.C.Rep. 453, 454 (1937).

[4] Cole, 2 F.C.C.Rep. 541 (1936); Kraft, *et al.*, 3 F.C.C.Rep. 560 (1936). See Statler, 4 F.C.C.Rep. 299, 300 (1937).

[5] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.6.

[6] *Ibid.* Section 103.6 would be § 103.5 under the proposed new rules of the Commission. The new section adds the following phrase to the proviso quoted in the text: "and in other cases in the discretion of the commission."

[7] 48 STAT. 1084 (1934), 47 U.S.C.A. § 308(b) (1937).

[8] *Ibid.*

[9] *Ibid.*

In addition, at any time after the application has been filed, the Commission may require of the applicant further statements of fact in writing to enable it to make its determination of the merits of the application.[10] Verification of the application and all additional statements of fact is mandatory.[11]

Every application for an instrument of authorization in respect to broadcast facilities must specify one frequency.[12] The Commission will not accept an application for a broadcast station construction permit or a broadcast station license which requests alternative facilities. Where at a hearing the applicant declared that any frequency which the Commission could allot for the use specified would satisfy him, such declaration was passed by.[13] This is because the Commission may only determine the correct use of the specific frequency applied for. It may not go beyond the application and substitute another frequency for that for which an application has been made. The application must also specify the power, hours of operation and all other terms of the authorization sought.[14]

[10] 48 STAT. 1084 (1934), 47 U.S.C.A. § 308(b) (1937).

[11] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.6.

Where the application is for a construction permit or station license, two copies are required to be filed with the Commission at Washington, D. C. FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.7.

[12] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 103.9. As to when various applications must be filed, see FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure,* §§ 103.10, 103.11, 103.13, 103.14, 103.15, 103.18.

Section 103.12, *op. cit. supra,* provides:

"In all cases where a construction permit is required by § 319 of the Act for the construction of a station, the application for station license . . . shall be filed by permittee or its lawful assignee, after consent of Commission to the assignment, prior to service or program tests."

These sections appear with changes as 103.9, 103.10, 103.11, 103.12, 103.13, 103.14, 103.17 respectively in the proposed new rules of the Commission.

[13] *Re* Howton, 2 F.C.C.Rep. 68 (1935).

[14] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Pro-*

§ 57. Same: Amendment and Withdrawal of Applications.

There are two restrictions on the right of an applicant to amend or withdraw his application:

1. Such action must not aggrieve or adversely affect other parties.
2. A hearing thereon must not have been concluded.

If both of these conditions are complied with, the amendment or withdrawal may be made without prejudice.[15]

Where the motion to allow withdrawal was made at the hearing, the application was dismissed with prejudice, since the licensee whose frequency was sought by applicant was put to expense and inconvenience in preparing for the hearing.[16]

Where the amendment changes the frequency, hours of operation, power, equipment or location of the station, to avoid prejudice, the applicant must file such amendment at least thirty days before a hearing on the application. Likewise, where the amendment or withdrawal aggrieves or adversely affects other parties.[17]

§ 58. Same: Application May Be Required by Commission.

> "Whenever the Commission regards an application for a renewal of license as essential to the proper conduct of a hearing or investigation, and specifically directs that the same be filed by a date certain, such application shall be filed within the time thus specified. If the licensee fails to file such application within the prescribed time, the hearing

cedure (1935), § 103.9. This section is set forth as 103.8 in the proposed new rules of the Commission.

[15] *Id.*, at 103.8.

[16] Parmer, *et al.*, 2 F.C.C.Rep. 172 (1935). See also *Utah Radio Educational Society, et al.*, 3 F.C.C. Rep. 246, 259 (1936) where the applicant failed to appear at the hearing.

[17] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.8. See Peffer, 4 F.C.C.Rep. 174, 175 (1937). The thirty days requirement is abrogated by § 103.7 of the proposed new rules of the Commission.

or investigation shall proceed as if such renewal application had been received." [18]

Whatever the utility of this regulation, the Commission could in no event change the frequency, authorized power or time of operation of a licensed station without the latter's consent, or until after a public hearing.[19]

§ 59. Same: Application for Approval of Assignment of Permit or License, or Transfer of Control of Licensee Corporation.

If a voluntary assignment of the property of a station, or a voluntary transfer of the control of a licensee corporation is made, the assignor and assignee both must execute the necessary and proper application to the Commission for authority so to do. Where such assignment is involuntary, only the assignee need execute the application.[20]

[18] *Id.*, at § 103.16.

[19] 48 STAT. 1082 (1934), 47 U.S.C.A. § 303(f) (1937).

[20] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 103.18.

In support of an application for the approval of an assignment or transfer of a license, the following information must be submitted:

". . . . In support of each such application affecting a radio station there shall be submitted under oath or affirmation, in addition to the information required by the forms furnished by the Commission, in properly marked exhibits, the following information:

"A. If the application is for transfer of license:

"(1) A complete detailed list of all the items of property and assets of the station, including intangibles. . . .

"(2) A similar list showing with reference to the items of property and assets given: (a) The original cost to the licensee, when and from whom purchased; (b) the present depreciated value and method of computing depreciation, and the replacement value and method of determining same. . . .

"(3) A profit-and-loss statement of the assignor showing receipts and disbursements in detail and also profit or loss for a period of 6 months preceding the filing of the application;

"(4) *A financial statement of the assignee showing in de-*

§ 60. Financial Qualifications to Be Set Forth in Application.

It is best that the application be as complete as possible in all respects in order to avoid the expense of a hearing.

tail the items of assets and liabilities and assignee's financial ability to continue the operation of the station in the public interest, together with the date of said statement;

"(5) *Where the assignment is voluntary, an executed copy of the contract or lease agreement which must provide (a) that assignee shall have complete control of the station, its equipment and operation, including unlimited supervision of programs to be broadcast; (b) transfer shall be subject to the consent of the Commission; and (c) the price, whether paid or promised, and all the terms and conditions of the proposed sale or transfer; (Italics supplied)*

"(6) Where assignment of property of the station is involuntary, a certified copy of the court order or other legal instrument effecting the transfer, showing all the terms and conditions under which the transfer is made, including the consideration therefor;

"(7) A copy of the articles of incorporation of the assignee, if a corporation, showing its power to engage in radio broadcasting, certified by the secretary of state of the State in which the assignee is incorporated;

"(8) A list of names, nationalities, and addresses of incorporators, directors, and officers, and of all stockholders owning 5 percent or more of the stock of said assignee corporation and all corporations controlling said assignee;

"(9) Applicants for the Commission's consent to the transfer of a license from one licensee to another must join in a statement under oath as to whether there are contracts, agreements, or understandings (other than the one submitted under subpar. 5 above), whether written or oral, which may in anywise affect or concern the transfer contemplated, the financial arrangements between the parties, the equipment of the station or its operation or supervision. If there are no such contracts or understandings, the statement should clearly evidence this fact; if there are any such contracts, full and complete copies thereof properly executed must be submitted. Action will not be had on any such appli-

It is especially important that the applicant show in detail financial ability to support a grant by the Commission. In any event, these facts must be proven in the

cation until this information is fully supplied.

"B. If the application is for transfer of control of a licensee corporation:

"(1) A complete detailed list of all the items of property and assets of the station, including intangibles; Real property must be listed separately showing both the buildings and land. If no real property is involved, applicant must so state;

"(2) A similar list showing with reference to the items of property and assets given: (a) The original cost to the licensee, when and from whom purchased, (b) the present depreciated value and method of computing depreciation, and the replacement value and method of determinine same. . . .

"(3) A financial statement of the licensee corporation, control of which is to be transferred, showing in detail the items of assets and liabilities, together with the date of said statement;

"(4) A profit-and-loss statement of said licensee corporation showing the receipts and disbursements in detail and also profit or loss for a period of 6 months preceding the filing of the application;

"(5) If control of the licensee corporation is to be transferred by contract, a fully executed copy thereof showing the date and all the terms and conditions, including the exact consideration paid or promised, with a condition that the transfer be subject to the consent of the Commission;

"(6) If control of said licensee corporation is to be transferred by involuntary means, a certified copy of the court order or other legal instrument effecting the transfer of control, showing all the terms and conditions thereof, including the consideration therefor;

"(7) If control is to be transferred to a corporation, a copy of the articles of incorporation, properly certified by the secretary of state of the State in which the corporation is incorporated;

"(8) A list of names, nationalities, and addresses of incorporators, directors, and officers, and of all stockholders owning 5 percent or more of the stock of said assignee corporation and all corporations controlling said assignee;

"(9) Applicants for the Com-

application or by evidence at a hearing. Therefore, the statements in the application should be selected in accord with the decisions of the Commission as to facts sufficient to support a grant.[21]

The applicant must show himself financially able to construct and operate the proposed radio broadcast station in the public interest.[22] Otherwise a grant of such application would not be in the public interest, convenience and necessity.[23] Obviously, one who is insolvent may not

> mission's consent to the transfer of control of a licensed corporation must join in a statement under oath as to whether there are contracts, agreements, or understandings (other than the one submitted under subpar. 5 above), whether written or oral, which may in anywise affect or concern the transfer contemplated, the financial arrangements between the parties, the equipment of the station or its operation or supervision. If there are no such contracts or understandings, the statement should clearly evidence this fact; if there are any such contracts, full and complete copies thereof properly executed must be submitted. Action will not be had on any such application until this information is fully supplied. . . . *Provided further,* That the Commission may in any case, in its discretion, require the furnishing of such other and further information in connection with the applications for consent to assignment of construction permit or license or for consent to transfer of control of a corporation holding a construction permit or license as it may deem necessary."
>
> Under the proposed new rule 103.17, F.C.C. Forms 704, 705 and 706 will cover the foregoing requirements.

[21] The Federal Communications Commission may require this information under § 308(b) of Communications Act of 1934, 48 STAT. 1084 (1934), 47 U.S.C.A. § 308(b) (1937). See §§ 103.8(b) and 103.15 of the proposed new rules of the Commission.

[22] Hopkins, *et al.,* 1 F.C.C.Rep. 117 (1934); General Television Corp., 1 F.C.C. 135 (1934); Mellot, 1 F.C.C.Rep. 222 (1935); Lansberg & Martin, 1 F.C.C.Rep. 142 (1934); Dellinger, 1 F.C.C. Rep. 15 (1934); Amatucci, 1 F.C.C. Rep. 179 (1934); Amelung, 1 F.C.C.Rep. 181 (1934); Repolge, 1 F.C.C.Rep. 256 (1935); Reith, 1 F.C.C.Rep. 261 (1935).

[23] Omelian, Fed. Radio Comm.

receive a grant of a license.[24] An application for renewal was refused when it appeared that the applicant was in such straits financially that he could not render a satisfactory service in the public interest.[25] The application must show that the operation and maintenance of the broadcast station will be adequately financed.[26] The application should disclose the nature and character of securities which the applicant claims support his financial ability.[27]

The applicant must rely on his own financial resources to sustain a grant. He must be financially able to construct and operate a radio broadcast station.[28] Since under the statute the licensee assumes the burden to operate in the public interest, the Commission must look only to him.[29] Where the application or evidence shows only verbal promises or statements by third persons that they will provide finances for the applicant and where such third persons are not bound, a grant of a license cannot be sustained. Moreover, such verbal declarations are incompetent to be admitted into evidence.[30] Likewise, where the applicant makes statements as to his financial ability, unsupported and based upon unreliable values without any appraisal of the properties, and in addition, upon promises of support from third persons, the application is insufficient

Docket 2046, Feb. 20, 1934, cited in BERRY, COMMUNICATIONS (1937) 306; Burch, 1 F.C.C.Rep. 139 (1934); Lansberg & Martin, 1 F.C.C.Rep. 142 (1934).

[24] Boston Broadcasting Co. (WLOE) *v.* Fed. Radio Comm., 67 F.(2d) 505 (App. D.C., 1933); Sproul *v.* Fed. Radio Comm., 54 F.(2d) 444 (App. D.C., 1931).

[25] United States Broadcasting Co., *et al.*, (The Brooklyn Cases), 2 F.C.C.Rep. 208 (1935).

[26] General Television Corp., 1 F.C.C.Rep. 138 (1934).

[27] Tidmore, Docket 2321, June 29, 1934, cited in BERRY, COMMUNICATIONS (1937), 135; Gunthorpe, 1 F.C.C.Rep. 177 (1934).

[28] *Re* Wiseman, Fed. Radio Comm. Docket 2037, Fed. 20, 1934, cited in BERRY, COMMUNICATIONS (1937) 306.

[29] *Re* Amelung, 1 F.C.C.Rep. 181 (1934); *Re* Repolge, 1 F.C.C. Rep. 256 (1935).

[30] Lansberg & Martin, 1 F.C.C. Rep. 142 (1934).

to show resources for a sound financial operation of a radio broadcast station.[31]

While an applicant may rely on some actual and definite financial support from third persons, yet his application is insufficient where he is wholly dependent upon others for such support to continue the operation of a radio broadcast station. The requirement is that the applicant show that he is financially able to support the operation of the station for a reasonable time.[32]

§ 61. Technical Qualifications to Be Set Forth in Application.

The operation of a radio broadcast station is a technical activity. Moreover, the public interest requires the best and most modern radio apparatus. The Commission has the power to require the use of modern equipment under its power to regulate the kind of apparatus.[33] In *Beebe* v. *Federal Radio Commission*,[34] it was held that a renewal was properly refused since the evidence showed that the applicant's transmitter did not conform to and could not be operated in accordance with the Commission's regulations or modern engineering standards.

Under Section 303(d) of the Communications Act of 1934,[35] the Commission must fix the location of individual stations. By subdivision (b) of that section,[36] the Commission must prescribe the nature of the service to be rendered by each station. In Section 303(c)[37] the Commission is given the power to assign frequencies, deter-

[31] Wyoming Broadcasting Co., Fed. Radio Comm. Docket 2137, Mar. 2, 1934, cited in BERRY, COMMUNICATIONS (1937).

[32] *Re* Phelan, Fed. Radio Comm. Docket 1966, Feb. 2, 1934, cited in BERRY, COMMUNICATIONS (1937) 306; Intercity Radio Tel. Co. *v.* Fed. Radio Comm., 46 F.(2d) 602 (App. D.C., 1931).

[33] 48 STAT. 1082 (1934), 47 U.S.C.A. § 303(e), (n) (1936); BERRY, COMMUNICATIONS (1937) 112.

[34] 61 F.(2d) 914 (App. D.C., 1932).

[35] 48 STAT. 1082 (1934), 47 U.S.C.A. § 303(d) (1937).

[36] *Id.* at 303(b).

[37] *Id.* at 303(c).

mine the power to be used by each station and the time of operation. Most imperative of all, the Commission is charged with the duty to prevent interference.[38]

Because of these statutory duties, powers and requirements, the Commission necessarily needs an enormous amount of technical data, the burden to supply which is on the applicant who must show the grant of his application to be in the public interest.[39] Furthermore, Section 308(b) requires that the application set forth the technical qualifications of the applicant.[40] The item of technical qualifications is inherent in the question of public interest. Therefore, the applicant must set forth in his application all details of his technical qualifications[41] and all technical data concerning the station location and apparatus.[42]

§ 62. General Power of Federal Radio Commission to Hold Hearings.

Section 4 of the Radio Act of 1927[43] specifically authorized the Federal Radio Commission to hold hearings. That Commission was further vested with authority to make such investigations as might be necessary to the proper performance of its duties. To accomplish these powers, the Commission received incidental powers to summon witnesses, administer oaths and compel the production of books, papers and documents. To aid in the administration of such authority, the Commission was empowered by Section 3[44] to appoint such examiners as were required from time to time.

[38] *Id.* at 303(f).

[39] See §§ 151 *et seq. infra.*

[40] 48 STAT. 1082 (1934), 47 U.S.C.A. § 308(b) (1937).

[41] FED. RADIO COMM., 3 ANNUAL REPORT (1929) 38, 42, 43; BERRY, COMMUNICATIONS (1937) 148.

[42] Release of July 15, 1932, FED. RADIO COMM., 6 ANNUAL REPORT 30 (1932); Fed. Communications Comm., 1 ANNUAL REPORT 32 (1935).

[43] Act of Feb. 24, 1927, C. 169, § 4(k), 44 STAT. 1163.

[44] Act of Feb. 24, 1927, C. 169, § 3, 44 STAT. 1162.

§ 63. Same: Applicant's Right to Hearings Generally.

Sections 11 [45] and 21 [46] of the Radio Act of 1927 established the course of procedure with respect to the various applications which the Federal Radio Commission had power to receive.

Upon the filing of an application, the Commission examined the documents submitted and the statements contained therein to determine whether the granting of such application would be in the public interest, convenience or necessity.[47] Where the application was for the grant of a broadcast station license or for the renewal or modification of an existing station license, and the Commission failed to determine that the granting of such application would be in the public interest, convenience or necessity, Section 11[48] specifically granted to the applicant a right to a hearing.

The Commission was required to notify the applicant of its adverse decision. In addition, the Commission had to specify the time and place for a hearing on the issues raised by its decision. At such time and place, the Commission was required to allow the applicant an opportunity to be heard under such rules and regulations as it might prescribe.

§ 64. Same: Hearings on Revocation of Licenses.

The Radio Act of 1927 enumerated certain causes as grounds for the revocation of broadcast station licenses by the Federal Radio Commission.[49] Section 14 [50] suspended the effect of an order of revocation of a broadcast station license until thirty days written notice had been given by the Commission to all parties whom it knew to be interested in the license sought to be revoked. The written notice was required to set forth the cause for the proposed revocation.

[45] *Id.* at 1167.

[46] *Id.* at 1170.

[47] Act of Feb. 24, 1927, C. 169, § 11, 44 STAT. 1167.

[48] *Ibid.*

[49] Act of Feb. 24, 1927, C. 169, § 14, 44 STAT. 1168.

[50] *Ibid.*

"Any person in interest aggrieved by said order" had the right within the thirty day period to apply in writing to the Federal Radio Commission for a hearing upon its order. The filing of such written application automatically suspended the order of revocation until the conclusion of the hearing which the Commission was directed to hold. The Commission had the power to prescribe rules and regulations as to the manner in which such hearings were to be conducted. Upon the conclusion of such hearing, the Commission could affirm, modify or annul the order of revocation.[51]

§ 65. Right to Hearings Under Rules and Regulations of Federal Radio Commission.

The Federal Radio Commission granted or allowed hearings in certain cases in which hearings were not required nor provided for by the Radio Act of 1927. The rules of practice and procedure of the Federal Radio Commission set forth the circumstances under which the hearings were allowed.[52]

§ 66. Hearings Where Applications Granted in Part.

An applicant could secure a hearing before the Federal Radio Commission where his application was granted in part without a hearing.[53] The same was true if the application was granted "with any privileges, terms, or conditions other than those requested".[54] If under these circumstances a hearing was not requested within fifteen days of the date of mailing of notice of such result, the decision of the Federal Radio Commission was deemed the grant of the application.[55]

[51] *Ibid.*

[52] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure* 26; L. G. Caldwell, *New Rules and Regulations of Federal Radio Commission* (1932) 2 JOURN. RADIO L. 66.

[53] As provided in FED. RADIO COMM., *op. cit. supra* n. 52, at 27.

[54] *Id.* at 27.

[55] *Ibid.*

The *Rules of Practice and Procedure* of the Federal Radio Commission, *op. cit. supra* n. 52, as

§ 67. Hearings After Applications Granted Without Hearing Under the Act of 1927.

The Federal Radio Commission reserved the right to grant applications without a hearing where, on the information before it, the Commission found that the public interest would be served thereby and that no other person would be adversely affected. This reservation was limited by a provision that "any such grant shall be conditional and may be suspended and reconsidered by the Commission".

This latter proviso applied where a person who claimed to be adversely affected by the granting of the application filed a protest within twenty days, in which case a hearing was held in the same manner as on other applications. The protest, however, was taken as a pleading limiting the issues to be tried at the hearing.[56]

§ 68. All Other Applications Designated for Hearing Under the Act of 1927.

Where the application had been determined to be proper on its face, but the Federal Radio Commission was unable

originally promulgated, allowed hearings on defective applications in certain cases. This was eliminated in a later revision.

It has been said of this later revision:

"The subject of defective applications was covered at length by four sections in General Order 93, only one of which has been retained . . . in the new regulations. This section defines what shall constitute a defective application and provides that 'each such application shall be returned to the applicant . . . together with a brief statement of the respect in which the application is defective.' The three omitted sections provided for refiling for hearing in certain cases, and for ultimate denial by the Commission, so that the propriety or validity of the Commission's action might be tested on appeal. The new regulations apparently mean that the applicant's only recourse is to mandamus proceedings to force acceptance of the application for filing." L. G. Caldwell, *New Rules and Regulations of Federal Radio Commission* (1932) 2 JOURN. RADIO L. 66, 73.

[56] L. G. Caldwell, *op. cit. supra* n. 55.

without a hearing on the merits to reach a determination that "the granting of such application either in whole or in part would serve public interest, convenience, or necessity," then under its rules the Commission designated the same for hearing.[57]

An application proper on its face was also designated for hearing where the Federal Radio Commission could not determine without a hearing that the grant of the authorization sought "would not aggrieve or adversely affect the interest of any person, firm, company or corporation holding a permit, license or other instrument of authorization from the Commission, or having an application therefor pending before the Commission".[58]

§ 69. Right to Hearings upon Construction Permits Under the Act of 1927.

There was no statutory ground for a hearing on the refusal of the Federal Radio Commission to grant an application for a broadcast station construction permit.[59] This omission would seem to have been cured by the general powers possessed by the Commission to hold hearings [60] and to make regulations.[61] Therefore, the Federal Radio Commission had discretion as to whether hearings should be allowed upon an adverse determination of such applications.

The Commission exercised its discretion to allow hearings on applications for construction permits under its rule that all applications which were proper on their face would be designated for hearings where the Commission could not reach a determination of public interest, convenience, or necessity.[62]

[57] FEDERAL RADIO COMMISSION, *op. cit. supra* n. 52, § 7.

[58] FEDERAL RADIO COMMISSION, *op. cit. supra* n. 52, § 7.

[59] See 44 STAT. 1162 (1927).

[60] *Id.* at § 4(k).

[61] *Id.* at § 4(f).

[62] FEDERAL RADIO COMMISSION, *op. cit. supra* n. 52, § 7.

§ 70. Structure of Federal Communications Commission: For Investigations and Hearings: Generally.

In contrast with the scope of regulation by the Federal Radio Commission under the Radio Act of 1927, the Federal Communications Commission is vested by the Communications Act of 1934 with regulatory jurisdiction over a much wider field of the communications industry.[63] The present authority of the Federal Communications Commission extends over the entire field of communication by electrical energy, which includes telephone and telegraph as well as radio communication.[64]

To facilitate an efficient administration of the regulatory powers of the Federal Communications Commission, the Communications Act of 1934 provided a structural system by means of which the Commission is organized.[65] There is a marked similarity between this system and the structure of the Interstate Commerce Commission.[66] The Federal Communications Commission is authorized to divide itself into three divisions, each division to consist of not less than three commissioners.[67] One of the divisions which had been established pursuant to the Communications Act was the Broadcast Division.[68]

§ 71. Same: Establishment of Divisions: Reference or Assignment Thereto.

Any member of the Federal Communications Commission may serve on one or more of the divisions established pursuant to Section 155(a) of the Communications Act of 1934.[69] By order, the Commission had established the following divisions:[70] (1) Broadcast (2) Telegraph

[63] 48 STAT. 1064, (1934) 47 U.S.C.A. § 151 *et seq.*, (1937). See §. 47 *supra*.

[64] *Ibid.*

[65] 48 STAT. 1064 (1934), 47 U.S.C.A., § 155 (1937).

[66] *Cf.* 41 STAT. 492, 493 (1887), 49 U.S.C.A., § 17 (1937).

[67] 48 STAT. 1064 (1934), 47 U.S.C.A., § 155(a) (1937).

[68] 1 F.C.C.Rep. 3 (1934).

[69] 48 STAT. 1064 (1934), 47 U.S.C.A. § 155(a) (1937).

[70] See 1 F.C.C.Rep. 3 (1934).

(3) Telephone, and had directed that the Chairman of the Commission be a member of each division.

By order dated October 14th, 1937, the Commission unanimously abolished its divisions.[71] Since Section 155 [72] has not been repealed by Congress, it is conceivable that the Commission may re-establish its divisions. For this reason as well as for historical purposes, consideration will be given to the powers and functions of the division system of administrative regulation, with especial reference to the Broadcast Division.

Each division was authorized to elect its own chairman.[73] The secretary and seal of the Commission were the secretary and seal of each division.[74]

The purpose of this scheme was to secure a division of labor and a more efficient administration of the Communications Act of 1934. Under the present Act, any work, business or function of the Federal Communications Commission may be referred to a division for action thereon.[75] The order of reference may take effect at once and is subject to the Commission's amendment, modification, addition or rescission.[76] The order of reference may continue in effect until otherwise ordered by the Commission.[77]

§ 72. Same: Division System Should Be Retained with Modifications.

The large burden imposed upon the Chairman of the Commission under the division system as set up by the Commission would seem to have been a prime reason for the abolition of the divisions. The Act of 1934 contemplated that at least three commissioners would administer the affairs of each division. It is submitted that the divi-

[71] Federal Communications Commission, Order No. 20 (October 14, 1937); NEW YORK TIMES, October 15, 1937, p. 1, 4 F.C.C. Rep. 41 (1937).

[72] 48 STAT. 1064 (1934), 47 U.S.C.A. § 155 (1937).

[73] *Id.* at § 155(a).

[74] *Id.* at § 155(c).

[75] *Id.* at § 155(b).

[76] *Ibid.*

[77] *Ibid.*

sion system is basically meritorious and that it was abandoned principally for reasons of personnel. The system might well be restored if the Act were amended to increase the number of commissioners.

The vast field of the communications industry sought to be regulated by the Commission presents a complexity of diverse problems. It is essential that a division of administrative function be allocated to specialized divisions composed of commissioners experienced in the handling of the respective fields. The responsibility for matters of broad policy need not be dislodged from the full Commission, but the actual administration of the respective industries should be delegated to the divisions.

The Interstate Commerce Commission has employed a system of dividing its functions which appears to be efficient. In fact, the structure of the Federal Communications Commission is patterned somewhat after the Interstate Commerce Commission.

It may be anticipated that the abolition of the division system will be the precursor of a revised structure of the Federal Communications Commission which will not finally abandon the division system. The increase of the number of commissioners so that at least three different members may serve in each division is sorely needed. The Chairman should be charged with supervisory and executive duties only, and should serve *ex officio* in each division. It is submitted that such an amendment to the Act of 1934 would serve as one of a series of progressive steps necessary in the effective revision of the Commission's structure.

The extension of the Civil Service system to the appointment of directors of the divisions, engineers, accountants, assistants to the General Counsel and similar personnel would constitute notable advances in the movement to attain efficient regulation by specialists.

§ 73. Divisions: Powers: Effect of Orders: How Evidenced.

Subject to the order of the Federal Communications Commission in the premises, each division would have

complete power over the work, business or functions assigned to its jurisdiction. Each division could hold hearings, make determinations and orders, certify, report or otherwise act. The power of a division over work, functions or business assigned to it would be those of the Federal Communications Commission and would be subject to the same duties and obligations.[78] Any action in the exercise of the powers of the Commission by a division would be of the same force and effect as if done by the superior body.[79]

An action by a division could be taken only by a majority vote.[80] An action of a division could be made, evidenced and enforced in the same manner as the actions of the Commission.[81] Any action of a division would be subject to the provisions of Section 405[82] which allows rehearings by the Commission.[83]

§ 74. No Divestment of Commission's Powers Under Division System.

The Communications Act of 1934 expressly provides that no provision in Section 155 nor anything done in pursuance thereof shall be deemed a divestment of any powers of the Federal Communications Commission.[84]

§ 75. Powers of Broadcast Division.

On July 17, 1934 the Federal Communications Commission established its Divisions[85] in accordance with the Communications Act of 1934.[86] On October 14, 1937 these Divisions were abolished.[87]

[78] 48 STAT. 1064 (1934), 47 U.S.C.A. § 155(c) (1937).

[79] *Ibid.*

[80] *Ibid.*

[81] *Ibid.*

[82] 48 STAT. 1095 (1934), 47 U.S.C.A. § 405 (1937). See §§ 112–114 *infra.*

[83] 48 STAT. 1066 (1934), 47 U.S.C.A. § 155(c) (1937).

[84] *Id.* at § 155(d).

[85] 1 F.C.C.Rep. 3 (1934).

[86] 48 STAT. 1064 (1934), 47 U.S.C.A. § 155(a) to (d).

[87] Federal Communications Commission, Order No. 20 (October 14, 1937); NEW YORK TIMES, October 15, 1937, p. 1, 4 F.C.C. Rep. 41 (1937).

The Broadcast Division had jurisdiction over "all matters relating to or connected with broadcasting".[88] The Broadcast Division had jurisdiction specifically over the following radio services and classes of stations:[89]

1. Broadcast service which includes broadcast stations
2. Temporary service which includes broadcast pick-up stations
3. Experimental service which includes:
    a. experimental visual broadcast stations
    b. experimental relay broadcast stations
    c. experimental broadcast stations
    d. general experimental stations
    e. special experimental stations.

It was also ordered that "the whole Commission shall have and exercise jurisdiction over all matters not herein specifically allocated to a division; over all matters which fall within the jurisdiction of two or more of the divisions . . . ; and over the assignment of bands of frequencies to the various radio services".[90]

In any case where a conflict arose as to the jurisdiction of any division or where the jurisdiction of any matter or service was not allocated to a division, the Commission determined whether the whole Commission or a division thereof should have and exercise jurisdiction, and if a division, the one which should have and exercise such jurisdiction.[91]

§ 76. Delegation of Authority to Boards and Individual Commissioners.

The Federal Communications Commission may assign or refer its work, business or functions in another manner. Assignment or reference may be made to an individual commissioner or to a board of one or more employees of

[88] 1 F.C.C.Rep. 3 (1934).
[89] *Ibid.*
[90] *Id.* at 3.
[91] *Id.* at 4.

the Commission.[92] Such order of assignment or reference is subject to being amended, modified, supplemented or rescinded by the Commission.[93] In view of the powers of a division,[94] it would seem that each division could make a similar assignment or reference of its work, business or functions.

There are restrictions on the assignment or reference to a commissioner or to a board which would not apply to assignments or references by the Commission to a division.[95] The Commission may not assign or refer to a board or to a commissioner any investigation instituted on its own motion. Nor may it so assign or refer, without the consent of the parties, any proceedings which are contested and which also involve the taking of testimony at public hearings. This latter provision does not, however, deprive the Commission of its power to appoint examiners to take testimony at public hearings. Investigations specifically required by the Communications Act of 1934 may not be assigned or referred to a board or individual commissioner.[96]

The order of reference or assignment to an individual commissioner or board is effective forthwith and until further action thereon by the Commission.[97]

Where an assignment or reference is validly made to a board or an individual commissioner, either may take any action on the matter assigned within the power and jurisdiction of the Federal Communications Commission. Such action has the same force and effect, and is evidenced and enforced in the same manner as if taken by the Commission itself. The individual commissioner or board when

[92] 48 STAT. 1068 (1934), 47 U.S.C.A. § 155(c) (1937). *Cf.* 47 STAT. 1368 (1933), 49 U.S.C.A. § 17(6) (1936) (Interstate Commerce Commission).

[93] *Ibid.*

[94] 48 STAT. 1068 (1934), 47 U.S.C.A. § 155(c) (1937). See § 73 *supra.*

[95] 48 STAT. 1068 (1934), 47 U.S.C.A. § 155(e) (1936).

[96] *Ibid.*

[97] *Ibid.*

so acting, is subject to the same duties and obligations as the Commission.[98]

The board and individual commissioner have the same secretary and seal as the Federal Communications Commission.[99]

§ 77. Disability of Individual Commissioner or Board.

Where an individual commissioner or member of a board is for any reason unable to serve, the Chairman of the Federal Communications Commission may appoint another in his stead. Such appointment is for the interim until the commissioner shall act.[100]

§ 78. Review of Action of Board or Individual Commissioner.

Administrative review of any report, decision or order of a board or individual commissioner is provided by Section 155(e).[101] Where a party is affected by the order, decision or report so made, he may by the filing of a petition secure a rehearing by the full Commission.[102] If the division system is effective, a rehearing by a division may be obtained on petition therefor.

Where the review is by a division, the action therein taken may be reviewed by the Commission[103] in pursuance of Section 405.[104]

§ 79. Facilities for State Participation in Regulation: Joint Boards.

The Communications Act of 1934 provides machinery for cooperation by the Federal Communications Commission with state agencies on problems which affect such states and which are within the domain of the Commis-

[98] *Ibid.*

[99] *Ibid.*

[100] *Ibid.*

[101] 48 STAT. 1068 (1934), 47 U.S.C.A. § 155(e) (1937).

[102] *Ibid.*

[103] *Ibid.*

[104] *Id.* at § 405. See §§ 112-114 *infra.*

sion.[105] The cooperation is to be achieved by the establishment of joint boards.

Section 410(a) empowers the Commission to refer any matter which arises under its administration of the Act to a joint board which is to consist of a member or members of the Commission together with the representatives of the state or states involved in such matters. The Commission has the power to determine the representation which each interest shall have and to appoint the members of a joint board. The representatives of the states are nominated by the state commission in the same domain or, if there be no such local commission, by the Governor. The Federal Communications Commission has the discretion to reject any and all such nominations.[106]

§ 80. Joint Boards: Powers, Duties and Liabilities.

A joint board possesses the same status as an individual commissioner[107] designated to hold hearings under Section 155(e).[108] It possesses the same powers and is subject to the same duties and liabilities as an individual commissioner.[109] The Federal Communications Commission may, however, prescribe the force and effect which any action of a joint board shall have.[110] The Commission may also prescribe the manner in which a joint board shall conduct its proceedings.[111]

§ 81. Joint Hearings.

The Communications Act of 1934 provides for another means of cooperation between the Federal Communications Commission and state agencies in the same field.[112] Sec-

[105] 48 STAT. 1098 (1934), 47 U.S.C.A. § 410(a) (1937).
[106] *Ibid.*
[107] *Ibid.*
[108] *Id.* at § 155(e).
[109] *Id.* at § 410(a).
[110] *Ibid.*
[111] *Ibid.*
[112] 48 STAT. 1098 (1934), 47 U.S.C.A. § 410(b) (1937).

tion 410(b)[113] empowers the Federal Communications Commission to hold joint hearings with any state commission in connection with any matter embraced within the regulatory power of the Federal Communications Commission.[114] These joint hearings are to be held and governed by such rules and regulations as are prescribed by the Federal Communications Commission.[115]

§ 82. Authority to Use Books, Etc., of State Commission.

The Federal Communications Commission is also authorized by the Communications Act of 1934 to cooperate with state commissions by availing itself of the services, books and records which are placed at its disposal by them.[116]

§ 83. Records of Federal Communications Commission.

The Communications Act of 1934 transferred to the jurisdiction and control of the Federal Communications Commission all records which formerly were under the jurisdiction of the Federal Radio Commission.[117]

The records of the Federal Communications Commission include all records so transferred. These records may be used by the Federal Communications Commission as if originally part of its own files.[118]

The Commission must make a report in writing of any investigation made by it. Such report must state the conclusions with the decision, order or requirement in the premises by the Commission. Where damages are awarded as the result of an investigation, the report must state the findings of fact upon which the award is based.[119]

The Communications Act of 1934 requires further that

[113] *Cf.* Transportation Act of 1920, 41 STAT. 484, 49 U.S.C.A. § 13 (1936) (Interstate Commerce Commission).

[114] 48 STAT. 1098 (1934), 47 U.S.C.A. § 410(b) (1937).

[115] *Ibid.*

[116] 48 STAT. 1098 (1934), 47 U.S.C.A. § 410(b) (1937).

[117] 48 STAT. 1102 (1934), 47 U.S.C.A. § 603(b) (1937).

[118] 48 STAT. 1103 (1934), 47 U.S.C.A. § 604(c) (1937).

[119] 48 STAT. 1094 (1934), 47 U.S.C.A. § 404 (1937).

every vote and official act of the Federal Communications Commission shall be entered of record. The report of investigations made by the Commission must likewise be recorded.[120] The complainant and the licensee complained of are each entitled to be furnished with a copy of such report.[121]

The rules of the Federal Communications Commission provide the following:[122]

> ". . . the files of the Commission shall be open to inspection as follows: . . . (b) All applications and amendments thereto filed under title II. or title III. of the Act; all documents filed with applications made when specific mention is made in the application referring to such document; authorizations issued upon such applications; all pleadings, depositions, transcripts of testimony, exhibits, examiners reports, exceptions and orders of the Commission.
>
> "(c) Other files in the discretion of the Commission upon written request describing in detail the documents to be inspected and the reasons therefor."

The Communications Act of 1934 requires the Commission to publish its reports and decisions in such a form and manner as may be best adapted for the public information and use. Such authorized publications are competent evidence in all United States and state courts without further proof or authentication thereof.[123] The Commission may lawfully withhold from publication all records containing secret information concerning the national defense.[124]

The official seal of the Federal Communications Commission is judicially noticed.[125]

[120] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(e) (1937).

[121] *Ibid.*

[122] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1936), § 100.6.

[123] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(m) (1937).

[124] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(j) (1937).

[125] *Id.* § 154(h).

§ 84. Continuance of Actions of Federal Radio Commission.

When the Communications Act of 1934 was enacted, there were in effect various orders, determinations, rules, regulations, permits, contracts, licenses and privileges issued by the Federal Radio Commission under the Radio Act of 1927 and its various amendatory acts. All of these actions and instruments are continued in effect until the Federal Communications Commission or the operation of law modifies, terminates or supersedes them.[126] Hence, the practice and procedure before the Federal Communications Commission until December 18, 1935 were governed by the old rules adopted by the Federal Radio Commission.[127]

§ 85. Continuance of Proceedings Before Federal Radio Commission.

Where a proceeding, hearing or investigation has been commenced or was pending before the Federal Radio Commission, such matter is continued before the Federal Communications Commission in the same manner as though begun originally before it. A proceeding, hearing or investigation so to be continued must be one which involves the administration of duties, powers and functions transferred to the Federal Communications Commission by the Act of 1934, or one which involves the exercise of jurisdiction similar to that granted under the Act of 1934.[128]

§ 86. Continuance of Suits Against the Federal Radio Commission.

Suits which were commenced prior to the date of the organization of the Federal Communications Commission are continued unaffected by any provisions of the Communications Act of 1934. This statute provides that such

[126] 48 STAT. 1103 (1934), 47 U.S.C.A. § 604(a) (1937).

[127] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 26.

[128] 48 STAT. 1103 (1934), 47 U.S.C.A., § 604(b) (1937).

suits shall be carried to final judgment, including appeals, in the same manner and with the same effect as if the Communications Act of 1934 had not been enacted.[129]

§ 87. Proceedings of Federal Communications Commission: Quorum: Disqualification of Commissioner: Manner to Be Conducted: Who May Appear.

Where proceedings are conducted by the Federal Communications Commission *en banc*, the presence of four members constitutes a quorum.[130] A commissioner is disqualified to participate in a hearing or proceeding where he has a pecuniary interest therein.[131] This pecuniary interest is distinct from that interest which disqualifies a nominee for appointment to the Commission.[132]

The Federal Communications Commission is authorized to conduct its proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice".[133]

The proceedings of the Commission are required to be public where so requested by any party interested.

"Any person may appear before the Commission and be heard in person or by attorney."[134] It has been held that a corporation being a fictional legal entity, cannot appear *in propria persona* before the Commission and that therefore an agent or attorney who represents a corporate party must be one qualified to make such an appearance under Rule 101.1.[135]

[129] *Id.* at § 604(d).
[130] *Id.* at § 154(h).
[131] *Id.* at § 154(j).
[132] *Id.* at § 154(b).
[133] *Id.* at § 154 (j)
[134] *Ibid.*
[135] Brownwood Broadcasting Company, 4 F.C.C.Rep. 281, 282 (1937); Sweetwater Broadcasting Company, 4 F.C.C.Rep. 293, 294 (1937).

Chapter V.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION—PLEADINGS.

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§ 88. Pleadings and Actions Thereon.

Pleadings in proceedings before the Federal Communications Commission which affect radio broadcasting are:

(1) Applications for instruments of authorization
(2) Petitions to intervene in a proceeding
(3) Appearance
(4) Answer
(5) Protest
(6) Official notice of violation
(7) Order of revocation or modification

§ 89. General Provisions: Subscription and Verification.

The applicant must personally subscribe and verify the application or amendment thereto. Where there is more than one party, one of the parties may do so. Where the applicant is a corporation, an officer must subscribe and verify the application. Where the applicant is physi-

cally disabled or is absent from the mainland of the United States, the attorney for the party may perform this act.[1]

Either a party or his attorney may subscribe other pleadings which initiate or supplement a proceeding before the Commission. Where an attorney verifies by his affidavit a pleading of fact, it must be only as to facts within his own personal knowledge and he must so state in his affidavit of verification.[2]

§ 90. Amendments to Pleadings.

Amendments to any pleading may be made as a matter of course, if filed with the Commission and served upon all parties of record not less than thirty days prior to the date set for the hearing on such proceeding.[3]

Amendments to any pleading which are filed within thirty days of a hearing may be allowed upon petition therefor in the discretion of the Commission and upon such terms as it may impose.[4]

Where a proposal which materially changes the application is made at a hearing, it is necessary that a formal amendment to the pleading be executed in the same manner as the original application.[5]

§ 91. Service of Papers.

All pleadings or documents filed which are related to a proceeding under the provisions affecting radio broadcasting, must be served by the filing party.[6]

Proof of such service may be made by admission as evidenced by the signature of the party served or by an affidavit of service. Such an affidavit must show that

[1] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.34(A).

[2] *Id.*, at § 105.34(B). Under the proposed new rule 105.32B, an attorney may not subscribe the initial pleadings, but may subscribe subsequent pleadings.

[3] *Id.*, at § 105.32.

[4] *Id.*, at § 105.33.

[5] Hammond-Calumet Broadcasting Corp., 2 F.C.C.Rep. 494 (1936).

[6] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.35.

the document was posted by registered mail to the last known address of the party intended to be served. The original and eight copies of the pleading or document together with the affidavit of service must be submitted to the Commission.[7]

§ 92. Applications.

Applications to the Federal Communications Commission have already been discussed in Chapter IV. *supra.*

§ 93. Petitions to Intervene.

Petitions to intervene may be filed at any time up to and not later than ten days prior to the date of any hearing.[8] The petition, in order to be granted, must show that the petitioner has a substantial interest in the subject matter of the hearing.[9] The facts supporting the intervention must be set forth clearly and concisely in the petition. The petition to intervene must be subscribed and verified by the petitioner.[10]

§ 94. Protests.

It has been pointed out [11] that where applications are granted by the Commission without a hearing, such grants are conditional, and upon protest, any person aggrieved or adversely affected in interest may secure a hearing thereon.[12] The protestant must subscribe and verify his protest which is required to contain: [13]

1. A statement of the protestant's interest in the matter

[7] *Ibid.*

[8] *Id.*, at § 105.20.

[9] *Id.*, at § 105.20.

[10] *Id.*, at § 105.19.

[11] See §§ 67 *supra* and 107 *infra.*

[12] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 104.4. See The WATR Co., Inc., 4 F.C.C.Rep. 410 (1937).

[13] *Id.*, at § 105.21(b). The Commission's proposed new rule 105.21 requires an additional statement that the protestant will appear and offer evidence at the hearing, if one is ordered.

2. A terse, yet complete, statement of facts which the protestant expects to prove upon the hearing
3. Proof of service of the protest upon the applicant.

The protest is a pleading limiting the issues to be tried. Where a protest to an application granted without a hearing is filed, the issues at the hearing on the protest are limited to those raised therein.[14]

For the purpose of a hearing, the Commission may consolidate the application and the protest.[15]

§ 95. Answers to Notice of Violations.

Licensees are bound to comply with the Communications Act of 1934 and its amendments, any other Act of Congress, Executive Orders, treaties to which the United States is a party, the rules and regulations of the Federal Communications Commission and the terms and conditions of the licenses granted by the latter. Where a licensee receives an official notice of a breach of any of the foregoing, he must reply within three days to the Commission and to its office from which the official notice is issued.[16]

The answer to each official notice must be complete in itself; no incorporation by reference may be made of other communications or answers to other official notices. Where the violation charged is one which may be due to the physical or electrical characteristics of the transmitting apparatus, the answer must state fully what is to be done by the licensee to prevent a violation in the future. Where new apparatus is to be installed for that purpose, the answer must state the date on which such apparatus was ordered, the manufacturer and date for which delivery is promised. If a construction permit is required to install the new apparatus, the answer must give an identification

[14] Evening News Association, Inc., *et al.*, 2 F.C.C.Rep. 185 (1935).

[15] See WJW, Inc., *et al.*, 2 F.C.C.Rep. 110, 112 (1935).

[16] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.23.

which will permit ready reference. Where the violation was due to some lack of attention to or improper operation of the transmitter, the answer must give the name and license number of the operator in charge.[17]

§ 96. Appearances.

As is noted *infra*,[18] an applicant must file an appearance where his application has been designated for hearing to determine the public interest, convenience and necessity, or whether any person will be aggrieved or adversely affected by the granting of the application.[19] The appearance must state a desire to be heard and a terse but complete statement in writing of the facts which the applicant expects to prove at the hearing.[20] The statement of facts should respond to each issue.[21] This appearance must be subscribed and verified by the applicant, but is not evidence of the facts therein stated.[22]

Since a corporate applicant is unable to appear in person, its attorney or other representative must be one qualified to make such an appearance in proceedings before the Commission in accordance with Rule 101.1.[22a]

§ 97. Appearances: Answers Thereto.

An answer to an applicant's appearance required by Rule 104.6 must also comply with the foregoing require-

[17] *Ibid.*

[18] See § 109 *infra* and n. 52 thereof.

[19] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935). § 104.6.

[20] *Id.*, at § 105.25. The Commission's proposed new rule 104.6(b) provides that such an appearance shall consist of the application and papers which are a part thereof, and a sworn statement that applicant will appear and offer evidence.

[21] South Carolina Broadcasting Co., Fed. Radio Comm. Docket, June 12, 1931; Virgil V. Evans, Fed. Radio Comm. Docket 1059; cited in BERRY, COMMUNICATION, (1937) 282.

[22] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.25.

[22a] Brownwood Broadcasting Company, 4 F.C.C.Rep. 281, 282 (1937); Sweetwater Broadcasting Company, 4 F.C.C.Rep. 293, 294 (1937).

ments. No respondent can be heard in any proceeding under any of the special provisions of the Communications Act of 1934 unless and until he has filed such an answer to the applicant's appearance.[23]

§ 98. Order Initiating Revocation of Station License.

As is noted *infra*,[24] one whose license is sought to be revoked under Section 312(a) of the Communications Act of 1934 is entitled to a hearing. Under Section 105.29 of the Federal Communications Commission's rules of Practice and Procedure, written notice of the issuance of an order of revocation must be given to the licensee. Since the order of revocation is effective fifteen days after the giving of the notice in writing, the rule requires that the period shall run from the service of such order of revocation or of a written notice containing the text thereof.[25]

The order of revocation, which is in the nature of a pleading instituting a proceeding, must state the grounds and the reasons for the proposed revocation.[26] The order must also contain a notice to the licensee of his right to be heard before the Commission by filing therewith a request in writing for a hearing within fifteen days after his receipt of service of the order.[27]

The request in writing for a hearing has the effect of suspending the order of revocation.[28] By the statute[29] and its own rule,[30] the Commission is bound to set the

[23] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.26; Central Broadcasting Co., 3 F.C.C.Rep. 290 (1936). Under the Commission's proposed new rule 104.6(b), the respondent need file only a statement of intention to appear.

[24] § 106 *infra*.

[25] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.29 (105.27 in the proposed new rules of the Commission).

[26] *Ibid.*

[27] *Ibid.*

[28] *Ibid.*

[29] 48 STAT. 1086 (1934), 47 U.S.C.A. § 312(a) (1937).

[30] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 105.29 (105.27 in the proposed new rules of the Commission).

order for hearing and give notice thereof to the licensee and any other interested parties. Where no such request for hearing is duly made by the licensee affected by the order, the order of revocation becomes final and effective without any further action by the Commission.[31]

§ 99. Orders to Show Cause: Modification of License.

The Federal Communications Commission is under a duty to see that broadcast station licensees or construction permittees serve the public interest, convenience and necessity, and that the pertinent treaties ratified by the United States are complied with. Where the Commission determines that either result would be achieved by the modification of an instrument of authorization, it may issue an order that the licensee or permittee show cause why his authorization should not be modified.[32]

The order to show cause must state the grounds and reasons for the proposed modification and also indicate specifically wherein the instrument of authorization is required to be modified. The licensee or permittee against whom the order is directed must be required to show cause why the order of modification should not issue at a place and time named in the order. The time allowed must not be less than thirty days from the date of the receipt of the order to show cause. The failure of the licensee or permittee named in the order to appear at the specified time and place, constitutes a default upon which a final order of modification will issue.

[31] *Ibid.*

[32] *Id.*, at § 105.30 (105.28 in the proposed new rules of the Commission).

Chapter VI.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION — HEARINGS — NECESSITY AND RIGHT THERETO.

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§ 100. Hearings: Necessity and Right Thereto: Generally.

"Administrative orders, quasi judicial in character, are void, if a hearing was denied, if that granted was inadequate or manifestly unfair, if the finding is contrary to the indisputable character of the evidence, or if the facts found do

not as a matter of law support the order made. The commission may not capriciously make findings by administrative fiat." [1]

This *dictum* is a concise and correct declaration of the principles to which the Federal Communications Commission must adhere where it acts quasi-judicially. Where the Commission so acts, it must provide an opportunity to be heard and the hearing must be adequate and fair. Since this duty of the Federal Communications Commission is conditioned on the nature of the proceeding, the question is raised as to what is a quasi-judicial proceeding as distinguished from a legislative proceeding.

In *American Telephone and Telegraph Co.* v. *United States* [2] there was occasion to discuss and shape the distinction between the exercise of a delegated legislative power and the exercise of a quasi-judicial power. Section 220(a) of the Communications Act of 1934 provides: [3]

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this chapter. . . ." [4]

By order,[5] the Federal Communications Commission exercised this power and set up a system of accounts for

[1] "Such authority however beneficently exercised in one case, could be injuriously exercised in another, is inconsistent with national justice, and comes within the Constitutional condemnation of all arbitrary exercise of power." *White* v. *Fed. Radio Comm.*, 29 F.(2d) 113, 115 (N.D. Ill., 1928).

[2] 14 F.Supp. 121 (S.D.N.Y., 1936), *aff'd.* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1937).

[3] 48 STAT. 1078 (1934) 47 U.S. C.A. § 220(a) (1937).

[4] Communications Act of 1934, 48 STAT. 1078 (1934), 47 U.S.C.A. § 153(h) (1937) "but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." See § 216 *infra*. The Interstate Commerce Commission may make similar orders as to carriers within its jurisdiction. 44 STAT. 835 (1926), 49 U.S.C.A. § 20(5) (1929).

[5] Cited in Fed. Communications Comm., Order 7-C (June 19, 1935) effective Jan. 1, 1936; FED. COMMUNICATIONS COMM. 2 ANNUAL REPORT (1936) 31.

telephone companies. The American Telephone and Telegraph Co. attacked this order as unconstitutional and void since it was not accompanied by a report stating conclusions and findings of fact by the Commission.[6]

In dissolving the temporary injunction,[7] the statutory three-judge court was of the opinion that to assert that this order needed findings of fact to support it, was to ignore a basic distinction.

> "When a system of accounts is laid down under these sections,[8] the action is a legislative, rather than a judicial function. *It is making a new rule to be applied in the future, not applying an already existing rule to past facts.* This is the characteristic of legislation. . . ."[9] *(Italics supplied).*

The United States Supreme Court has expressed this distinction as follows:[10]

> *"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end.*

[6] American Tel. & Tel. Co. *v.* United States, 14 F.Supp. 121 (S.D.N.Y., 1936). This was a bill in equity to enjoin the order of the Commission. At the hearing before a statutory three-judge court, a temporary injunction was issued pending final disposition. On Feb. 18, 1936, the three-judge court dissolved the temporary injunction and sustained the order of the Commission. A stay pending appeal was granted by the United States Supreme Court. FED. COMMUNICATIONS COMM., 2 ANNUAL REPORT (1936), 31. Later, the lower court decision was affirmed and the stay dissolved. *American Tel. & Tel. Co.* v. *United States,* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1937).

[7] American Tel. & Tel. Co. *v.* United States, 14 F.Supp. 121 (S.D.N.Y., 1936), *aff'd.* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1937).

[8] 48 STAT. 1078 (1934), 47 U.S.C.A. § 220(a) (1937).

[9] American Tel. & Tel. Co. *v.* United States, 14 F.Supp. 121 (S.D.N.Y., 1936), *aff'd.* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1937).

[10] Prentis *v.* Atlantic Coast Line, 211 U.S. 210, 226, 29 Sup. Ct. 67, 53 L.Ed. 150 (1908); Keller *v.* Potomac Elec. Co., 261 U.S. 428, 440, 43 Sup. Ct. 445, 67 L.Ed. 731 (1922).

Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." *(Italics supplied).*

§ 101. Federal Communications Commission May Make General Regulations: When Legislative and When Quasi-Judicial.

Another distinction between quasi-judicial actions and legislative actions of an administrative body would seem to be recognized in the Communications Act of 1934. The Federal Communications Commission has the general power to make regulations to prevent interference between broadcast stations and to carry out the provisions of the Act.[11] In the exercise of this general power the Commission may not order changes in the frequency, authorized power and the times of operation without the consent of the licensee unless a public hearing has first been held.[12]

In both cases, the Commission is exercising delegated legislative power. The Commission is required, however, in the latter instance, to act in a quasi-judicial manner so that the property interests which would be affected by the order, may be protected.[13] This requirement of a statutory type of "due process" is a recognition to some

[11] 48 STAT. 1082 (1934), 47 U.S.C.A. § 303(f) (1937).

[12] *Ibid.*

[13] There is no property right in the ether conferred by a broadcast station license. See § 39 *supra*. What is meant is that there is no vested right against the reasonable regulatory power of the Congress. *Fed. Radio Comm.* v. *Nelson Bros. Bond & Mtge. Co.*, 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932). But, since the broadcast station licensee makes an investment in property and makes valuable contracts on the basis of his license, justice would seem to demand that he have an opportunity to defend his right to continue under the license; otherwise, the property and contracts may become a total loss by arbitrary action of the Commission. The implication of the term "reasonable" as used *supra* would be, therefore, that in some manner the requirement of a due process must be met, at least in its elemental connotation, by the giving of notice and a hearing. *What is Due Process Before the Commission?* Note, (1933) 4 AIR L. REV. 413.

extent of property characteristics under the license despite the fact that there is not a property interest in the ether.[14]

§ 102. Right to Hearing Under Communications Act of 1934: Change of Frequency, Hours of Operation and Power by General Regulation.

The Federal Communications Commission has the power to make regulations to prevent interference between broadcast stations and to carry out the provisions of the Communications Act of 1934. A licensee is entitled to a public hearing where in pursuance of this power the Commission orders a change either in the frequency, authorized power or the hours of operation of a broadcast station. Such a hearing is unnecessary, however, where the licensee consents to the action of the Commission.

At such a public hearing, the Commission is required to determine whether any of these changes will promote the public convenience or interest or will serve the public necessity or achieve fuller compliance with the provisions of the Act.[15]

The Federal Radio Commission possessed similar power to make regulations, but was not required to hold hearings in the exercise thereof.[16]

§ 103. Same: Issuance, Renewal or Modification of Licenses.

The Federal Communications Commission, like its predecessor, the Federal Radio Commission, is directed to examine applications for the issuance, renewal or modification of broadcast station licenses to determine whether the granting of such application would be in the public interest, convenience or necessity.[17]

[14] Note that no property rights are granted by the license and that the investment made under the license does not create an indefeasible property interest. "Equities", however, arise under the license, which the Commission must consider. *Fed. Radio Comm.* v. *Nelson Bros. Bond & Mtge. Co.*, 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[15] 48 STAT. 1082 (1934), 47 U.S. C.A. § 303(f) (1937).

[16] 44 STAT. 1162 (1927).

[17] 48 STAT. 1085 (1934), 47 U.S. C.A. § 309(a) (1937).

Where the Commission does not reach such a determination, it must notify the applicant thereof and fix a time and place for a hearing upon the issues raised by its determination. The Commission is required to grant the applicant an opportunity to be heard under such procedural requirements as it may prescribe.[18]

It would seem that Section 309(a) of the Communications Act of 1934 meets the requirements of due process. In a quasi-judicial proceeding, the administrative body must grant a hearing.[19] In a leading case[20] under the identical section of the Radio Act of 1927,[21] the Court of Appeals of the District of Columbia held this provision to be valid and consonant with due process.

§ 104. Same: Hearing After Effective Date of Order.

The requirement that where the Commission acts quasi-judicially as to licenses, it must grant a hearing,[22] is not met by the grant of an opportunity to be heard on a day after the effective date of an order which changed the frequency of a broadcast station.[23] It was so held, where an application had been made for renewal of a station license on the same terms, and where, before the expiration of the existing license period, the Commission ordered a change of frequency effective on the last day of that period.[24]

Such conduct on the part of the Commission is arbitrary because under the statute the applicant for renewal is entitled to a hearing before the issuance of a final order

[18] *Ibid.*

[19] See § 100 *supra;* White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D. Ill., 1928).

[20] Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929).

[21] 44 STAT. 1162 (1927), § 11.

[22] White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D. Ill., 1928).

[23] Saltzman (Fed. Radio Comm.) *v.* Stromberg-Carlson Mfg. Co., 46 F.(2d) 612, 60 App. D.C. 31 (1931); Courier-Journal Co. *v.* Fed. Radio Comm., 46 F.(2d) 614, 60 App. D.C. 33 (1931).

[24] Courier-Journal Co. *v.* Fed. Radio Comm., 46 F.(2d) 614, 60 App. D.C. 33 (1931).

of refusal or of renewal.[25] An order which first deprives the licensee of rights granted by the license and under the statute, and then gives the licensee a hearing, is violative of due process. The grant of a hearing is not curative and the order is void.[26]

This doctrine was further extended in *Journal Co.* v. *Federal Radio Commission.*[27] A licensee had been granted an application for an increase of power. The appellant, a licensee operating a Maine broadcast station, had been denied a hearing upon the application. The Commission thereupon ordered a Florida station transferred to the same frequency without granting a hearing to the appellant. The effect of the latter order was to reduce appellant's service area to but twenty miles and to cause ruinous interference with its operations. Two days later, the Commission renewed appellant's license on the same terms. Appellant claimed that he was entitled to a hearing on the ground that although the renewal was on the same terms, the increase in power to one station and the addition of another to the same frequency, constituted in effect a refusal to renew.[28] The Court of Appeals of the District of Columbia allowed the review, reversed and remanded the cause for notice and hearing, saying:[29]

> "The Commission was in error as a matter of law in increasing the power of the Maine station and shifting the Florida stations without notice to appellant and an opportunity to be heard.

[25] 44 STAT. 1162 (1927), § 11; 48 STAT. 1085 (1934), 47 U.S.C.A. § 309(a), 303(f) (1937); White *v.* Fed. Radio Comm., 29 F.(2d) 113 (N.D. Ill., 1928).

[26] Saltzman (Fed. Radio Comm.) *v.* Stromberg-Carlson Mfg. Co., 46 F.(2d) 612, 60 App. D.C. 31 (1931); Courier-Journal Co. *v.* Fed. Radio Comm., 46 F.(2d) 614, 60 App. D.C. 33 (1931).

[27] 48 F.(2d) 461, 60 App. D.C. 92 (1931).

[28] It had been earlier held that on an application to renew a license, the renewal with a modification was in effect a refusal to renew. *General Elec. Co.* v. *Fed. Radio Comm.,* 31 F.(2d) 630, 58 App. D.C. 386 (1929).

[29] Journal Co. *v.* Fed. Radio Comm., 48 F.(2d) 461, 463, 464, 60 App. D.C. 92 (1931).

"The purpose of this regulation obviously is to prevent chaos and to insure satisfactory service. The installation and maintenance of broadcasting stations involve a very considerable expense. Where a broadcasting station has been constructed and maintained in good faith, it is in the interests of the public and common justice to the owner of the station that its status should not be injuriously affected except for compelling reasons. . . ."

§ 105. Hearing Where License Modified on Application for Renewal.

It is also considered a refusal to renew where the Commission inserts a condition in the license upon an application for its renewal. In *Westinghouse Electric and Manufacturing Co.* v. *Federal Radio Commission,*[30] the Commission on an application for renewal of the station license inserted the modification that the license was a temporary authority to operate on 1020 kilocycles. No notice or opportunity of hearing was granted. The Court of Appeals of the District of Columbia reversed the orders of the Commission and directed a renewal upon the old terms of the license until, as a result of a hearing after due notice, it was determined that such continued operation would not be in the public interest, convenience and necessity.[31]

§ 106. Hearings on Revocation of Licenses.

The revocation of a license is clearly a quasi-judicial proceeding where the ground of revocation is one of those enumerated in Section 312(a) of the Communications Act of 1934.[32] A notice and an opportunity to be heard are required to be given where a license is revoked. These requirements are met by a procedure substantially similar

[30] 47 F.(2d) 415, 53 App. D.C. 53 (1932).

[31] *Ibid.;* Courier-Journal Co. *v.* Fed. Radio Comm., 46 F.(2d) 614, 60 App. D.C. 33 (1931).

[32] 48 STAT. 1086 (1934), 47 U.S. C.A. § 312(a) (1937).

to that enacted by the Radio Act of 1927, with but two changes.

Section 14 of the Radio Act of 1927[33] provided that an order of revocation should not be effective until thirty days notice thereof in writing had been given to the licensee and to all parties interested in the license. Section 312(a) of the Communications Act of 1934[34] reduces this period to fifteen days. Section 14 of the Radio Act of 1927[35] allowed a hearing to any person aggrieved by the proposed order of revocation. Section 312(a) of the Communications Act of 1934[36] contains no such provision.

Under the present procedure, an order of revocation is not effective until fifteen days written notice has been given to the licensee. Such notice must state the cause or causes for the order of revocation. The aggrieved licensee may thereupon make written application to the Commission within such fifteen day period for a hearing upon the order. Such an application is effective to suspend the order of revocation until the conclusion of the hearing thereon.

The Commission may prescribe rules and regulations as to the conduct of such a hearing. Upon the conclusion thereof, the Commission may affirm, modify or annul its order of revocation.[37]

Where revocation is sought of the license of a broadcast station whose studio is within the United States but whose transmitter is situated in another country, Section 325(c)[38] requires that the procedure of Section 312(a)[39] be followed. Such a licensee is also entitled to notice and a hearing. To revoke, the Commission must

[33] 44 STAT. 1162 (1927).

[34] 48 STAT. 1086 (1934), 47 U.S. C.A. § 312(a) (1937).

[35] 44 STAT. 1162 (1927).

[36] *Ibid.*

[37] 48 STAT. 1086 (1934), 47 U.S. C.A. § 312(a) (1937).

[38] 48 STAT. 1091 (1934), 47 U.S. C.A. (1937).

[39] As outlined *supra* in this section.

find that the continuance of such operations will not be in the public interest.[40]

§ 107. Applications Granted Conditionally Without Hearing: Aggrieved Person's Right to Hearing.

The Federal Communications Commission may grant applications for an instrument of authorization without a hearing where it determines that such grant would be in the public interest, convenience or necessity.[41] When made under Section 309(a) of the Communications Act of 1934, a grant without a hearing is only conditional.[42] It remains conditional for a period of thirty days from the day on which public announcement thereof is made, or, if the order specifies a later day as the effective date, from that day.[43] Within this thirty day period, "any person aggrieved or whose interests may be adversely affected may obtain a hearing upon such application by filing a protest . . . "[44]

Where such a protest is filed, the Federal Communications Commission will set the application already granted without a hearing, for a hearing in the same manner in which other applications are set for hearing. Notice of the hearing will be given by the Commission to the applicant and other interested parties.

[40] 48 STAT. 1086 (1934), 47 U.S.C.A. § 325(c) (1937).

[41] 48 STAT. 1085 (1934), 47 U.S.C.A. § 309(a) (1937). The term, "instruments of authorization", refers to broadcast station construction permits and licenses.

[42] *Ibid.*

[43] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 104.4.

[44] *Ibid.*

"Protests to any application granted . . . without a hearing under § 309(a) . . . shall be subscribed and verified by the protestant and shall contain:

1. A statement of protestant's interest in the matter;
2. A terse yet complete statement of facts which protestant expects to prove upon the hearing, and
3. Proof of service upon the applicant."

FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 105.21(b). The Commission's proposed new rule 105.21(b) would require the protestant to state that he intends to participate in the hearing, if one is set.

The application having been set for hearing, the effective date of the order protested is postponed until after the hearing. Pending the Commission's decision after the hearing, if the permission involved in the granting of such application is necessary to the maintenance of an existing service, the Commission reserves the right to authorize the applicant to continue to use the facilities or permission involved.

Where no protest is filed in accordance with this procedure within the time allowed, the granting of the application involved becomes absolute and final without further action by the Commission. Likewise, such an order becomes final and absolute without any further action of the Commission, where a protest which has been filed is withdrawn before the hearing thereon.[45]

§ 108. Applications Granted in Part Without Hearing.

The Federal Communications Commission may without a hearing, in its discretion, grant applications in part or with privileges, terms or conditions other than those sought. In such a case, the applicant receives a right to a hearing under the rules of the Commission.[46] This was also true of the Federal Radio Commission under its rules.[47] Within thirty days from the day on which public announcement of such grant is made, or from the effective date of the order if the Commission specifies a later date, the applicant must file a written request for a hearing.[48] Unless the applicant files such a request, the action of the Commission is deemed to be a grant of the application.

The written request for a hearing must specify that part of the application, or the privileges, terms or conditions therein, not granted. The facts which the applicant expects to prove at the hearing must be set forth in a

[45] FEDERAL COMMUNICATIONS COMM., *Practice and Procedure* (1935) § 104.4.

[46] *Id.*, at § 104.5.

[47] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 27.

[48] FEDERAL COMMUNICATIONS COMM., *Practice and Procedure* (1935) § 104.5.

written statement to accompany such request therefor. When these requirements have been met and the necessary documents have been received by the Commission, a hearing will be set with notice to the applicant and other parties in interest.

> "Pending such hearing the effective date of the action of the Commission with respect to such application shall be postponed to the date of said decision after hearing."[49]

§ 109. All Other Applications Designated for Hearing.

Any other applicant who has neither been granted nor refused his application is entitled to a hearing under certain circumstances.

Where the Commission is unable to determine that the granting of an application would be in the public interest, convenience or necessity, the application is designated for hearing.

In an instance where the Commission is unable to determine that the granting of the application, in whole or in part, would not aggrieve or adversely affect in interest any licensee or any person having an application pending, the application will also be designated for hearing.[50] But where the Commission has set an application for hearing because of the pendency of conflicting applications which make it impossible to determine that the grant would be in the public interest, the amendment of the application to eliminate the conflicts will justify its removal from the hearing docket and its grant without a hearing. In this case, it is necessary that the Commission find that the grant would serve the public interest.[51]

[49] *Ibid.*

"Within a period of 10 days from the receipt of such notice of hearing, the applicant shall deliver or mail a copy of the statement of facts to be proved by it to all other parties notified of the hearing, and shall file with the Commission an affidavit stating that this requirement has been met." *Ibid.*

[50] *Id.*, at § 104.6.

[51] Nashville Broadcasting Corp., 2 F.C.C.Rep. 341 (1936).

Where no appearance is made by the applicant, or no statement in writing of facts to be proved at such hearing is filed within the time allowed by the rules of the Commission,[52] the hearing will be cancelled and the applicant deemed to be in default. In such an instance, the application will be denied with notice thereof to the applicant and the other parties. A default will also be entered where after properly filing such appearance and written statement, the applicant fails to appear and offer his evidence on the date of the hearing. For such a default, the Commission will deny the application.[53]

§ 110. Hearings on Applications for Special Authorizations.

Special authorizations to operate a broadcast station for a limited time, or in a manner or to an extent or for a service different than or beyond that authorized in the existing license, may be made by the Commission.[54] Where such an application is made, no provision is made in the rules for a hearing thereon. In fact, if a hearing were granted in such instances, the consequent delay would frequently defeat the purpose of these special authorizations.

[52] "(a) The secretary shall forthwith mail a written notice to the applicant setting forth the action of the Commission . . . the time and place for hearing, and a list of the other parties notified thereof.

"(b) In order to avail himself of the opportunity to be heard, the applicant shall within 15 days of the mailing of the notice by the secretary, file with the Commission a written appearance and statement of his desire to be heard, in accordance with rule 105.25.

" Within 25 days of the mailing of the notice of hearing as aforesaid, any respondent who desires to participate in the hearing, shall file with the Commission his answer to any such appearance in accordance with rule 105.26." FEDERAL COMMUNICATIONS COMM., *Practice and Procedure* (1935) § 104.6. Rules 105.25 and 105.26 are discussed *infra*.

[53] *Id.*, at § 104.6.

[54] *Id.*, at § 103.19. Provided, however, that if the request is for a broadcast station to utilize additional hours of operation, approval may not be granted if another broadcast station is licensed to operate in the same locality during the hours requested.

Moreover, since a complete procedure with respect to the obtaining of such special authorizations is set forth in the rules of the Commission,[55] it would seem that applications therefor are excluded from the category set forth in Rule 104.6 designated as "All Other Applications Designated for Hearings".[56]

§ 111. Right to Hearing: Contest Between Two Stations: Determined by Date Application Pending.

It has been held that due process requires the grant of a hearing on notice to either party requesting it, where there are two or more applicants for the same frequency.[57] The rules of the Federal Radio Commission allowed a hearing to any person or corporation aggrieved by the action of the Commission in granting a license to another without a hearing. Such a hearing was obtained by the filing of a protest within twenty days. The Radio Commission also had the power to suspend the license granted until the conclusion of the hearing.[58]

[55] "In any event, no such request will be considered unless:

"(a) It is received in the Commission at least 10 days previous to the date of proposed operation.

"(b) If the request is for operation upon a clear channel, it shall be supported by the consent of the dominant clear channel station.

"(c) Request for any frequency shall be supported by the consent of each station licensed for operation upon the frequency, where consenting station is located at a distance less than that given in the latest published table of recommended separations.

"(d) Request made by a sharing-time station shall be supported by the consent of the station with which the licensee requesting the same shares time.

"Consent shall be forwarded direct to the Commission by the consenting station and shall show whether the same is for simultaneous operation or whether consenting station is giving up the time sought by the applicant." FEDERAL COMMUNICATIONS COMM., *Practice and Procedure* (1935) § 103.19.

[56] *Id.*, at § 104.6.

[57] Symons Broadcasting Co. *v.* Fed. Radio Comm., 64 F.(2d) 612, 60 App. D.C. 31 (1931).

[58] Caldwell, *New Rules and Regulations of Fed. Radio Comm.*, (1932) 2 JOURN. RADIO L. 66.

One who has applied for a license to operate on the same frequency for which a license has been granted to another, while the former application has been pending, is a person aggrieved and is entitled to a hearing upon his protest.[59] The same result may be obtained where the applicant is a corporation.

In *Symons Broadcasting Co.* v. *Federal Radio Commission*,[60] the applicant filed his application with the supervisor in Seattle on a date before operation on the same frequency was granted to another, but his application was not received in Washington until after the date on which the grant was made. The Court of Appeals of the District of Columbia held that the application was pending before the Commission upon its filing in Seattle, and, therefore, notice and hearing were required by due process and by the rules of the Commission.

This holding would be applicable to a similar situation arising under regulations by the Federal Communications Commission. By its rules, grants without hearings are also made conditional and a protestant is allowed the right to a hearing.[61]

§ 112. Same: Right to Rehearings: Discretion of Commission.

The power to grant a rehearing on a decision, order or requirement rests in the discretion of the Commission. Any party to the proceeding in which such action was taken, may make application for a rehearing to the Commission. This rule, however, varies as to proceedings instituted under the special provisions of the Act of 1934 relating to radio broadcasting.[62]

In broadcasting cases, an application for a rehearing

[59] Symons Broadcasting Co. *v.* Fed. Radio Comm., 64 F.(2d) 612, 60 App. D.C. 31 (1931).

[60] *Ibid.*

[61] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 104.4.

[62] 48 STAT. 1095 (1934), 47 U.S.C.A. § 405 (1937).

may be made not only by a party but by any person aggrieved or whose interests are adversely affected by the Commission's action. Moreover, such an applicant must file a request for rehearing within twenty days after the effective date of the decision, order or requirement made under the special radio provisions.

In any case, the Commission may make general rules dealing with applications for rehearings. Where the Commission grants a rehearing, the proceedings thereupon are to conform as nearly as possible to the original proceedings, but the Commission may direct otherwise.[63]

Unless the Commission so orders specially,[64] the filing of an application for a rehearing does not operate to stay or postpone the enforcement of any decision, order or requirement of the Commission. An application for a rehearing may not be set up as an excuse for failure to comply with, or to obey, the action of the Commission unless a stay of proceedings has been specifically ordered by the Commission.[65]

Upon the rehearing, the Commission must consider all the facts, including those which arose since the prior hearing. Where upon all the facts, it appears that the decision, order or requirement protested against is unjust and unwarranted, "the Commission may reverse, change or modify" accordingly. If the action taken after the rehearing is a reversal, change or modification of the original determination, it is subject to the same provisions as an original order.[66]

§ 113. Contents of Petition for Rehearing.

A petition for rehearing on a decision, order or requirement under the special provisions relating to radio con-

[63] *Ibid.*

[64] The power to grant rehearings necessarily carries with it the power in the Commission to stay operation of its orders until the question of rehearing is decided. *Columbia Ry., G. & E. Co.* v. *Blease*, 42 F.(2d) 463 (E.D.S.C., 1927).

[65] 48 STAT. 1095 (1934), 47 U.C.S.A. § 405 (1937).

[66] *Ibid.*

tained in the Communications Act of 1934, must be filed within twenty days from the effective date thereof.[67]

This petition must show:[68]

1. That the petitioner has discovered new or additional material evidence of which he could not have known even with due diligence at the time of the original hearing.

2. That some material question of law or matter of fact was not considered in the decision, order or requirement. The material question of law or matter of fact must be such that, if it had been considered, the Commission would have made a different decision, order or requirement.

§ 114. Same: Limitations Upon Hearing Where Applications Repeated.

To avoid the possibility that a rehearing in substance and in effect might be secured by the mere filing of another application of the same nature as the one denied, the Rules of Practice and Procedure of the Federal Communications Commission provide for certain periods of time within which no such application can be made.

An applicant who has had an opportunity to be heard on a particular application and has defaulted, or whose application was denied after such hearing, or in either case whose application was dismissed with prejudice, cannot have another application considered or designated for hearing until the lapse of certain periods of time. This rule likewise applies to the applicant's successors and assignees.[69]

A period of twelve months must elapse from the date of denial of the applicant's first application, where his second application is for exactly or substantially the same license or construction permit.[70] Such similarity must relate to the class of station, the terms, privileges and conditions requested, and the region sought to be served.[71]

[67] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.31.

[68] *Id.*, at § 106.32.

[69] *Id.*, at § 104.7.

[70] *Id.*, at § 104.7(a).

[71] *Ibid.*

Only six months need elapse from the date of denial, where the second application is for the same kind of license or construction permit but differs materially as to the class of station, the privileges, terms and conditions requested and the region sought to be served.[72] Where additional facilities have become available, since the denial of the first application, for designation to the particular service in the region sought to be served, the foregoing restrictions do not apply to new applications therefor.[73]

[72] *Id.*, at § 104.7(b).
[73] *Ibid.*

Chapter VII.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION — HEARINGS — TESTIMONY AND ARGUMENT.

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§ 115. Hearings: Who May Hold.

In addition to its power to hold hearings *en banc,*[1] the Federal Communications Commission may designate any commissioner, examiner or director of any division to hold hearings, to sign and issue subpoenas, to administer oaths,

[1] 48 STAT. 1066 (1934), 47 U.S. C.A. § 154(h) (1937).

to examine witnesses and to receive evidence at any place in the United States so appointed by the Commission.[2]

An examiner may not exercise this broad power in the instances where any of the following are involved:[3]

1. A change of policy by the Commission
2. A revocation of a broadcast station license
3. New devices or developments in radio
4. A new kind of use of radio frequencies.

In any case where the examiner may hold a hearing, the Commission must hear oral argument on the request of either party.[4] This requirement did not appear in the Radio Act of 1927 but was asserted by the Federal Radio Commission under its general power to make rules and regulations. These early rules and regulations provided that the right to oral argument upon the report of an examiner rested within the discretion of the Federal Radio Commission.[5]

Under the Communications Act of 1934, the Commission itself has the power to require by subpoena the attendance and testimony of witnesses. Likewise, the Commission may compel the production of all books, papers, schedules of charges, contracts, agreements and documents relating to any matter under investigation.[6]

§ 116. Subpoena to Compel Testimony or Production.

The attendance of witnesses at a proceeding before the Federal Communications Commission may be compelled from any part of the United States and at any place designated for a hearing. Where obedience is not given to a subpoena issued by the Federal Communications Commis-

[2] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(a) (1937).

[3] *Ibid.* See Eastland Co., *etc. v.* Federal Communications Commission, 92 F.(2d) 467, 67 App. D.C. 176 (1937), *cert. den.* 302 U.S. 735, 58 Sup. Ct. 120, 82 L.Ed. 37 (1937).

[4] *Ibid.*

[5] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31.

[6] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(a), (b) (1937).

sion, the Commission has no power to punish for contempt. The assistance of any court of the United States must be sought to enforce the subpoena. In like manner, the production of books, papers and documents for which a subpoena has been issued under Section 409 by the Commission may be compelled where the person served has disobeyed the process. In both cases, the Federal Communications Commission or any party to a proceeding before the Commission may bring these proceedings in any court of the United States to enforce a subpoena.[7]

The United States courts possess jurisdiction, on application by the Commission, to order a witness to answer relevant questions put to him, or to produce books, papers, documents, *et cetera* which are under his control.[8]

The Communications Act of 1934 empowers "any of the district courts of the United States within the jurisdiction of which such inquiry is carried on", to issue an order requiring the compliance of the person served with the subpoena. Such a court order may issue where the witness served has been contumacious or has refused to obey a subpoena. To compel a witness to appear and testify upon his refusal so to do in answer to a subpoena of the Commission, a petition is filed with the district court. The petition states the facts and prays for an order requiring and commanding the witness to appear before the Commission and answer the questions put to him which he had refused to answer, or to produce that which he had refused to produce.[9]

The failure of the witness served to obey such an order of a court of the United States is punishable by such court as a contempt thereof. This provision is applicable to carriers and licensees of the Federal Communications Commission as well as to any other person served with a subpoena of the Commission.[10] Where a recalcitrant witness

[7] *Id.*, at § 409(c).

[8] Interstate Commerce Comm. *v.* Brimson, 154 U.S. 447, 14 Sup. Ct. 1125, 38 L.Ed. 1047 (1893).

[9] *Ibid;* 48 STAT. 1096 (1934). 47 U.S.C.A. § 409(c), (d) (1937).

[10] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(d) (1937).

is ordered to show cause why he should not be punished for contempt of the court for his refusal to answer questions and to produce documents as required by the prior order of the court, he is not entitled to a trial by a jury[11] but he is entitled to a hearing by the court before he may be held in contempt.[12]

§ 117. Issuance of Subpoenas.

The Federal Communications Commission is under a direction to conduct its proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice."[13] In view of this, the Federal Communications Commission has promulgated a definite procedure for, and certain restrictions on, the issuance of subpoenas whether for the attendance and testimony of witnesses or for the production of documentary evidence.

Where the hearing is held before the Commission *en banc,* any commissioner may issue and sign the subpoena.[14] Similarly, where the hearing is scheduled to be heard by a division, the subpoena may be issued and signed by any member thereof.[15]

A director of any division of the Federal Communications Commission, when designated to hear the testimony in any case, may sign and issue subpoenas therein.[16] In addition, a member of the division which authorized the hearing before the Director, may sign and issue the process.[17]

[11] Interstate Commerce Comm. *v.* Brimson, 154 U.S. 447, 14 Sup. Ct. 1125, 38 L.Ed. 1047 (1893).

[12] *Ibid.*

[13] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(j) (1937).

[14] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.18(1).

[15] *Id.,* at § 106.18(2) [Repealed by Order No. 24, 4 F.C.C.Rep. 44, 45 (1937)].

[16] *Id.,* at § 106.18(3) (b) [Repealed by Order No. 24, 4 F.C.C. Rep. 44, 45 (1937)].

[17] *Id.,* at § 106.18(3) (a). Both subdivision (3) (a) and subdivision (3) (b) of § 106.18 of the rules of practice and procedure of the Federal Communications Commission, *op. cit. supra* n. 14, are no longer in force and effect by reason of the abolition of the division system.

Where an examiner of the Federal Communications Commission conducts the hearing by designation, he may sign and issue the subpoena.[18] The subpoena in a hearing before an examiner may also be signed by the chief examiner or the assistant chief examiner[19] or by a member of the division which authorized the hearing.[20]

In no case may a subpoena be signed and issued by the Federal Communications Commission or a proper subordinate thereof unless there has been a recommendation thereon in advance by the law department of the Commission.[21] The examination and recommendation in advance by the law department of the Commission is not essential where a representative of that department is not present at a hearing in the field.[22]

Unless directed by the Federal Communications Commission upon its own motion, subpoenas will be issued only upon request in writing. Applications for subpoenas to compel witnesses to produce documentary evidence must be verified, and must specify with particularity, the books, papers or documents desired, and the facts expected to be proved thereby.[23]

§ 118. Subpoenas: Service and Return.

Service of a subpoena signed and issued by the Federal Communications Commission may be made by a United States marshal or his deputy. Similarly, any citizen of

[18] *Id.*, at § 106.18(4) (b).

[19] *Id.*, at § 106.18(4) (c).

[20] *Id.*, at § 106.18(4) (a) [Repealed by Order No. 24, 4 F.C.C. Rep. 44, 45 (1937)].

[21] *Id.*, at § 106.18 (This requirement is not contained in the Commission's proposed new rule 106.15 which replaces § 106.18 *supra.*).

[22] *Id.*, at § 106.18.

[23] *Id.*, at § 106.18.

"Witnesses who are summoned and respond thereto are entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken." FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 106.20; 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(b) (1937).

the United States of legal age and competent to be a witness may serve a subpoena of the Commission.[24]

Service of a subpoena is made by the exhibition of the original to the person served and the leaving of a copy thereof with him. Where the person served cannot read, the server must read the subpoena to him.

Upon service of the subpoena, a return must be made to evidence the service. The return made by a United States marshal or his deputy on the original of the subpoena is sufficient. Any other person serving a subpoena must make an affidavit thereof. The affidavit of service must state the date, time and manner of service. The affidavit and the original of the subpoena must be returned to the Commission, as the form of the subpoena requires.[25]

Where there has been a failure to serve the subpoena, the reasons therefor must be stated on the original.[26]

"The original subpoena, bearing or accompanied by the required return, affidavit, or statement, shall be returned forthwith to the secretary of the Commission, or, if so directed on the subpoena, to the presiding commissioner before whom the person named in the subpoena is required to appear."[27]

§ 119. Who May Take Depositions.

Since it is sometimes inconvenient and perhaps unnecessary to compel the attendance of some witnesses at a proceeding before the Commission although their testimony may be important, the Communications Act of 1934 provides that depositions of witnesses may be taken and the method of taking same.

The right to take depositions does not belong to the Federal Communications Commission alone but to any party to any proceeding or investigation which is pending before the Commission. However, the right of parties to

[24] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 106.21.

[25] *Ibid.*

[26] *Ibid.*

[27] *Ibid.*

take testimony of a witness by deposition is limited in that parties may not do so until after a cause or proceeding is at issue on petition and answer; thereafter, parties may do so at any time.

The Commission's power to take testimony by deposition is not so limited. "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."[28]

§ 120. Depositions: By Order of Commission.

A party may request the Federal Communications Commission to exercise its power to order the taking of testimony by deposition.

The request for such an order must be in writing, stating the witness' address, the matters and facts as to which the party expects the witness to testify and the cause or reason for the taking of such deposition. The written request is required to be subscribed and sworn to by the party or his attorney. Such request must be filed with the Commission fifteen days before the date on which it is proposed to take the deposition.[29]

§ 121. Order to Take Depositions.

Where an order to take a deposition is allowed, the secretary must mail a copy thereof to all parties at least ten days before the day on which testimony is scheduled to be taken.[30]

This order must state the name and address of the witness, the matters and facts as to which the witness is expected to testify, and the place where, the time when and the officer designated to preside over the taking of such testimony.[31]

[28] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(e) (1937).

[29] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.22.

[30] *Ibid.*

[31] *Id.*, at § 106.23.

Section 409(e) of the Communications Act of 1934, 48 STAT. 1096, 47 U.S.C.A., provides:

". . . depositions may be taken before any judge of any court of

§ 122. Depositions on Notice.

Where a party proposes to take the deposition of a witness at his own instance, Section 409(e) of the Communications Act of 1934 requires that the party or his attorney shall first give reasonable notice to the opposing party or his attorney of record, whoever may be nearest in point of distance.[32] Such reasonable notice must be in writing and contain the witness' name, and must also specify the time and place at which his deposition will be taken. The attendance and deposition of any witness and the production of documentary evidence may be secured in the same manner as though such attendance and deposition or production were sought before the Commission itself.[33]

§ 123. Procedure in Taking Depositions.

At the time and place for the taking of the deposition and before the officer selected,[34] the witness who is to testify must first be cautioned to tell the whole truth, and before any questions are put to him he should be sworn, or should affirm.[35] Thereupon he should be carefully examined.[36]

the United States, or any United States Commissioner, or any clerk of a district 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."

[32] Pierce, *et al.*, 3 F.C.C.Rep. 146, 147 (1936).

[33] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(e) (1937).

[34] A deposition made before a Notary Public who is also the Assistant Treasurer of the applicant corporation has been excluded on the ground that the Notary was an interested person. *Hanseth, et al.*, 3 F.C.C.Rep. 581, 585 (1936).

[35] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.24; 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(f) (1937).

[36] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(f) (1937). An examination on the deposition of a witness by a corporate party will be excluded unless the corporation's representative is legally qualified to appear before the Commission in accordance with Rule 101.1. *Brownwood Broadcast-*

Each question put to the witness must be recorded and his answers taken down in his own words.[37] The testimony so given must be reduced to writing by the official before whom the deposition is taken or under his direction. The deposition in its written form must be subscribed by the witness and certified in the usual manner by the presiding official.[38]

Objections to the form of any question and answer are required to be taken before the official presiding at the taking of the deposition. Where objections to form are not so made, they are deemed to have been waived. Where no representative of the Federal Communications Commission is present at the taking of the deposition of any witness, the deposition, if offered in evidence at the hearing, may be received, subject, however, to any proper legal objection by the Commission.[39] This saving of the Commission's rights can be taken to extend only to objections as to form. Objections to substance are saved for any party until the hearing.

The statute requires that depositions be promptly filed with the Commission.[40] Under the rules of the Commission, the original and one copy of the deposition plus the original and one copy of all exhibits referred to therein, must be sent by the presiding officer under his seal to the Secretary of the Commission. The time within which to file the deposition with the Commission cannot be extended under the rules. It must be filed not later than five days prior to the date of the hearing in which the party is to offer them in evidence.[41]

ing Company, 4 F.C.C.Rep. 281, 282 (1937); *Sweetwater Broadcasting Company,* 4 F.C.C.Rep. 293, 294 (1937).

[37] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.24.

[38] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(f) (1937).

[39] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.24.

[40] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(g) (1937).

[41] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.26.

Filing of the deposition is not enough to make it a part of the record in any proceeding; it must be offered and received in evidence at the hearing by the officer conducting same unless it is ordered otherwise by the Commission.[42]

§ 124. Depositions May Be Taken Outside United States.

The taking of depositions is not limited to places within the United States since the statute expressly provides that they may be taken of a witness in a foreign country. Such a deposition is to be taken before an officer or person appointed by the Commission. The parties may, however, agree by stipulation in writing upon an officer or person before whom such deposition shall be taken. The stipulation must be filed with the Commission.[43]

§ 125. Testimony at Hearings.

It has already been observed that the Federal Communications Commission may hold hearings *en banc,* that the Broadcast Division also had the power to hold hearings and that either body may designate any commissioner, examiner or director of the Division to hold hearings, at which witnesses are examined and evidence received.[44]

The rules of the Federal Radio Commission provided that testimony could be taken "before a quorum of the commission, before less than a quorum of the commission, or before any examiner appointed by the commission in the discretion of the commission."[45]

Where the testimony was taken before the full Federal Radio Commission, the parties could follow it by oral argument or by briefs, or by both, in the discretion of the Commission. The rule provided that the case should then be decided by the Commission on the testimony heard and

[42] *Id.,* at § 106.25.

[43] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(g) (1937).

[44] See § 115 *supra.*

[45] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31.

the proceedings conducted therein.[46] The Federal Communications Commission has enacted the same rule.[47]

Where at a hearing before the Federal Radio Commission, the applicant challenged a Commissioner for prejudice and the Commissioner withdrew from participation therein, the decision of the Federal Radio Commission on the testimony heard and on the proceedings, could not be attacked as null and void since the withdrawal had been with the express consent and approval of the applicant.[48] In such a case, the remaining commissioners could lawfully proceed.

In a similar situation, there is little doubt that this holding would be applicable to the Federal Communications Commission.

§ 126. Same: Testimony Heard by Less Than Quorum, Director or by Examiner.

Where less than a quorum of the Federal Radio Commission or an examiner heard the testimony, a written report and a transcription of the testimony had to be reported back to the Commission. The report was required to contain recommendations by the officer taking the testimony as to the decision to be rendered thereon and also "the facts and grounds upon which such recommendation is based".[49] The same rule has been promulgated by the Federal Communications Commission with the additional proviso that division directors who hear testimony must also comply with this rule.[50] This proviso is ineffective at present as a result of the abolition of the division system.[51]

[46] *Ibid.*

[47] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.29.

[48] In *Technical Radio Lab.* v. *Fed. Radio Comm.*, 59 App. D.C. 125, 36 F.(2d) 111 (1929), the Court said:

"Moreover the appellant cannot be heard in this court to challenge proceedings which were taken by the Commission with appellant's consent."

[49] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure*, 31.

[50] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 106.27.

[51] FEDERAL COMMUNICATIONS

The Federal Radio Commission was bound by its rule to mail a copy of such a report to each party to the hearing.[52] Each party had the right within five days from the mailing of the report to file exceptions thereto.[53] The alleged errors upon which the exceptions were based had to be pointed out with particularity even to the extent of specific reference to the exact portion of the report or transcript to which exceptions were taken.[54]

While promulgating the same rule, the Federal Communications Commission has extended the period to file exceptions to fifteen days from the day of mailing of the report.[55] In addition, the party taking the exceptions is required to file fifteen copies of his exceptions with an affidavit of service or mailing of copies thereof upon each party to the hearing.

Where an applicant filed exceptions to the report of an examiner and requested that the record be left open for further evidence, the request was denied by the Commission in the absence of a showing of reasons why the evidence could not have been introduced at the original hearing and since the Commission was of opinion that it should have been introduced at that time.[56]

The Commission has denied a request for a ninety-day extension of time within which to file exceptions to an examiner's report since no sufficient reason for the request was given.[57]

COMMISSION, Order No. 20 (October 14, 1937) NEW YORK TIMES, October 15, 1937, p. 1, 4 F.C.C. Rep. 41 (1937).

52 FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31.

53 The original provision was for a fifteen (15) day period. *Ibid.* This was later amended to the five (5) day period. L. G. Caldwell, *New Rules and Regulations of the Federal Radio Commission,* (1932) 2 JOURN. RADIO L. 66, 75.

54 FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31.

55 FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.28.

56 Hughes, *et al.,* 2 F.C.C.Rep. 85 (1935).

57 Packard and Rosenberg, 2 F.C.C.Rep. 65 (1935).

§ 127. Oral Argument on Exceptions to Examiner's Report.

In order to secure an oral argument on the exceptions, a party was required to file therewith a written request to the Federal Radio Commission for permission to do so before a quorum thereof. An affidavit also had to be filed to the effect that copies of the exceptions and the request had been served upon every other party to the hearing.[58] The granting of such a request was in the discretion of the Federal Radio Commission under its rules. That Commission could consider and decide such matters without argument.[59]

[58] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31.

In *Unity School of Christianity* v. *Fed. Radio Comm.,* 62 App. D.C. 52, 64 F.(2d) 550 (1933), the Court said:

"Where counsel for the parties are located in the same city we think it better practice to attempt to serve opposite counsel, and in the event mailing is necessary, that notice be sent by registered mail."

[59] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 31. This rule was held not to be an abuse of administrative discretion in *Sproul* v. *Fed. Radio Comm.,* 60 App. D.C. 333, 54 F.(2d) 444 (1931). *Cf. Unity School of Christianity* v. *Fed. Radio Comm.,* 62 App. D.C. 52, 64 F.(2d) 550 (1933). These two cases are to be compared. In the *Sproul* case, there was no denial of due process in that only one party, the applicant, was involved, and in any case, a hearing by an examiner is not inadequate. *Quon Quon Poy* v. *Johnson,* 273 U.S. 352, 47 Sup. Ct. 346, 71 L.Ed. 680 (1927). In the *Unity School* case, there was a denial of due process in that where two or more broadcast stations are applicants for the same frequency, either one requesting a hearing is entitled to it [*Symons Broadcasting Co.* v. *Fed. Radio Comm.,* 62 App. D.C. 46, 64 F.(2d) 381 (1933)] and thus, where as in this case, the Examiner's report was favorable to the applicant, and where the opposing broadcast station assigned to the same frequency filed exceptions to his report, and requested oral argument without notice to the applicant, an order of the Federal Radio Commission overruling the Examiner was reversed as a denial of due process. Under due process, the applicant was held to be entitled to a notice and opportunity to answer the exceptions and to oral argument thereon [*Dohany* v. *Rogers,* 281 U.S. 362, 50 Sup. Ct. 299, 302, 74 L.Ed. 904 (1929)] since the order affected the very existence of the station.

This discretionary power possessed by the Federal Radio Commission has not been given to the Federal Communications Commission. The Communications Act of 1934 specifically provides that in all cases heard by an examiner, the Commission shall hear oral arguments on the request of either party.[60]

The rules of the Federal Communications Commission provide that the filing of briefs upon such oral arguments is within the discretion of the Commission.[61]

The request for oral argument before the Federal Communications Commission must be made when the exceptions are filed or if no exceptions are filed, within the time allowed for the filing of exceptions. Where a party desires to argue orally in opposition to another's exceptions, he must make a written request therefor within five days from his receipt of such exceptions. The request must show by affidavit that a copy has been served upon or mailed to every party to the hearing. Where a time for oral argument has been set, at least ten days notice must be given to all parties at the hearing unless the Commission orders otherwise.[62]

The statutory modification of the power of the Commission to grant oral argument cannot be said to alter the Commission's power to determine the weight of the examiner's or director's report. Nor does the statutory modification affect the function of such officials. Moreover, parties who are heard by an examiner have no right to complain where they have failed to request oral argument.[63]

§ 128. Weight of Examiner's Report.

The function of an Examiner is analogous to that of an auditor or special master and his report has similar

[60] 48 STAT. 1096, 47 U.S.C.A. § 409(a) (1936).

[61] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1936) § 106.29.

[62] *Ibid.*

[63] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

weight.[64] Therefore, the failure of the Commission to adopt the recommendations of its examiner in a case is not error. ". . . the Commission had the responsibility of decision and was not only at liberty but was required to reach its own conclusions upon the evidence."[65]

§ 129. Time for Filing Briefs.

The rules of the Federal Communications Commission provide that the filing of briefs is within the discretion of the Commission.[66]

Whenever the filing of any brief in connection with a hearing is allowed, fifteen copies thereof shall be filed with the Commission.

"A party filing an opening brief shall file the same within 20 days from the date on which hearing and testimony is concluded. Only a party who files an opening brief, may file a reply to the brief of an opposing party. Such reply shall be filed within 10 days from the expiration time for filing said opening brief."

"For good cause a Commissioner, Examiner, or Director, before whom any hearing is being held, may, prior to the conclusion of such hearing, on his own motion or that of any party, add to or reduce the time hereinabove provided for the filing of briefs."

"At or prior to the date fixed for the filing of any brief, the party filing the same shall serve upon or mail to every other party to the proceeding at least one copy thereof, and no brief will be accepted or considered by the Commission unless accompanied by an affidavit showing this requirement has been met."[67]

[64] Unity School of Christianity *v.* Fed. Radio Comm., 62 App. D.C. 52, 64 F.(2d) 550 (1933); Woodmen of the World Life Ins. Assn. *v.* Fed. Radio Comm., 65 F.(2d) 484 (App. D.C., 1933).

[65] Fed. Radio Comm. *v.* Nelson Bros. Bond and Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[66] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1936), § 106.30.

[67] *Ibid.*

§ 130. Hearings: Inquiry by Commission on Its Own Motion.

The Federal Communications Commission need not sit by and wait for complaints or petitions, before commencement of proceedings. In this respect it is different from a court of law or equity. The Commission has the power and authority to institute inquires in any case on its own motion at any time. Its authority and power so to institute an inquiry is limited to "any matter or thing" as to which the Act of 1934 provides that a complaint may be made. The Commission may also institute an inquiry on any question which may arise under the Act of 1934 or which relates to the enforcement of any provision of that Act.[68]

In an inquiry on its own motion, the Commission may proceed as though such proceeding were instituted by complaint or petition. It has the same powers and authority in either inquiry. In an inquiry on its own motion, the Commission is expressly granted 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." But the Commission may not make an order for the payment of money in an inquiry on its own motion.[69]

§ 131. Necessity That Hearing Be Oral.

Where the statute or due process requires a hearing, it is generally understood that such hearing must be oral.[70] So long as the party is permitted to present all material evidence but does not request an oral hearing, there is no denial of due process.[71] Conversely, where a party requests an oral hearing but is permitted only to present written evidence, there would seem to be a denial of due

[68] 48 STAT. 1094 (1934), 47 U.S.C.A. § 403 (1936).

[69] *Ibid.*

[70] Chicago, Milw. & St. P. Ry. Co. *v.* Minn., 134 U.S. 418, 457, 10 Sup. Ct. 462, 33 L.Ed. 970 (1890). Albertsworth, *Judicial Review of Administrative Action* (1922) 35 HARV. L. REV. 127, 130, 131. *Cf.* Smith *v.* Hitchcock, 226 U.S. 53, 33 Sup. Ct. 6, 57 L.Ed. 119 (1912).

[71] Albertsworth, *op. cit. supra* n. 70, 131.

process, *i.e.*, where some form of property interest is involved.[72]

In *Unity School of Christianity* v. *Federal Radio Commission*,[73] which presented a situation in which it had previously been decided that a hearing was necessary,[74] it was held that due process required an oral hearing since the existence of the station was at stake.[75]

§ 132. Continuances, Extensions and Postponements of Hearings.

Continuances of any proceeding or hearing pending before the Federal Communications Commission, or extensions of time for the filing of documents or other instruments, may be secured on good cause shown unless a statute limits the time for filing. The continuance or extension is within the discretion of the Commission and the reasons for such postponement must be those which are sufficient for analogous continuances and extensions in the courts of the United States.[76]

Requests for continuances or extensions must be in writing and in the form of a verified petition. The reasons for requesting additional time as well as the amount of time considered necesssary, must be set forth. Diligence on the part of the petitioner must also be indicated.[77]

These requests must be made at a time and in such a manner as to avoid unnecessary hardship or expense to the parties to the proceeding. In all respects, the requests must comply with the rules and regulations of the Commission.[78]

[72] *Ibid.*

[73] 62 App. D.C. 52, 64F.(2d) 550 (1933).

[74] 62 App. D.C. 46, 64 F.(2d) 381 (1933).

[75] Unity School of Christianity *v.* Fed. Radio Comm., 62 App. D.C. 52, 64 F.(2d) 550 (1933); Dohany *v.* Rogers, 281 U.S. 362, 50 Sup. Ct. 299, 302, 74 L.Ed. 904 (1929).

[76] FEDERAL COMMUNICATIONS COMM., *Practice and Procedure* (1936), § 106.5.

[77] *Ibid.*

[78] *Ibid.*

When in the judgment of the officer presiding at a hearing, the ends of justice will be better served, he may, on his own initiative or upon the motion of a party, after opening any hearing upon notice, temporarily postpone the time or the day or change the place thereof. In either case, good cause must be shown.[79]

[79] *Id.*, at § 106.6.

Chapter VIII.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION — RULES OF EVIDENCE.

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§ 133. Rules of Evidence at Hearings: Generally.

There is no doubt that administrative tribunals are not bound by the common law or the jury-trial rules of evidence which apply to actions between private parties.[1] An order of an administrative body is not invalid merely because it has admitted evidence which would be deemed incompetent in judicial proceedings where strict rules of evidence are applied.[2]

Dr. Sharfman in his authoritative work on the Interstate Commerce Commission says:[3]

> ". . . relaxation of the technical rules of evidence is grounded in a . . . purpose of affording those tribunals an opportunity to probe the realities which underlie the situations with which they [administrative tribunals] deal. Not only are the principal reasons for strict rules of evidence, developed under the exigencies of the jury system, inapplicable to tribunals composed of expert personnel, but it would be virtually impossible to effect prompt and realistic administrative determinations under the narrow rules which govern court proceedings. . . . *The experience of the tribunal affords the protection which is generally deemed to inhere in specific rules. . . .*" *(Italics supplied).*

§ 134. Same: Limit on Disregard of Rules of Evidence.

An administrative tribunal may not disregard the strict rules of evidence so as to prejudice the substantial rights

[1] ". . . it may be concluded that at *common law* the body of jury-trial rules of Evidence does not, as such, control the inquiries made by administrative officials. . . ." 1 WIGMORE ON EVIDENCE (2nd ed., 1923) § 4 c.

A complete and excellent discussion of this proposition may be found in STEPHENS, ADMINISTRATIVE TRIBUNALS AND THE RULES OF EVIDENCE (1933), especially with reference to the Interstate Commerce Commission and the Federal Trade Commission at pp. 92–103.

[2] United States *v.* Abilene and So. Ry. Co., 265 U.S. 274, 288, 44 Sup. Ct. 565, 68 L.Ed. 1016 (1924); Int. Commerce Comm. *v.* Baird, 194 U.S. 25, 24 Sup. Ct. 563, 48 L.Ed. 860 (1903).

[3] II. SHARFMAN, THE INTERSTATE COMMERCE COMMISSION (1931) 355.

of the parties. In *Interstate Commerce Commission* v. *Louisville and Nashville R. Co.*,[4] the United States contended on appeal that the Interstate Commerce Commission was required by statute to obtain information necessary to perform its duties and to accomplish the duties for which it was created and that as a consequence of the legislative power to make rates delegated to it, the findings of this Commission must be presumed to have the support of such information even though such information was not formally proved at the hearing. The proceedings before the Interstate Commerce Commission were on a complaint by a shipper against certain rates established by the Louisville and Nashville Railroad Company. The United States Supreme Court overruled this contention on the ground that an administrative tribunal acting quasi-judicially, though not restricted by strict rules of evidence, "cannot act upon its own information".[5]

The Commission must protect the ordinary rights of the parties which exist at common law. The parties are entitled to be informed of the evidence before the Commission, or that which it will consider.[6] Where the evidence offered is the testimony of a witness, the parties have a right to cross-examine.[7] Likewise, the parties must be allowed to inspect physical and documentary evidence. The parties must have an opportunity to submit evidence in explanation or rebuttal.[8]

Where the Commission has observed the foregoing essential rules of evidence, there can be no reversal on the ground that it has failed to observe strict rules of admissibility. Thus, the admission by an administrative tribunal of

[4] 227 U.S. 88, 33 Sup. Ct. 185, 57 L.Ed. 431 (1912).

[5] Int. Commerce Comm. *v.* Louisville and Nashville R. Co., 227 U.S. 88, 33 Sup. Ct. 185, 57 L.Ed. 431 (1912).

[6] *Ibid.*

[7] *Ibid.*

[8] "In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding. . . ." *Ibid.*

hearsay evidence, ordinarily inadmissible in a court of law, was upheld by the United States Supreme Court.[9]

§ 135. Same: Federal Communications Commission: Not Bound by Strict Rules of Evidence.

In accordance with these general principles, the Federal Communications Commission, as was the Federal Radio Commission, is not bound to conduct its hearings in accordance with strict rules of evidence. Moreover, ample support is found in the Communications Act of 1934 for the proposition that the Commission is independent of the common law rules of evidence.

[9] ". . . we do hold that . . . where such evidence (hearsay) was introduced without objection and was substantially corroborated by original evidence clearly admissible against the parties to be affected, the Commission is not to be regarded as having acted arbitrarily, nor may its findings and orders be rejected as wanting in support simply because the hearsay evidence was considered with the rest." *Spiller* v. *Atchison, T. & S. F. Ry. Co.,* 253 U.S. 117, 40 Sup. Ct. 466, 64 L.Ed. 810 (1920).

In *Tri-State Broadcasting Co.* v. *Federal Communications Commission,* 96 F.(2d) 564, 566 (App. D.C., 1938), the Court of Appeals said:

"This testimony was incompetent. While the Commission under familiar principles is not, as an administrative body, limited by the strict rules as to the admissibility of evidence which prevail in courts, nevertheless, '. . . the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. . . .' Interstate Commerce Commission *v.* Louisville & N. R. Co., 1913, 227 U.S. 88, 93, 33 Sup. Ct. 185, 57 L.Ed. 431. The testimony admitted was clearly hearsay. It was a statement in effect of what others had told Roderick. Its admission deprived the appellant of the right to cross-examine those a composite of whose views Roderick was reflecting into the record. It is urged in the brief for the Commission that the testimony was admissible as the opinion of an expert. But Roderick did not testify to any such study or experience in the field of radio broadcasting, community facilities, needs, and the like, as qualified him as an expert in the proper sense of that term. Whether, as contended by the Commission, there is in the record, exclusive of this incompetent testimony, competent evidence covering the same subject, we will not determine until the case is here upon proper findings."

Mr. Wigmore has said:[10]

> ". . . a declaration, in the statute creating such officials, that their jurisdiction includes the power to make the rules of their own procedure is an implied sanction of their independence of the jury-trial rules and removes any possible common-law doubt."

In the Communications Act of 1934, the Federal Communications Commission in every instance is given the power to make rules and regulations for the conduct of its hearings.[11] This power was also possessed by the Federal Radio Commission under the Radio Act of 1927.[12] The Communications Act of 1934 provides:[13]

> "The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."

There would seem to be no rigid requirement that the Commission adhere to strict rules of evidence; in fact, there is an implied sanction of its independence thereof.

§ 136. Federal Communications Commission: Its Rules of Evidence.

The Federal Radio Commission promulgated a rule that the rules of evidence governing civil proceedings in the courts of the United States should govern formal hearings before the Commission, any commissioner or examiner.[14] The Federal Radio Commission in the same rule, reserved its right to relax these rules of evidence in any case where in its judgment the ends of justice would be better served by so doing.[15] The same rule also established specific

[10] I. WIGMORE ON EVIDENCE (2d ed., 1923) § 4 c.

[11] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).

[12] 44 STAT. 1162 (1927).

[13] 48 STAT. 1066 (1934), 47 U.S.C.A. § 154(j) (1937).

[14] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930), *Practice and Procedure,* 32.

[15] *Ibid.*

situations to which the rules of evidence of the courts of the United States would not apply but which would be governed by the differing rules of the Federal Radio Commission.[16]

The Federal Communications Commission has adopted this rule of its predecessor with certain modifications which will be indicated *infra*.[17]

§ 137. Same: Station List and Pending Applications in Record of Hearing.

The rule of the Federal Radio Commission was that certain documents were deemed to be part of the record unless the transcript stated otherwise.[18] This was so without any formal or special request or offer by a party to the hearing.[19] Under this rule, the list of all broadcast stations licensed in a certain band of frequencies was a part of the record where the hearing was on an application for authorization to operate in that band. The list specified the broadcast stations, the power which they were allowed to use, their frequencies and the respective hours of operation.[20] This rule was held to be a valid regulation in *Boston Broadcasting Co.* v. *Federal Radio Commission*.[21]

In that case,[22] which involved an application for the renewal of a radio broadcast station license, the Federal Radio Commission had found that the applicant had failed to show sufficiently a need for its station in the area of Boston, Massachusetts. The Commission further found that the region was already in receipt of good service by seven broadcast stations in and near that city. No evidence had been offered at the hearing to support the latter

[16] *Ibid.*

[17] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.8.

[18] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure*, § 8(a).

[19] *Ibid.*

[20] *Id.*, at § 8(a) (1).

[21] 62 App. D.C. 299, 67 F.(2d) 505 (1933).

[22] Boston Broadcasting Co. *v.* Fed. Radio Comm., 62 App. D.C. 299, 67 F.(2d) 505 (1933).

portion of the finding. The Court held[23] that no formal offer of such proof was necessary under the rule of the Federal Radio Commission[24] and that the list of broadcast stations was always before the Commission.

This rule also provided that at a formal hearing of the Federal Radio Commission the record was to be deemed to include a list of all pending applications to operate in the same band of frequencies.[25] Likewise, the record was deemed to include such of the rules, regulations and general orders of the Commission as were published and were concerned with the band of frequencies in question and the services authorized for such bands.[26]

This rule automatically making certain documents of the Federal Radio Commission part of the record of the hearing, was very much criticized as imposing too great a burden and expense in the printing of the record on an appeal. The rule was continued in effect, however, in the 1932 revision.[27] The Federal Communications Commission has not adopted this rule, and, therefore, any list of stations or pending applications or the rules, regulations and general orders should be offered in evidence at a hearing before the Commission.[28] It would seem to be preferable practice that the rule of the Federal Radio Commission be retained by its successor.

§ 138. Same: Government Reports and Records in Evidence.

The Federal Radio Commission did not require that reports of any governmental department or agency be submitted in evidence in the original.[29] The present rule

[23] *Ibid.*

[24] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32 *Practice and Procedure,* § 8(a).

[25] *Id.,* at § 8(a) (2).

[26] *Id.,* at § 8(a) (3).

[27] Caldwell, *New Rules and Regulations of Federal Radio Commission,* (1932) 2 JOURN. RADIO L. 66.

[28] *Cf.* BERRY, COMMUNICATIONS (1937) 282.

[29] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure,* § 8(b).

of the Federal Communications Commission also does not require the production of original government reports.[30] There is a difference between the two rules. The former rule required the report to have been made by an employee in the course of his duties as a foundation for a copy to be acceptable in evidence.[31] The new rule omits this requirement.[32] Except for this difference, both rules allow the admission of copies to the extent of their materiality and relevancy without any authentication other than a statement by the proper custodian of the record.[33] The statement of authentication should recite that the copy offered in evidence is a true copy and that the record is what it purports to be. The rule of the Federal Communications Commission requires the statement of authentication to be in the form of a certificate.[34]

This rule, as promulgated by the Federal Radio Commission, was held valid in *Beebe* v. *Federal Radio Commission*,[35] which involved an application for the renewal of a radio broadcast station license. In this case, the appellant contended that the Commission erred by its admission into evidence of a letter received by a supervisor (an employee of the Commission) which was attached to his report. On the appeal, the letter was held to be admissible under this rule. The rule was held valid on the ground that as an administrative tribunal, the Federal Radio Commission could depart from the strict rules of evidence under reasonable regulations.[36]

[30] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935) § 106.9.

[31] FEDERAL RADIO COMMISSION, *op. cit.* n. 29, § 8(b).

[32] FEDERAL COMMUNICATIONS COMMISSION, *op. cit.* n. 30, § 106.9.

[33] *Id., op. cit. supra* nn. 29 and 30.

[34] FEDERAL COMMUNICATIONS COMMISSION, *op. cit.* n. 30, § 106.9.

[35] 61 App. D.C. 273, 61 F.(2d) 914 (1932).

[36] Beebe *v.* Fed. Radio Comm., 61 App. D.C. 273, 61 F.(2d) 914 (1932).

Moreover, the Court held that the letter contained information admitted by the appellant to be true. Hence, even if its admission were improper, the appellant could not have been prejudiced thereby. *Ibid.*

§ 139. Same: Evidence Offered Containing Immaterial Matter.

It frequently occurs that a party may desire to offer relevant and material evidence which is part of a document containing other matter not relevant or material and not desired to be offered in evidence. In this situation, the Federal Communications Commission has adopted the rule of the Federal Radio Commission.[37] Such documents, under this rule, are not acceptable in evidence.[38] To introduce the material and relevant portions into the record, the offering party has to make true copies of these portions and to present such copies with the entire original document to the Commission and to opposing counsel. After such presentation, the document is receivable in evidence and may become part of the record. But the opposing counsel has the right to introduce in like manner other material and relevant portions of the document.

§ 140. Same: Exhibits Offered Must Be in Duplicate.

The Federal Communications Commission has adopted [39] the requirement of the Federal Radio Commission [40] that documents or exhibits, in part or in whole, must be offered in duplicate to be received in evidence.

§ 141. Same: Records of Other Proceedings.

In case any portion of the record before the Federal Communications Commission in any proceeding other than the current hearing is offered in evidence, a true copy of such portion must be presented in duplicate for the current record in the form of an exhibit.[41]

[37] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.10; FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure,* § 8(c).

[38] *Ibid.*

[39] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.11.

[40] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure,* § 8(e).

[41] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.15 (Not included in the Commission's proposed new rules.).

§ 142. Same: Unsworn Documents and Oral Declarations Not Received.

Unless the rules of practice and procedure of the Federal Communications Commission provide for their admissibility, unsworn documents and oral declarations are not admissible into evidence.[42] The Federal Radio Commission, in pursuance of a similar rule,[43] rejected the offer of an unverified letter by the applicant's engineer to the effect that a new crystal had been purchased and was in operation, which would eliminate all deviation from the assigned wave-length. On appeal, this was held not to be error.[44]

Even before the adoption of this rule by the Federal Radio Commission, there was no error in its rejection of the offer of unverified written statements of persons not called as witnesses and also no error in refusing oral statements made by such persons in the presence of government officials.[45]

§ 143. Same: Cumulative Evidence to Be Avoided.

Evidence which is merely cumulative is to be avoided. To that end, the Federal Communications Commission reserves the right to curtail the number of witnesses who might be presented by any party on any issue.[46] The Federal Radio Commission had the same rule.[47]

§ 144. Same: Evidence Presented in Form of Affidavits.

Contrary to the original rule of the Federal Radio Commission,[48] a party cannot present his case entirely in

[42] *Id.*, at § 106.12 (Not included in the Commission's proposed new rules.).

[43] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure*, § 8(e).

[44] Riker *v.* Fed. Radio Comm., 60 App. Div. D.C. 373, 55 F.(2d) 535 (1931).

[45] Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929).

[46] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.13.

[47] FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure*, § 8(f).

[48] *Id.*, at § 8(g).

the form of affidavits before the Federal Communications Commission. No rules of practice exist which sanction the presentation of an entire case by such evidence.

§ 145. Same: Privilege Against Self-Incrimination.

The general rule at common law is that no person may be compelled to give testimony which might tend to incriminate or subject him to a penalty or a forfeiture. Since this is a mere privilege, any person may waive it. The Communications Act of 1934 represents what may be called a basic departure from this rule. While a witness may claim his privilege against self-incrimination, the only effect of such assertion is to gain for him an immunity against prosecution for any charges which arise out of his testimony.[49] The Commission may disregard the witness' claim of such privilege and compel him to appear and to testify. Nor may this privilege be asserted as an excuse for disobedience of the subpoena issued out of the Commission.[50] The immunity must be claimed at the time the witness is called upon to testify.[51] This statutory rule is extended to any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Act or of any amendments thereto.[52]

The common law rule against compulsion of a witness to testify against himself is extended to the production of documentary evidence.[53] The Communications Act of 1934 provides for the abrogation of this privilege and the substitution of an immunity from prosecution.[54] Therefore, the ground of self-incrimination cannot be offered as an excuse for a refusal to testify.

A similar provision contained in the statute governing

[49] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(i) (1937).

[50] *Ibid.*

[51] *Accord:* United States *v.* Lee, 290 Fed. 517 (N.D. Tex., 1923); United States *v.* Skinner, 218 Fed. 870 (S.D.N.Y., 1914).

[52] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(i) (1937).

[53] IV. WIGMORE ON EVIDENCE (2d ed., 1923) § 2264.

[54] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(i) (1937).

the Interstate Commerce Commission was held to be valid since it granted an absolute immunity to the witness who may therefore be compelled to testify or produce.[55]

In any case, there is no immunity from prosecution where the person compelled to testify has committed perjury.[56]

The immunity granted by the statute does not extend to corporations.[57]

§ 146. Informal Hearings.

Hearings before the Federal Communications Commission may be formal or informal.[58] In its rules and in those of the Federal Radio Commission, a distinction is made between the procedure in formal hearings and in informal hearings. The rules authorize the Commission to hold such informal hearings upon petition by any person or by its own motion, as from time to time the Commission deems necessary.[59]

Informal hearings may be held for the following purposes:[60]

(1) To investigate any matter which the Commission could investigate under the law

(2) To obtain information in order to determine its policies

(3) To formulate or amend its rules and regulations.

To accomplish these purposes, the Commission has the same powers it has in formal hearings, *i.e.*, to summon

[55] Hale *v.* Henkel, 201 U.S. 43, 26 Sup. Ct. 370, 50 L.Ed. 652 (1905); Brown *v.* Walker, 161 U.S. 591, 16 Sup. Ct. 644, 40 L.Ed. 819 (1895).

[56] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(i) (1937).

[57] Wilson *v.* United States, 221 U.S. 361, 31 Sup. Ct. 538, 55 L.Ed. 771 (1910); Baltimore & Ohio R. R. Co. *v.* Int. Commerce Comm., 221 U.S. 612, 31 Sup. Ct. 621, 55 L.Ed. 878 (1910); Hale *v.* Henkel, 201 U.S. 43, 26 Sup. Ct. 370, 50 L.Ed. 652 (1905).

[58] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.1.

[59] *Id.*, at § 106.2; FEDERAL RADIO COMMISSION, 4 ANNUAL REPORT (1930) 32, *Practice and Procedure.*

[60] *Ibid.*

witnesses and to compel testimony. The procedure of an informal hearing is such as best serves the purpose of the hearing.

§ 147. Hearings: Evidence Must Be Relevant.

In quasi-judicial proceedings, the Commission is bound to consider evidence relevant to the issues raised by its notice of hearing or by any other instrument upon which a hearing is predicated.

In *Brahy* v. *Federal Radio Commission,*[61] the appellant had applied for the renewal of his broadcast station license. The Commission, having failed to reach a determination that a renewal would be in the public interest, convenience and necessity,[62] noticed the application for a hearing on the charge that the appellant had used power in excess of the amount authorized. At the hearing, the Commission received in evidence testimony that on two certain days the appellant had deviated from the assigned frequency. Upon the introduction of such evidence, the appellant moved for a continuance. On appeal from a denial of the motion, the appellate court held that the continuance should have been granted.[63] It was held that a party to a hearing is

[61] 53 App. D.C. 53, 59 F.(2d) 45 (1932).

[62] This was under the procedure outlined in § 91 of the Radio Act of 1927, 44 STAT. 1162.

[63] The Court, however, affirmed the order of the Federal Radio Commission based on the finding that the appellant had deviated from the assigned frequency. The Court held that the election of the appellant to proceed with his defense after the denial of his motion for a continuance, constituted a waiver of his right to receive notice of any charges not contained in the original notice and upon which testimony was taken at the hearing. *Brahy* v. *Fed. Radio Comm.,* 53 App. D.C. 53, 59 F.(2d) 415 (1932). *Accord:* Tech. Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929). The actual appearance of appellant by counsel at all hearings, his submission of evidence and his other participation therein, is a consent to the course of the hearing; he cannot with merit complain that he did not receive lawful notice of the charges against the broadcast station and of the time and place of the hearings. *Ibid.* In such a case, the Commission may proceed to dispose of the application on its merits since the

entitled to reasonable notice of the specific issues to be considered at the hearing so that he need not be compelled to incur the expense of producing witnesses or documents at a hearing to defend himself against possible or imaginary charges.[64]

Not only is the Commission bound to restrict its evidence to the issues embraced in the notice of hearing, but other parties to the hearing are likewise restricted. In *Beebe* v. *Federal Radio Commission,*[65] the application was for a renewal of a broadcast station license. The applicant sought to introduce evidence of his intention to secure a new transmitter, which evidence was rejected. On appeal, this was held not to be error since the only issue at the hearing was whether the renewal of the license for use of the old equipment should be granted.[66]

§ 148. Additional Evidence During Hearings May Be Required of Any Party.

Any party may be required by the officer presiding at a hearing, to present additional evidence upon any issue.[67]

§ 149. Additional Evidence After Hearings May Be Required of Any Party.

Any party may be required by the presiding officer, upon his own motion or upon the motion of a party, to furnish additional documentary evidence to supplement the existing record within a stated period of time. The record is

appellant has been accorded all the rights of a litigant and has had his day in court. *Evansville on the Air,* 2 F.C.C.Rep. 341 (1936).

[64] Brahy *v.* Fed. Radio Comm., 53 App. D.C. 53, 59 F.(2d) 415 (1932). For continuance under the practice of the Radio Commission, see its 4 ANNUAL REPORT 31, *Practice and Procedure,* § 5 (1930).

[65] 61 App. D.C. 273, 61 F.(2d) 914 (1932).

[66] Beebe *v.* Fed. Radio Comm., 61 App. D.C. 273, 61 F.(2d) 914 (1932).

[67] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1935), § 106.16.

then to be kept open for the extended period and the additional evidence, when offered, is made a part thereof.[68]

§ 150. Opening and Closing at Hearings.

At hearings on applications, the applicant opens and closes. At all hearings in all proceedings instituted by the Federal Communications Commission, it opens and closes. At hearings on protests, the protestant opens and closes.[69]

In hearings upon a consolidated record, the presiding officer designates the order of presentation. Where an intervention is in behalf of a party, the intervenor follows that party. Where the intervention is not in behalf of either original party, the presiding officer designates the order of procedure.[70]

§ 151. Burden of Proof on Applicant.

Where the Federal Communications Commission has failed to reach a determination, after examination of the application, that the granting of such application would be in the public interest, convenience or necessity, and has designated the application for hearing, upon whom is the burden of proof? This question depends upon the nature of the application.

§ 152. Same: Application for Construction Permit.

An applicant for a construction permit who has been granted a hearing has the burden of proof to show that the granting of such application would be in the public interest, convenience or necessity.[71] In *Goss* v. *Federal Radio Commission*,[72] the Commission found that the applicant had failed to show a substantial need for additional service in the Boston area and that there had not been a

[68] *Id.*, at § 106.17.
[69] *Id.*, at § 106.7.
[70] *Ibid.*
[71] Goss *v.* Fed. Radio Comm., 62 App. D.C. 299, 67 F.(2d) 507 (1933); Sweetwater Broadcasting Company, 4 F.C.C.Rep. 293 (1937).
[72] 62 App. D.C. 299, 67 F.(2d) 507 (1933).

sufficient showing of financial responsibility. The Commission could not find that the granting of the construction permit would be in the public interest. The Court held that the burden was on the applicant.

In *Sweetwater Broadcasting Company,*[72a] the Commission said that an applicant for a construction permit has the burden of proving *inter alia* that he is legally, technically, financially and otherwise qualified, that there is a public need for the service he proposes to render, and that there is reasonable expectation of sufficient commercial support available to the proposed station to indicate that it will be operated in the public interest.

An applicant for a permit to locate and maintain a studio in the United States in order to transmit radio program material to a foreign broadcast station to be rebroadcast to this country, must show such application to be in the public interest.[73]

§ 153. Same: Application for Renewal.

It is well established that the burden of proof at a hearing on an application for renewal is upon the applicant.[74] In *Riker* v. *Federal Radio Commission,*[75] the Commission had found *inter alia* that the applicant, charged with a deviation from his assigned frequency, had failed to show that such deviations were due to causes beyond his control. It further found that the applicant had failed to show that the renewal and continuance of his broadcasting operations would be in the public interest, convenience or necessity. On appeal from the denial of the application, the Court held that the burden of proof upon the issues raised by the charges in the notice was upon the applicant.[76]

[72a] 4 F.C.C.Rep. 293, 295 (1937).

[73] Yount, 2 F.C.C.Rep. 200 (1935).

[74] Goss *v.* Fed. Radio Comm., 62 App. D.C. 299, 67 F.(2d) 507 (1933).

[75] 60 App. D.C. 373, 55 F.(2d) 535 (1931).

[76] Riker *v.* Fed. Radio Comm., 60 App. D.C. 373, 55 F.(2d) 535 (1931); KFKB Broadcasting Co., Inc. *v.* Fed. Radio Comm., 60 App. D.C. 79, 47 F.(2d) 670 (1931); Beebe *v.* Fed. Radio Comm., 61 App. D.C. 273, 61 F.(2d) 914 (1932).

This case must be distinguished from *Saltzman* v. *Stromberg-Carlson Telephone and Manufacturing Co.*[77] In the latter case, the action was for an injunction against the Federal Radio Commission by the plaintiff licensee. The Commission by order had transferred the plaintiff's station and another station to another frequency, although neither had applied for such frequency and although plaintiff had already applied for a renewal of his station license on the same terms. Although the original order of transfer was made without notice and hearing, a later order allowed a hearing after the effective date of the transfer. A temporary injunction issued, whereupon the Commission postponed the effective date of the transfer and ordered a hearing prior thereto wherein all parties affected might show cause against the order of transfer. The Court refused to dissolve the injunction on the ground that such order forced the plaintiff to show cause why the frequency should not be changed. On appeal by the Commission to the Court of Appeals of the District of Columbia, the refusal of the lower court to dissolve the injunction was affirmed.[78] The Court of Appeals held that the order of transfer was based on *ex parte* findings of evidence which were unrevealed to the plaintiff. These *ex parte* findings do not make a *prima facie* case so as to compel the plaintiff to show error in the order.[79] The requirement of a hearing implies that the plaintiff is entitled to hear all the evidence and examine the witnesses.[80]

The burden of proof and the party upon whom it rests are determined by the issues raised by the pleadings in the proceeding. The distinction between these two cases

On the appeal, this burden continues to be on the applicant for renewal. *Technical Radio Lab.* v. *Fed. Radio Comm.*, 59 App. D.C. 125, 36 F.(2d) 111 (1929).

[77] Saltzman *v.* Stromberg-Carlson Mfg. Co., 60 App. D.C. 31, 46 F.(2d) 612 (1931).

[78] *Ibid.*

[79] *Ibid.*

[80] *Ibid. Accord:* Int. Commerce Comm. *v.* Louisville and Nashville R. Co., 227 U.S. 88, 33 Sup. Ct. 185, 57 L.Ed. 431 (1912).

is found in the different issues raised therein. In the case of an application for a renewal of a radio station license, the issue is whether the continued operation of the station would be in the public interest.[81] In any proceeding on an application for the issuance or modification of a broadcast station license, the issue is the same as on an application for renewal. The burden in all these cases is on the applicant to show the public interest.[82]

In a case where the Commission *on its own motion* seeks to modify or revoke a radio station license the issue is twofold:

(1) Is such action in the public interest?

(2) Does the order affect any rights under the license?

On the first issue the burden is on the Commission to show the public interest in such modification or revocation. The second issue imposes the requirement of a hearing.[83] To rely on *ex parte* findings as a *prima facie* case, where the order affects rights under a license, is to deprive the licensee of his right to examine the witnesses, to inspect the evidence[84] and to present his witnesses and evidence in his own defense. On this latter issue, it is not a question of burden of proof; it is one of due process. Hence, in *Saltzman* v. *Stromberg-Carlson Telephone and Manufacturing Co.*,[85] the Commission was enjoined from enforcing an order based upon its *ex parte* findings because

[81] Riker *v.* Fed. Radio Comm., 60 App. D.C. 373, 55 F.(2d) 535; KFKB Broadcasting Co., Inc. *v.* Fed. Radio Comm., 60 App. D.C. 79, 47 F.(2d) 670 (1931); Beebe *v.* Fed. Radio Comm., 61 App. D.C. 273, 61 F.(2d) 914 (1932).

[82] Saltzman *v.* Stromberg-Carlson Mfg. Co., 60 App. D.C. 31, 46 F.(2d) 612 (1931). *Accord on appeal:* Courier Journal Co. *v.* Fed. Radio Comm., 60 App. D.C. 33, 46 F.(2d) 614 (1931).

[83] Int. Commerce Comm. *v.* Louisville and Nashville R. Co., 227 U.S. 88, 33 Sup. Ct. 185, 57 L.Ed. 431 (1912).

[84] Red Oak Radio Corp., *et al.*, 1 F.C.C.Rep. 163, 166 (1936); Station WIS, Inc., 1 F.C.C.Rep. 172 (1936).

[85] Saltzman *v.* Stromberg-Carlson Mfg. Co., 60 App. D.C. 31, 46 F.(2d) 612 (1931).

of its failure to comply with due process. The question of burden of proof was not controlling in that case.

§ 154. Burden on Protestant.

Where a protest is made against the granting of an application by the Federal Communications Commission, the protestant must sustain the allegations made by him.[86] This burden of the protestant does not affect the ultimate burden of proof which remains upon the applicant, who must always show the public interest.[86a]

It has been held by the Federal Communications Commission that the protestant had not sustained an allegation that the removal of Station KICK from Carter Lake, Iowa, to Davenport, Iowa, would result in serious economic injury to the protestant station by a curtailment of its advertising business through the increase of competition.[87] The allegation of the protestant raised an issue between it and the applicant, on which the former had the affirmative.

Where the protestant fails to appear or does not offer evidence to support his allegations, a motion to dismiss the protest will be granted.[88]

Where in the protest, it is urged against the granting of an application for the modification of a broadcast station license by an increase in authorized power that such increase would cause objectionable interference, the protestant must sustain his allegation by showing specifically what interference conditions would result.[89] Where the applicant station is located beyond the distance recommended by the Commission as necessary to avoid objectionable interference, an allegation is not sufficient; special circumstances making the official recommendation inapplicable must be shown by the protestant.[90]

[86] Red Oak Radio Corp., *et al.*, 1 F.C.C.Rep. 163, 166 (1936).

[86a] See proposed new rule 104.4 of the Commission.

[87] Red Oak Radio Corp., *et al.*, 1 F.C.C.Rep. 163, 166 (1936).

[88] Station WIS, Inc., 1 F.C.C. Rep. 172, (1936).

[89] WSMB, Inc., 1 F.C.C.Rep. 247, 250 (1936).

[90] KTAR Broadcasting Co., 1 F.C.C.Rep. 218, 220 (1936).

Chapter IX.

ADMINISTRATIVE REGULATION BY FEDERAL COMMUNICATIONS COMMISSION—APPEALS.

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§ 155. Appeals from the Federal Radio Commission: Act of 1927.

Actions of the Federal Radio Commission were appealable in certain cases. The provisions of the Radio Act of 1927, as originally enacted, allowed appeals to the Court of Appeals of the District of Columbia in cases where the Commission had refused an application for a construction permit or for a station license, or for the renewal or modification of a station license. A licensee whose license had been revoked could appeal from such a decision to the Court of Appeals of the District of Columbia or to the United States District Court in the district where the station was operated.[1]

§ 156. Amendment of 1930.

In 1930, Congress amended Section 16 of the Radio Act of 1927.[2] This amendment allowed an appeal from the Commission's decisions except where there had been a refusal of an application for a construction permit.[3] The appeals allowed were limited to the Court of Appeals of the District of Columbia.[4] Section 16 as amended also granted, in any case in which the licensee could appeal, a right of appeal to any one "aggrieved or whose interests are adversely affected" by the decision of the Commission.[5]

§ 157. Same: Appeals Allowed from Refusal of Construction Permit.

There would seem to be no good reason why an appeal should not have been allowed under the Act of 1927 to an

[1] 44 STAT. 1169 (1927), § 16.

[2] Act of July 1, 1930, 46 STAT. 844.

[3] 44 STAT. 1169 (1927), § 16, (a)1, 2.

"(a) An appeal may be taken . . .

"1. By any applicant for a station license or for renewal of an existing station license, or for modification of an existing station license, whose application is refused by the commission.

"2. By any licensee whose license is revoked, modified, or suspended by the commission."

[4] *Id.*, at § 16(a).

[5] *Id.*, at § 16(a), 3.

unsuccessful applicant for a construction permit. In fact there were cases in which such appeals were allowed.[6] In *Goss* v. *Federal Radio Commission*,[7] the applicant had sought permission to construct a broadcast station to operate on the frequency of 1500 kilocycles for unlimited time with 250 watt power in the daytime and 100 watt power in the nighttime. The Commission moved to dismiss the action upon the ground that the Act of 1927 as amended did not allow an appeal from the denial of a construction permit. The Court allowed the appeal upon the ground that, in substance and in effect, the application refused was for a station license and as such was appealable.[8]

In *Durham Life Insurance Co.* v. *Federal Radio Commission*,[9] the licensee had applied for authority to install new transmitting apparatus of greater power, which application had been refused by the Commission. The licensee sought to appeal, whereupon the Commission moved to dismiss upon the ground that the application was for a construction permit. The Court of Appeals held that the application was for "a modification of an existing station license" and that the decision thereon was therefore appealable under the Radio Act of 1927 as amended.[10]

§ 158. Same: Appeals Not Allowed from Refusal to Approve Assignment.

Another apparent defect of the Radio Act of 1927, even as amended, was its failure to make provision for an appeal where an application for the approval of the assignment of

[6] Goss *v.* Fed. Radio Comm., 62 App. D.C. 299, 67 F.(2d) 507 (1933); Durham Life Ins. Co. *v.* Fed. Radio Comm., 60 App. D.C. 375, 55 F.(2d) 537 (1931). *Accord:* Pacific Development Radio Co. *v.* Fed. Radio Comm., 60 App. D.C. 378, 55 F.(2d) 540 (1931).

[7] 62 App. D.C. 299, 67 F.(2d) 507 (1933).

[8] Goss *v.* Fed. Radio Comm., 62 App. D.C. 299, 67 F.(2d) 507 (1933).

[9] 60 App. D.C. 375, 55 F.(2d) 537 (1931).

[10] Durham Life Ins. Co. *v.* Fed. Radio Comm., 60 App. D.C. 375, 55 F.(2d) 537 (1931). *Accord:* Pacific Development Radio Co. *v.* Fed. Radio Comm., 60 App. D.C. 378, 55 F.(2d) 540 (1931).

a station license had been refused.[11] The case of *Pote (Station WLOE)* v. *Federal Radio Commission*[12] involved an attempt to secure an appeal from the refusal of approval of the assignment. It was urged that the words, "modification of an existing station license", contained in the amended Radio Act of 1927[13] provided for an appeal in such a case. The Court, with Judge Groner dissenting, dismissed the appeal upon the ground that there was no express or implied provision in the amended Act which permitted an appeal in such a case. It held that the application was not for the "modification of an existing station license" since the terms and conditions of the license remain unaffected by the assignment.[14]

Judge Groner in his dissenting opinion,[15] advanced what seems to be a tenable position, namely, that the application for the approval of the assignment was in fact an application for a station license. He argued that the assignee had secured all of the property of the former licensee and could not operate the station without a license. Therefore, the dissent considered the refusal to approve the assignment to be in effect a refusal to grant a station license which latter action was appealable under the amended Radio Act of 1927.[16]

§ 159. Same: Appeal Allowed from Suspension of License.

The amended Act of 1927 made provision for an appeal by the licensee or by an aggrieved person from a decision ordering a suspension of the station license.[17] Such a provision is meaningless since there was no express grant to the Federal Radio Commission of a power to suspend, nor had it ever asserted that it had such a power.

[11] Such approval in writing of the assignment of a station license was required by § 12 of the Act of 1927, 44 STAT. 1162.

[12] 62 App. D.C. 303, 67 F.(2d) 509 (1933).

[13] 46 STAT. 844 (1930), § 16(a).

[14] Pote (Station WLOE) *v.* Fed. Radio Comm., 62 App. D.C. 303, 67 F.(2d) 509 (1933).

[15] *Ibid.*

[16] 46 STAT. 844 (1930), § 16(a)1.

[17] *Id.*, at § 16(a), 2, 3.

§ 160. Appeals: Communications Act of 1934.

The Communications Act of 1934 specifically allows an appeal by any applicant from the refusal of a construction permit.[18] As yet no appeal is allowed from the refusal of an application for the approval of an assignment of an existing station license. It would seem desirable that the Act be amended to provide for an appeal in this instance. The Communications Act does not make provision for an appeal from an order suspending a station license, which was included in the Act of 1927.

Under the Communications Act of 1934, in addition to applicants for construction permits, applicants for a station license or for the renewal or modification thereof, may also appeal to the Court of Appeals of the District of Columbia from adverse decisions of the Communications Commission. Whether any of such applications have been granted or refused, any person aggrieved or adversely affected thereby may also appeal to the Court of Appeals of the District of Columbia.[19]

Appeal to the Court of Appeals of the District of Columbia is the exclusive remedy of a person aggrieved or affected in his interests by an order of the Commission granting or refusing a station license, or a renewal or modification thereof.[20]

It is interesting to note that the Commission regarded as an application for modification of a license, a request to modify a construction permit which was filed after the original construction permit had been granted and before the station license was issued.[21]

§ 161. Appeals to the United States Supreme Court: Act of 1927.

No provision was made in the Act of 1927 as originally enacted for a review by the United States Supreme Court

[18] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(b) (1936).

[19] *Id.*, at § 402(b), (1).

[20] *Id.*, at § 402(b), (2).

[21] Sykes *v.* Jenny Wren Co., 64 App. D.C. 379, 78 F.(2d) 729 (1935).

of a decision on an appeal from the Federal Radio Commission to the Court of Appeals of the District of Columbia. However, it is provided in the Judicial Code of the United States that the United States Supreme Court may, by writ of *certiorari,* require any civil or criminal case in the Court of Appeals of the District of Columbia to be certified to it for determination. The writ of *certiorari* can issue either before or after a judgment or decree by the lower court. When the case is before the United States Supreme Court under Section 347 of the Judicial Code, it has the same power and authority and its determinations have the same effect "as if the cause had been brought there by unrestricted writ of error or appeal."[22]

Even under Section 347 of the Judicial Code, no appellant was ever successful in securing a review by the United States Supreme Court of the determination of the Court of Appeals of the District of Columbia on appeals from decisions of the Federal Radio Commission. The United States Supreme Court refused to hear appeals which had first been taken to the Court of Appeals under the Act of 1927 as originally enacted.[23] The reason for such refusal is found in the nature of the review provided for by the Act of 1927 and in the jurisdiction of the Supreme Court.

The Act of 1927 in its original form made provision as to the nature of the review to be granted by the Court of Appeals of the District of Columbia on appeals from

[22] 43 STAT. 938 (1925), 28 U.S. C.A. § 347 (1936).

[23] General Electric Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

There were other cases in which questions involving the Act of 1927 were certified to the United States Supreme Court, but the Supreme Court refused to examine the merits of the appellants' claims of the unconstitutionality of the Radio Act of 1927, upon the ground that the questions propounded by the Circuit Court of Appeals were indefinite. *White* v. *Johnson,* 282 U.S. 367, 51 Sup. Ct. 115, 75 L.Ed. 388 (1931); *American Bond and Mortgage Co.* v. *United States,* 282 U.S. 374, 51 Sup. Ct. 118, 75 L.Ed. 395 (1931).

the Federal Radio Commission. Section 16 provided as follows:[24]

> "At the earliest convenient time the court shall hear, review and determine the appeal upon said record and evidence, and may alter or revise the decision appealed from and enter such judgment as to it may seem just."

It was held that the powers granted to the Federal Radio Commission were purely administrative and that Section 16 made the Court of Appeals "a superior and revising agency" in the same field. Since the courts of the District of Columbia are created under the legislative power of Congress in connection with the government of the Territories, and since the jurisdiction of such courts is founded upon other legislative powers of Congress rather than upon the Judiciary Article of the Constitution, the courts of the District of Columbia may be given administrative powers to carry out Congressional regulation of interstate commerce.[25]

The United States Supreme Court cannot be invested with such administrative powers or jurisdiction for review because its jurisdiction is founded upon the provisions of the Constitution.[26] As the Court itself said:[27]

> "It was brought into being by the judiciary article of the Constitution, is invested with judicial power only, and can have no jurisdiction other than of cases and controversies falling within the classes enumerated in that article. It cannot give decisions which are merely advisory; nor can it exercise or participate in the exercise of functions which are essentially legislative or administrative."

[24] Act of Feb. 23, 1927, 44 STAT. 1162, § 16.

[25] General Electric Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

[26] General Electric Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930); Keller *v.* Potomac Elec. Power Co., 261 U.S. 428, 43 Sup. Ct. 445, 67 L.Ed. 731 (1922); Postum Cereal Co. *v.* California Fig Nut Co., 272 U.S. 693, 47 Sup. Ct. 284, 71 L.Ed. 478 (1927).

[27] General Electric Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

For reasons of lack of jurisdiction, the United States Supreme Court dismissed an appeal from a decision of the Court of Appeals of the District of Columbia involving action by the Federal Radio Commission. Such a decision of the Court of Appeals had not raised a judicial question and therefore presented no case or controversy which the United States Supreme Court had jurisdiction to determine.[28]

§ 162. Amendment of 1930.

After the refusal of the United States Supreme Court on jurisdictional grounds to review the case of *General Electric Co.* v. *Federal Radio Commission*,[29] Congress removed the procedural obstacles in the path of such a review. A new Section 16 of the Radio Act was passed. It provided as follows:[30]

> "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 the 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, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. . . .*"

In *Federal Radio Commission* v. *Nelson Brothers Bond and Mortgage Co.*,[31] it was contended that this new Section 16 had not changed the nature of the review by the Court of Appeals of the District of Columbia of actions of the Federal Radio Commission and that therefore the appeal to

[28] *Ibid.*

[29] *Ibid.*

[30] Act of July 1, 1930, 46 STAT. 844.

[31] 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

the United States Supreme Court should be dismissed for want of jurisdiction. The Supreme Court allowed the appeal. In doing so, Chief Justice Hughes said of the new section:[32]

> "The limitation manifestly demands judicial as distinguished from administrative review. Questions of law form the appropriate subject of judicial determinations . . . whether there is compliance with the legal requirements which fix the province of the Commission and govern its action, are appropriate questions for judicial decision."

Moreover, the provision as to the conclusiveness of the findings of the Commission, unless they are arbitrary, does not impose an administrative function upon the Court.

> "A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law . . . and an inquiry into the facts before the Commission, in order to ascertain whether its findings are thus vitiated, belongs to the judicial province and does not trench upon, or involve the exercise of administrative authority. . . ."

§ 163. Communications Act of 1934.

The Communications Act of 1934, where it allows appeals to the Court of Appeals of the District of Columbia,[33] re-enacts the provision of the amended Radio Act of 1927[34] with respect to the power of that Court and the nature of the review by it. As in the Act of 1927, appeals to the United States Supreme Court are to be pursued according to the procedure set forth in Section 347 of the Judicial Code of the United States.[35] Therefore, where *certiorari* is granted by the Supreme Court in cases arising

[32] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 276, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[33] 48 STAT. 1093 (1934), 47 U.S. C.A. § 402(b) (1937).

[34] 46 STAT. 844 (1930).

[35] 43 STAT. 938 (1925), 28 U.S. C.A. § 347 (1936).

under the Communications Act of 1934, such appeals are not dismissible for want of jurisdiction.[36]

§ 164. Appeals to the Court of Appeals of District of Columbia: Procedure.

Section 402(c) of the Communications Act of 1934[37] re-enacts, with slight changes in language, the amended Section 16 of the Radio Act of 1927[38] and sets forth the procedure by which an appeal is taken from the Federal Communications Commission to the Court of Appeals of the District of Columbia.

One who seeks an appeal from the Federal Communications Commission from its decision in a proceeding on an application for a construction permit, a station license, or the renewal or modification of an existing station license, is given twenty days from the effective date of the decision within which to appeal. The effective date of a decision on such an application is the day on which the Commission makes public announcement thereof at its office in Washington, D. C. However, the Commission may specify in its decision a later date as the effective date thereof, which supersedes the date under the statute.[39]

Within the twenty day period so allowed, the appellant must file with the Court of Appeals of the District of Columbia a written notice of the appeal with a statement of the reasons therefor. Since no provision is made for a specific form of the notice of appeal, the practice has developed of using a simple form which contains the basis upon which the appellant deems himself to have been aggrieved

[36] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(b) (1937); Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[37] 48 STAT. 1093, 47 U.S.C.A. § 402(c) (1937).

[38] 46 STAT. 844 (1930). In the Act of 1934, the term "person" is employed rather than the phrase "person, firm or corporation" used in the amended § 16 of the Radio Act of 1927.

[39] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(c) (1937).

by the ruling of the Commission. The statement of reasons for the appeal is set forth in an affidavit attached to the notice of appeal and signed by the appellant or his counsel. Such an affidavit should also state that the notice annexed thereto is a true copy of the notice of appeal to be filed with the appellate court.

Notice should also be given to the Commission as to the date on which the notice of appeal and the reasons therefor will be filed with the appellate court. When the notice of appeal is filed with the Court, it should be noted on the record that receipt of a copy thereof has been acknowledged by the Commission.[40] This is to meet the requirement of proof that a "true copy of said notice and statement" has been served upon the Commission.[41]

It may be necessary to apply for a stay order where, pending the appeal, the execution of the Commission's order may cause injury to the appellant. Such an application for a stay is made by petition signed by the petitioner or by his counsel of record. The petition should be properly verified. A copy of the petition must be served on the Commission. The petition should be filed with the notice of appeal.[42]

Upon the receipt of the service of the notice and statement of appeal, the Commission must within five days thereafter deliver a copy of the notice of appeal to every person shown by its records to have an interest in the appeal and who under Section 402 has a right to intervene therein.[43]

The Commission is required to file with the Court within thirty days after the appeal has been filed, either the the original or certified copies of all documents and the evidence presented to it in connection with the application in question. The Commission must also file with the Court at the same time a certified copy of the decision appealed

[40] BERRY, COMMUNICATIONS (1937), § 988 *et seq.*

[41] 48 STAT. 1093 (1934), 47 U.S. C.A. § 402(c) (1937).

[42] BERRY, *op. cit. supra,* n. 40, § 991 *et seq.*

[43] 48 STAT. 1093 (1934), 47 U.S. C.A. § 402(c) (1937).

from. After the expiration of such thirty day period or commencing with the earlier date when the required filing is completed, the Commission has thirty days within which it must file with the Court a full written statement of the facts and the grounds for its decision, as the same were found and given by it.[44] The Commission must further

[44] This provision was considered in *Missouri Broadcasting Corp.* v. *Federal Communications Commission*, 94 F.(2d) 623 (App. D.C., 1937). The question raised in that case was as to the time when the Commission is required by § 402(c) of the Act of 1934, 48 STAT. 1093, 47 U.S.C.A. (1937), to find the facts and state the grounds of its decision or order. The Commission, in reliance upon the provision requiring it to file a full statement of the facts and grounds for its decision within thirty days after it has filed the record, contended that it need not find the facts and state the grounds of its decision until thirty days after the record is filed with the Appellate Court. The Court of Appeals for the District of Columbia held otherwise. The Court, *per* Groner, J., said at 626:

"But all of these reasons aside, we think we are not required to give any of the language or requirements of the act forced construction to reach the conclusion we do. For, as we have pointed out, the act unquestionably requires the commission in every case of appeal to file not only the record and its decision but a statement of the facts and a statement of the grounds of its decision. The exact language is—file a full statement in writing of the facts and grounds for its decision *as found and given by it.* The six words we have italicized imply, we think, that the grounds of decision and a brief factual statement of the reasons therefor have been previously given, that is, previously to the filing of the full statement, i.e., findings of fact, in this court. Certainly this would be the reasonable and ordinary course because no commission exercising the judicial function ought to give a decision without knowing the grounds therefor, and the statement of those grounds necessarily must be drawn from the facts found. If this rule be adopted the appellant will, when the commission enters its order, know the grounds of the decision and will know whether he desires to appeal and will be able to frame intelligently his assignments of error. On the other hand, the commission will not be inconvenienced by being required to include in its order a succinct statement of facts and grounds therefor, since necessarily in every case the commission will know why it is deciding it as it is. We are not unmindful that the reduction of the factual findings to a concise statement in writing requires time, and undoubtedly it was this consideration which moved Con-

file a complete list of the interested persons to whom there has been delivered a copy of the notice of appeal.

Any person who is shown by the records of the Commission to have an interest in the appeal and who has a

gress to afford the commission extra time for filing its 'full' statement in writing. And in this view there is no reason why the formal findings of fact—as is not unusual in cases, either in law or equity, should not await the taking of the appeal. What we have said, we hope, sets a sufficient standard to prevent the recurrence of this question on future appeals."

In *Saginaw Broadcasting Co.* v. *Federal Communications Commission,* 96 F.(2d) 554, 559, 560 (App. D.C., 1938) the Court of Appeals again considered the instant question and said:

"In discussing the necessary content of findings of fact, it will be helpful to spell out the process which a commission properly follows in reaching a decision. The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion. For example, before the Communications Commission may grant a construction permit it must, under the statute, be convinced that the public interest, convenience, or necessity will be served. An affirmative or negative finding on this topic would be a finding of ultimate fact. This ultimate fact, however, will be reached by inference from basic facts, such as, for example, the probable existence or non-existence of electrical interference, in view of the number of other stations operating in the area, their power, wave length, and the like. These basic facts will themselves appear or fail to appear, as the case may be, from the evidence introduced when attentively considered. Thus, upon the issue of electrical interference evidence may be introduced concerning power and wave length of a proposed station and of existing stations, and expert opinion based upon this evidence may be offered as to the likelihood of interference; and expert opinion based on evidence of field measurements of signal strength of existing stations may also be offered. This testimony may conflict. It is the Commission's duty to find from such evidence the basic facts as to the operation of the proposed and present stations in respect of power, wave length, and the like, and whether or not electrical interference will result from the operation of the proposed station, and then to find as an ultimate

right to intervene under Section 402 of the Communications Act of 1934 may at any time after his receipt of notice of the appeal, inspect the appellant's statement of reasons for said appeal and make copies thereof.

Where such interested person wishes to intervene, as he may under Section 402 of the Communications Act, he must file with the Court a verified statement of the nature of his interest and a notice of his intention to intervene. The intervener must also file proof that service has been made of true copies thereof upon both the appellant and the Commission.[45]

§ 165. Effective Date of Orders Other Than for Payment of Money.

All orders of the Federal Communications Commission, unless for payment of money or otherwise provided for in the Act, take effect within a reasonable time. Such reasonable time is not less than thirty days after the order is served. Other than one ordering payment of money, an

fact whether public interest, convenience, or necessity will be served by granting or not granting the application.

"We ruled in Missouri Broadcasting Corporation *v.* Federal Communications Commission, 68 App. D.C. 154, 94 F.(2d) 623, 1937, and again in Heitmeyer *v.* Federal Communications Commission, 68 App. D.C. 180, 95 F.(2d) 91, 1937, that findings of fact in the broad terms of public convenience, interest or necessity, the criterion set up by § 319(a) of the Act, were not sufficient to support an order of the Commission. We now rule that findings of fact to be sufficient to support an order, must include what have been above described as the basic facts, from which the ultimate facts in the terms of the statutory criterion are inferred. It is not necessary for the Commission to recite the evidence, and it is not necessary that it set out its findings in the formal style and manner customary in trial courts. It is enough if the findings be unambiguously stated, whether in narrative or numbered form, so that it appears definitely upon what basic facts the Commission reached the ultimate facts and came to its decision."

Accord: Tri-State Broadcasting Co. *v.* Federal Communications Commission, 96 F.(2d) 564 (App. D.C., 1938).

[45] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(d).

order of the Federal Communications Commission remains in effect until it is superseded by a further order or for a specified period of time in accordance with the terms of the order. The period of time may be changed by the suspension, modification or setting aside by the Commission of its order. Likewise, where the order is suspended or set aside by a court of competent jurisdiction.[46]

§ 166. Power of the Courts to Review Decisions of the Commission.

To what extent are the determinations of the Federal Communications Commission final? Since the Commission is an administrative body, it would be well first to advert to the general principles governing the finality of administrative determinations.

It has already been established that where the determination attacked was made in the exercise of a delegated legislative power, the findings of the Commission are conclusive.[47] This is also true where the determination is the product of an exercise of executive power. Of these propositions, the late Chief Judge Pound said:[48]

> "*In theory, at least, executive and legislative power and justice, properly exercised, are not proper subjects of judicial review, even though questions of law are raised*; determinations which are within the power of the legislative or the executive are and should be final and conclusive; administrative orders should be reviewed by the courts only when a justiciable question is presented and the courts should consider only such matters as come within the scope of judicial power."

It must be noted that irrespective of the nature of the power sought to be exercised, the question of the juris-

[46] *Id.*, at § 408.

[47] See § 100 *supra*.

[48] POUND, CONSTITUTIONAL ASPECTS OF ADMINISTRATIVE LAW, lecture in THE GROWTH OF AMERICAN ADMINISTRATIVE LAW (1923) 100.

diction of the administrative body to exercise such a power in the premises is always open to judicial review.[49]

In *Interstate Commerce Commission* v. *Humboldt S. S. Co.*,[50] that Commission decided that it had no jurisdiction to make the order sought by the steamship company. The United States Supreme Court determined that the Commission had jurisdiction to make such an order and directed that a writ of *mandamus* issue to compel it to take jurisdiction.[51] It was held that jurisdiction to determine jurisdiction is not possessed by an administrative body, but reposes in the courts.[52]

Similarly, where an administrative officer exercises authority not possessed by him, an injunction to restrain him may issue from a competent court.[53]

§ 167. Same: Conclusiveness of Determinations and Due Process.

The courts may also review the determination of an administrative tribunal to ascertain whether there has been a compliance with the procedure required by due process.[54]

Due process requires that a hearing be given before any encroachment is made upon the rights of a party.[55] Such a hearing must be one at which the party has an opportunity to present his evidence, to cross-examine witnesses and to inspect the evidence of his opponents. Where these requirements are not met, the determination will be

[49] Int. Commerce Comm. *v.* Humboldt S. S. Co., 224 U.S. 474, 32 Sup. Ct. 556, 56 L.Ed. 849 (1911); Noble *v.* Union River Logging Co., 147 U.S. 165, 13 Sup. Ct. 271, 37 L.Ed. 123 (1893).

[50] 224 U.S. 474, 32 Sup. Ct. 556, 56 L.Ed. 849 (1911).

[51] *Ibid.*

[52] *Ibid.* See *Ex Parte* Harding, 219 U.S. 363, 31 Sup. Ct. 324, 30 L.Ed. 824 (1910).

[53] Noble *v.* Union River Logging Co., 147 U.S. 165, 13 Sup. Ct. 271, 37 L.Ed. 123 (1893).

[54] Albertsworth, *Judicial Review of Administrative Action by the Federal Supreme Court,* (1922) 35 HARVARD L. REV. 127; Interstate Commerce Comm. *v.* Louisville and N. R. Co., 227 U.S. 88, 33 Sup. Ct. 185, 57 L.Ed. 431 (1912).

[55] See §§ 100–103 *supra.*

reversed as arbitrary or capricious. These requirements apply solely to instances where the Commission acts in a quasi-judicial capacity. They do not extend to the exercise of executive or legislative powers.[56]

§ 168. Same: Question Presented Must Be Justiciable.

Judicial review of action by an administrative body may be had only of questions of law.[57] Review of questions of fact in such cases is not permitted because it would make the court a part of the administrative function only.[58]

In *Interstate Commerce Commission* v. *Union Pacific Railroad Co.*,[59] the United States Supreme Court held that the orders of the Interstate Commerce Commission are final unless they are (1) beyond the power which that Commission could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law.

The first two restrictions on the finality of the orders of an administrative agency are illustrated by the holdings in *Federal Radio Commission* v. *Nelson Bros. Bond and Mortgage Co.*[60] In that case, the Supreme Court held that there was not an unlawful delegation of power to the Federal Radio Commission to regulate radio broadcasting, that Congress could lawfully regulate radio broadcasting under its power to regulate interstate commerce and that therefore the exercise of such power was constitutional. The United States Supreme Court also held that under the terms of the Davis Amendment, the Federal Radio Commission could delete stations and that its deletion of

[56] See §§ 100–103 *supra*.

[57] Int. Commerce Comm. *v.* Union Pacific R. Co., 222 U.S. 541, 32 Sup. Ct. 108, 56 L.Ed. 308 (1911); Int. Commerce Comm. *v.* Ill. Central R. Co., 215 U.S. 452, 30 Sup. Ct. 155, 54 L.Ed. 280 (1909); Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[58] Gen. Electric Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

[59] 222 U.S. 541, 32 Sup. Ct. 108, 56 L.Ed. 308 (1911).

[60] 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

respondent's station was not an exercise of a power not within the statute.

§ 169. Same: Mixed Questions of Law and Fact.

It has been recognized that questions of fact may be involved in the determination of questions of law.[61] It has been held that an order, regular on its face, may be set aside if it appears that the rate fixed by the Interstate Commerce Commission is so low as to be confiscatory.[62] The same is true if the Commission acted so arbitrarily and unjustly as to make orders which are quasi-judicial in character and contrary to the evidence or without evidence to support them.[63] Where the authority of the Commission has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power, its action may be set aside.[64]

The United States Supreme Court analyzed the problem as follows:[65]

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. . . . Its (Commission's) conclusion is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to

[61] Int. Commerce Comm. *v.* Union Pacific R. Co., 222 U.S. 541, 547, 32 Sup. Ct. 108, 56 L.Ed. 308 (1911).

[62] *Ibid.*

[63] *Ibid.*

[64] *Ibid.;* Int. Commerce Comm. *v.* Illinois R. Co., 215 U.S. 452, 30 Sup. Ct. 155, 54 L.Ed. 280 (1909).

[65] Int. Commerce Comm. *v.* Union Pacific R. Co., 222 U.S. 541, 32 Sup. Ct. 108, 56 L.Ed. 308 (1911); *Accord:* Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

determine whether there was substantial evidence to support the order."

§ 170. Same: Power of Courts to Review Determinations of Federal Communications Commission: Communications Act of 1934.

Where appeals are allowed to the Court of Appeals of the District of Columbia from decisions of the Federal Communications Commission,[66] this review is confined to cases which raise a justiciable question and which are therefore appealable further to the United States Supreme Court.[67]

The Communications Act of 1934 expressly enacts the foregoing principles with respect to the finality of administrative determinations. The Court of Appeals of the District of Columbia can give a judicial review only.

Section 402(e)[68] confines the review by the Court of Appeals to questions of law only. The findings of the Federal Communications Commission are made conclusive where they are supported by substantial evidence. But where it clearly appears that such findings are arbitrary or capricious, they are not conclusive and may be reversed.

§ 171. Right to Appeal Statutory: Exclusive Remedy.

The right to appeal from the Federal Communications Commission to the Court of Appeals of the District of Columbia is statutory.[69] The express provisions of the Act cannot be dispensed with even to the extent of doing

[66] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(b) (1937). See § 160 *supra*.

[67] Fed. Radio Comm. *v.* Nelson Bros. Bond and Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[68] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(e) (1937); see § 163 *supra*.

[69] Universal Service Wireless, Inc. *v.* Fed. Radio Comm., 59 App. D.C. 319, 41 F.(2d) 113 (1930); Pote (Station WLOE) *v.* Fed. Radio Comm., 62 App. D.C. 303, 67 F.(2d) 509 (1933). *Accord:* Sykes *v.* Jenny Wren Co., 64 App. D.C. 379, 78 F.(2d) 729 (1935); White *v.* Fed. Radio Comm., 29 F.(2d) 113 (D.C. Ill., 1928).

equity.[70] So long as a party has had due notice and a hearing, he is not entitled to an appeal from the order of an administrative body unless the statute so provides. Conversely, where the Act grants a right to appeal, a party cannot utilize another remedy but must pursue the statutory procedure to its end.[71]

§ 172. Act of 1927: Review of Commission's Findings.

Under Section 16 of the Radio Act of 1927[72] prior to its amendment in 1930,[73] an appeal from a refusal of an application raised the question as to whether the findings on which the decision was based were manifestly against the evidence.[74] The Court of Appeals was empowered to review the whole record and evidence and to enter such judgment as to it might seem just.[75] The Act in its original form constituted the Court of Appeals as only a superior revising agency in an administrative sphere.[76] The record and evidence being open to the Court, the appellant could contend that the findings of the Radio Commission were manifestly against the evidence.

[70] Universal Service Wireless, Inc. *v.* Fed. Radio Comm., 59 App. D.C. 319, 41 F.(2d) 113 (1930). In this case, it was held that since § 16 of the Radio Act of 1927 did not provide for appeals from an order of reissuance of a construction permit, the appeal would be dismissed. See also Pote *v.* Fed. Radio Comm., 67 F.(2d) 509, 62 App. D.C. 303 (1933).

[71] Sykes *v.* Jenny Wren Co., 64 App. D.C. 379, 78 F.(2d) 729 (1935); White *v.* Fed. Radio Commission, 29 F.(2d) 113 (D.C. Ill., 1928). *Accord:* Monocacy Broadcasting Co. *v.* Prall, 67 App. D.C. 176, 90 F.(2d) 421 (1937).

[72] Act of Feb. 23, 1927, 44 STAT. 1169.

[73] Act of July 1, 1930, 46 STAT. 844.

[74] Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929); Ansley *v.* Fed. Radio Comm., 60 App. D.C. 19, 46 F.(2d) 600 (1930); Havens and Martin, Inc. *v.* Fed. Radio Comm., 59 App. D.C. 393, 45 F.(2d) 295 (1930); General Broadcasting System *v.* Fed. Radio Comm., 60 App. D.C. 64, 47 F.(2d) 426 (1931).

[75] Act of Feb. 23, 1927, 44 STAT. 1169, § 16.

[76] General Elec. Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

§ 173. Burden of Proof Upon Appellant.

On the issue of whether the findings were manifestly against the evidence, the appellant had the affirmative burden.[77]

Unless the appellant proved that the findings of the Commission were manifestly against the evidence, the Court sustained the findings.[78]

On appeal, the burden of proving that the granting of the application would be in the public interest, convenience and necessity continued to be on the appellant.[79]

The amended Section 16 of the Act of 1927[80] provided a judicial review and abolished administrative review by the Court of Appeals of actions of the Federal Radio Commission.[81] The Act of 1934[82] re-enacts the amended Section 16 as part of Section 402.

Section 402 provides that the findings of the Commission shall be conclusive if supported by substantial evidence.

The question now raised on appeal is whether the findings of fact by the Commission are supported by substantial evidence. The burden is upon the appellant to prove that there is not substantial evidence to support the findings of fact.[83]

There is *dictum* in *Beebe* v. *Federal Radio Commission*[84]

[77] Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929).

[78] General Broadcasting System *v.* Fed. Radio Comm., 60 App. D.C.64, 47 F.(2d) 426 (1931); KFKB Broadcasting Assn. *v.* Fed. Radio Comm., 60 App. D.C. 79, 47 F.(2d) 670 (1931); Ansley *v.* Fed. Radio Comm., 60 App. D.C. 19, 46 F.(2d) 600 (1930).

[79] See § 151 *et seq. supra;* Technical Radio Lab. *v.* Fed. Radio Comm., 59 App. D.C. 125, 36 F.(2d) 111 (1929).

[80] Act of July 1, 1930, 46 STAT. 844.

[81] Fed. Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[82] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(e), (f) (1936).

[83] Telegraph Herald Co. *v.* Fed. Radio Comm., 62 App. D.C. 240, 66 F.(2d) 220 (1933).

[84] 61 App. D.C. 273, 61 F.(2d) 914 (1932). In this case, the Court said:

"The rule is laid down by our prior decisions that upon an application for renewal of a license, the burden is upon the applicant to establish that such renewal

to the effect that the question on appeal is still whether the findings are manifestly against the evidence. In *Telegraph Herald Co.* v. *Federal Radio Commission,*[85] it was expressly stated to the contrary that the question on appeal is whether the decision is not supported by substantial evidence. This would seem to follow from the language of the existing statute.

The province of the Court of Appeals of the District of Columbia has been changed. That court cannot now determine the reasonableness of the ruling by the Commission nor the correctness of its conclusions. It cannot consider the expediency or wisdom of a decision of the Commission. It cannot weigh the evidence.[86] It formerly possessed all these powers as a "superior and revising" agency in an administrative field.[87]

§ 174. Substantial Evidence.

The Court on appeal must determine from the record the question as to whether the evidence is substantial.[88] Even though the evidence is conflicting, if it is substantially in support of the findings of the Commission, the findings are conclusive.[89]

§ 175. Parties on Appeal: How Designated.

The same rules govern the persons who are parties on an appeal as are applicable to the original proceedings.

The term "party" under the rules of the Commission, includes any person, body politic, municipal organization

would be in the public interest, convenience, or necessity and that the court will sustain the findings of the commission unless manifestly against the evidence."

[85] 62 App. D.C. 240, 66 F.(2d) 220 (1933).

[86] Fed. Radio Comm. *v.* Nelson Bros. Bond and Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[87] Gen. Elec. Co. *v.* Fed. Radio Comm., 281 U.S. 464, 50 Sup. Ct. 389, 74 L.Ed. 969 (1930).

[88] Riker *v.* Fed. Radio Comm., 60 App. D.C. 373, 55 F.(2d) 535 (1931).

[89] Woodmen of the World Life Ins. Co. *v.* Fed. Radio Comm., 65 F.(2d) 484 (App. D.C., 1933).

or state commission.[90] The term "applicant" means a party who applies for a permit, license or other instrument of authorization which the Commissioner has power to grant, and for which an application is required.[91] The term "intervener" means a party whom the Commission has allowed to become a party upon petition in any proceeding before it.[92] The term "petitioner" means a party who seeks relief within the jurisdiction of the Commission.[93]

The term "protestant" means one who is aggrieved or adversely affected in interest by any action of the Commission where it grants without a hearing an application for an instrument of authorization.[94] A "respondent" is one against whom the Commission, on petition or on its own motion, institutes an inquiry, investigation or other proceeding.[95] A "respondent" may also be a party against whom revocation proceedings have been instituted.[96] A "respondent" may also be a licensee or pending applicant for a license or permit who would be aggrieved or adversely affected in interest by the granting of any application designated for hearing.

§ 176. Who Is Aggrieved or Adversely Affected in Interest.

The contention has been frequently raised since the amendment of 1930 that the grant of a new broadcast station license has such an effect upon the advertising revenues of existing stations in the same area as to constitute them persons adversely affected in interest. The argument is based on the claim that the resulting increase in competition curtails the advertising revenue of existing stations and thus renders it more difficult to present adequate sustaining programs to constitute operation in the

[90] FEDERAL COMMUNICATIONS COMMISSION, *Practice and Procedure* (1936), § 102.1.
[91] *Id.*, at § 102.2.
[92] *Id.*, at § 102.6.
[93] *Id.*, at § 102.5.
[94] *Id.*, at § 102.7(c).
[95] *Id.*, at § 102.8(a).
[96] *Id.*, at § 102.8(b).

public interest. This point has even been urged in areas where the advertising revenue is seemingly unlimited.

The first case in which this contention was considered is *WGN, Inc.* v. *Federal Radio Commission.*[97] The Court of Appeals held that the appellant was not a party aggrieved or adversely affected in interest by the decision of the Commission[98] granting a license for a new broadcast station.

In *Sykes* v. *Jenny Wren Co.*,[99] this same view was argued before the Court and was again rejected. However, Judge Groner delivered a strong dissenting opinion in which he discussed the problem at length, concluding that intervention should have been allowed. Judge Groner said:[100]

> "True enough, it may be the right of the Commission to determine the 'equities' which shall control, but to command approval, it must act judicially, must hear and weigh the evidence and exercise its powers fairly and equitably; and this it cannot do by closing its ears to the proffer of testimony in behalf of one whose legal rights are put in jeopardy and who seasonably applies for a hearing."

[97] 62 App. D.C. 385, 68 F.(2d) 432 (1933).

[98] *Ibid.*

[99] 64 App. D.C. 379, 78 F.(2d) 729 (1935).

[100] *Id.*, at 735. Since the decision in *Sykes* v. *Jenny Wren Co., ibid.*, there has been a change in the view of the Court of Appeals of the District of Columbia. In *Great Western Broadcasting Association, Inc.* v. *Federal Communications Commission,* 94 F.(2d) 244 (App. D.C., 1937), Judge Groner, speaking for a unanimous court, expressed the following *dictum* at page 248:

"It will be observed at once that in none of these assignments (of error) is it suggested or claimed that the financial or economic interests of Intermountain are adversely affected by the action of the Commission in granting Powers' application. If that were the contention, we would have a wholly different case, for we are by no means in agreement with the contention frequently urged upon us that evidence showing an economic injury to an existing station through the establishment of an additional station is too vague and uncertain a subject to furnish proper grounds of contest. On the contrary, we think it is a necessary part of the problem submitted to the Commission in the application for broadcasting facilities. In any case where it is shown that

§ 177. Appellant Must Have Been Party to or Must Have Sought to Intervene in the Original Proceeding.

One who was not a party to the proceeding before the Commission may not appeal from the decision, order or requirement therein. Neither may one who has not sought to intervene in the proceeding before the Commission take the appeal.[101] This is the import of the language of Section 402(b) and the rules of the Commission.[102] Unless the party seeking to appeal has been a party to the proceeding or has sought to be made such, no error has been committed by the Commission in regard to his interest. The appeal is only to rectify errors at the hearing. Moreover, the appellate court is without power to grant him relief which was not requested below. It may not substitute its order for that of the Commission. It can only reverse or modify the order below.[103]

Intervention on appeal is likewise so restricted. Any other construction of the statute would produce an anomalous result as is evidenced by the holding in *Red River*

the effect of granting a new license will be to defeat the ability of the holder of the old license to carry on in the public interest, the application should be denied unless there are overwhelming reasons of a public nature for granting it. And it is obviously a stronger case where neither licensee will be financially able to render adequate service. This we think is the clear intent of § 402(b)(2) of the statute . . ."

[101] Red River Broadcasting Co., Inc. *v.* Federal Communications Commission (Baxter, Intervener), 98 F.(2d) 282 (App. D.C., 1938). But there are cases under the Interstate Commerce Act which hold *contra: Interstate Commerce Comm.* v. *Diffenbaugh,* 222 U.S. 42, 32 Sup. Ct. 22, 56 L.Ed. 83 (1911); *Skinner & Eddy Corp.* v. *United States,* 249 U.S. 557, 39 Sup. Ct. 375, 63 L.Ed. 772 (1919); *Atlantic Coast Line R. Co.* v. *Interstate Commerce Comm.,* 194 Fed. 449 (Com. Ct., 1911); *Pittsburgh & W. Va. Ry.* v. *United States,* 6 F.(2d) 646 (D.C.W.D. Pa., 1924).

[102] Red River Broadcasting Co., Inc. *v.* Federal Communications Commission (Baxter, Intervener), 98 F.(2d) 282 (App. D.C., 1938). *Accord:* DILL, RADIO LAW (1938) 219; BERRY, COMMUNICATIONS (1937) 213.

[103] See §§ 162, 163 *supra.*

Broadcasting Co., Inc. v. *Federal Communications Commission (Baxter, Intervener)*,[104] where the Court said:

> "The right to administrative relief is a privilege afforded by law to persons who consider themselves interested or aggrieved. Unless the interests of such a person are brought to the attention of the Commission through established procedural channels, it will be impossible for it to give them proper consideration. The Act and the rules of the Commission have made adequate provision therefor. The burden, therefore, is, and properly should be, upon an interested person to act affirmatively to protect himself. It is more reasonable to assume in this case a legislative intent that an interested person should be alert to protect his own interests than to assume that Congress intended the Commission to consider on its own motion the possible effect of its action in each case, upon every person who might possibly be affected thereby. Such a person should not be entitled to sit back and wait until all interested persons who do so act have been heard, and then complain that he has not been properly treated. To permit such a person to stand aside and speculate on the outcome; if adversely affected, come into this court for relief; and then permit the whole matter to be reopened in his behalf, would create an impossible situation. In a closely settled area with a number of existing stations such a procedure would permit successive appeals by many persons and as a result a complete blocking of administrative action. 'A well-settled rule of statutory construction enjoins courts not to attribute to the Legislature a construction which leads to absurd results.' . . .
>
> "In other words, in order to bring itself within the statutory provisions governing appeals by an aggrieved person, appellant must show, not only—as we have assumed but not decided—that it is affected by the order appealed from, but that it has failed to secure relief after having availed itself of any prescribed administrative procedure by which it could have protected its interests."

[104] 98 F.(2d) 282, 286, 287 (App. D.C., 1938).

Chapter X.

JUDICIAL ENFORCEMENT OF COMMUNICATIONS ACT OF 1934.

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§ 178. Mandamus.

Where there has been a failure to comply with or a violation of any of the provisions of the Communications Act of 1934, a writ of *mandamus* may issue from the district courts of the United States. The application for the writ is made by the Attorney General upon the request of the Federal Communications Commission. The failure or violation must be alleged in the petition. The writ commands the person accused to comply with the provisions of the Communications Act of 1934.[1]

§ 179. Criminal Proceedings.

Criminal prosecution may be instituted against any person who violates the Communications Act of 1934. There are three distinct counts embraced in Section 501 of the Act upon which a person may be prosecuted. In all three cases, the violation must have been done by a person "wilfully and knowingly".

[1] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(a) (1937).

It is a ground for criminal prosecution "wilfully and knowingly" to do or cause or suffer to be done any act or matter, or thing prohibited or declared unlawful by the Communications Act of 1934; likewise, "wilfully and knowingly" to omit or fail to do any act, matter or thing which the Act requires to be done; finally, "wilfully and knowingly" to cause such omission or failure.[2]

Even if a forfeiture is provided for such offense, and if no other penalty is provided upon conviction thereof, the punishment is a fine of not more than $10,000 or imprisonment for a term of not more than two years, or both.[3]

It is a criminal offense "wilfully and knowingly" to violate any rule, regulation, restriction or condition made or imposed by the Federal Communications Commission under the authority of the Communications Act of 1934; likewise, to violate "wilfully and knowingly" 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.[4]

Such an offense is punishable, in addition to any other penalties, by a fine of not more than $5,000 for each and every day during which such offense occurs.[5]

Any criminal trial on the above grounds has its venue in the district in which the offense was committed. Where the acts constituting the offense are begun in one jurisdiction and completed in another, the venue of the trial may be in either jurisdiction as though it had actually and wholly been done therein.[6]

§ 180. Disobedience of Witness: Penalty.

The neglect or refusal of any person to comply with a subpoena or his failure to attend and testify or to produce

[2] 48 STAT. 1100 (1934), 47 U.S.C.A. § 501 (1937).

[3] *Ibid.*

[4] *Id.*, at § 502.

[5] *Ibid.*

[6] 48 STAT. 1101 (1934), 47 U.S.C.A. § 505 (1937).

documentary evidence as lawfully required, constitutes a misdemeanor. However, one who has not the power to produce such books, papers, schedule of charges, contracts, agreements and documents as required, is not guilty of such a misdemeanor. Upon conviction, the punishment for such refusal to attend and testify is a fine of not less than $100 nor more than $5,000, or imprisonment for more than one year, or both such fine and imprisonment.[7]

§ 181. Enforcement of Orders Not for Payment of Money.

All orders of the Federal Communications Commission are enforceable in the courts of the United States.[8] An application for the enforcement of such orders may be made by the Commission, by any party injured by the failure or neglect to comply with the order, or by the United States in the person of the Attorney General. Such application can be made upon the failure or neglect of any person to obey any order of the Commission other than one for the payment of money.[9]

The application for enforcement is made in the appropriate district court of the United States.[10] The venue of such an application is governed by Section 43 of the Judicial Code.[11] The procedure for the hearing by the

[7] 48 STAT. 1096 (1934), 47 U.S.C.A. § 409(j) (1937).

[8] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(b) (1937).

[9] *Ibid.* In addition, § 401(c) provides:

"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 chapter and for the punishment of all violations thereof . . ."

Section 401(b) is similar to the provision for the enforcement of the orders, other than for the payment of money, of the Interstate Commerce Commission, 43 STAT. 633 (1924), 49 U.S.C.A. § 16 (1936).

[10] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(a) (1937).

[11] This section is as follows:

"The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission, shall be in the judicial district wherein is the residence of

district court is set forth in Section 44 of the Judicial Code.[12]

Before the writ is issued, the district court must, upon a hearing, make a determination that the order of the Commission was "regularly made and duly served" and that the person so served had disobeyed that order. Such a writ of the district court may be either mandatory or restraining. It may restrain the person named therein or his officers, agents, or representatives from continuing to disobey the order of the Commission, or it may order that the Commission's process be obeyed.[13]

The order of the district court in the premises may be served and is returnable anywhere in the United States.[14]

the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party, the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission, the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office." 38 STAT. 219, 28 U.S.C.A. § 43.

This applies to proceedings to enforce orders of the Federal Communications Commission by virtue of § 402(a), 48 STAT. 1093 (1934), 47 U.S.C.A. (1937).

[12] This section is as follows:

"The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in §§ 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in §§ 45, 45a, 46, 47, 47a, and 48 of this title . . ." 38 STAT. 220 (1913), 28 U.S.C.A. § 44 (1936).

This section applies to proceedings to enforce orders of the Federal Communications Commission by virtue of § 402(a), 48 STAT. 1093 (1934), 47 U.S.C.A. (1937).

[13] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(b) (1937).

[14] 38 STAT. 220 (1913), 28 U.S.C.A. § 44 (1936).

Section 401(d), 48 STAT. 1092 (1934), 47 U.S.C.A. (1937), incorporates certain other acts which

§ 182. Enforcement, Enjoining, Setting Aside, Annulment, or Suspension of Any Order of the Commission: By Any Party.

To enforce any order of the Federal Communications Commission, any party injured by the neglect or failure to obey such order may proceed with the same effect and in the same manner as the Commission.[15] Likewise, any party may proceed in the same manner to enjoin, set aside, annul or suspend an order of the Commission.[16]

However, an order of the Commission granting or refusing an application for a construction permit for a broadcast station, or for a broadcast station license, or for renewal of an existing broadcast station license, or for modification of an existing broadcast station license, may not be enforced, enjoined, set aside, annulled or suspended by this procedure.[17] The remedy available against such an order of the Commission is an appeal to the Court of Appeals of the District of Columbia.[18]

This remedy is exclusive and must be pursued on any complaint against such an order of the Commission.[19] One seeking to be made a party cannot maintain an action in equity to enjoin the Commission from granting the application of another where the Commission has refused to make such a person a party since such refusal is deemed a decision in the proceeding and is appealable if the appli-

apply to the expedition of actions in equity in which the United States is the complainant. However, these acts are expressly applicable only to suits in equity arising under the provisions of the Communications Act of 1934 which relate to common carriers. The expediting acts are: Act of Mar. 3, 1911, 36 STAT. 1167, 15 U.S.C.A. § 28, 49 U.S.C.A. § 45; Act of Feb. 13, 1925, 43 STAT. 938, 28 U.S.C.A. § 345(1).

[15] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(b) (1937). See discussion in § 181 *supra*.

[16] 48 STAT. 1092 (1934), 47 U.S.C.A. § 401(b), 402(a) (1937). See discussion in § 181 *supra*.

[17] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(a) (1937).

[18] 48 STAT. 1093 (1934), 47 U.S.C.A. § 402(b) (1937). See discussion in §§ 163, 164, 170 *supra*.

[19] Sykes *v.* Jenny Wren Co., 64 App. D.C. 379, 78 F.(2d) 729 (1935).

cation is granted. This rule was enunciated in *Sykes* v. *Jenny Wren Co.*[20]

Section 402(b) of the Communications Act of 1934 does not deprive the Commission of its power to proceed in a court of equity under the statutory procedure to enforce any order of the Commission other than for the payment of money.[21]

Such orders of the Federal Communications Commission as are not appealable under Section 402(b) may be judicially enforced, enjoined, set aside or suspended. The procedure to be used is that of Section 401(b) and Section 402(a).

An important type of order which may thus be brought before the courts by the Commission or by any person aggrieved or affected in interest, is one for the revocation of a station license, from which order there is no appeal. Any broadcast station whose license is sought to be revoked or modified may move to set aside, suspend or enjoin such order.[22] Such a licensee may not do so where the modification is upon his application; in such a case, he must appeal.[23]

May a broadcast station licensee move to set aside, suspend or enjoin a modification of his license where such action was taken in deciding the application of another? Assuming the other's application is for the same wavelength and the same hours as possessed by the complaining licensee, since the complaining licensee would receive a hearing as a requirement of due process,[24] a decision modifying complainant's license by reducing his hours in order to place the other licensee on the same frequency, would

[20] *Ibid.*

[21] See 48 STAT. 1092 (1934), 47 U.S.C.A. §§ 401, 402 (1937).

[22] 48 STAT. 1092 (1934), 47 U.S.C.A. § 402(a), (b) (1937).

[23] 48 STAT. 1092 (1934), 47 U.S. C.A. § 402(b) (1937).

[24] Symons Broadcasting Co. *v.* Fed. Radio Comm., 62 App. D.C. 46, 64 F.(2d) 381 (1933).

seem to be appealable only on the authority of *Sykes* v. *Jenny Wren*.[25] However, it is to be noted that a modification of a license made upon the Commission's own initiative without any application, is not appealable. Such an order may be attacked by a bill to set aside, suspend or enjoin.

[25] 64 App. D.C. 379, 78 F.(2d) 729 (1935).

Chapter XI.

STATE JURISDICTION AND REGULATION OF RADIO BROADCASTING.

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§ 183. Generally.

The jurisdiction of the Federal Government to regulate radio broadcasting is clear.[1] It is important, however,

[1] See §§ 4–9 *supra.*

to consider whether the several states have the power to regulate in the field and if so, the extent of such jurisdiction. A recapitulation of previous discussions [2] of the problems of jurisdiction is essential to answer adequately this new inquiry.

It has been established that radio broadcasting is commerce and interstate; [3] that it admits of only one national system of regulation; [4] that consequently, under the United States Constitution,[5] the power to regulate it which is vested in Congress is supreme.[6] Congress possesses the jurisdiction to regulate radio transmission as commerce despite the fact that there are broadcasts which are not for profit.[7] Moreover, Federal jurisdiction does not end because broadcasts have intrastate coverage [8] and the same result obtains where there is a commingling of interstate and intrastate broadcast transmission.[9]

To what degree, then, does this supreme power of Congress to regulate radio broadcasting exclude the power of the various states? It is generally acknowledged that where Congress has not enacted any regulation of a field

[2] See §§ 5–8 *supra*.

[3] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Federal Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932); American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318 (C. C.A. 7th, 1931), *aff'g* 31 F.(2d) 448 (N.D. Ill., 1929).

[4] Federal Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[5] U. S. CONST. ART. I., § 8, cl. 3.

[6] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Federal Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932); American Bond & Mtge. Co. *v.* United States, 52 F.(2d) 318 (C. C.A. 7th, 1931), *aff'g* 31 F.(2d) 448 (N.D. Ill., 1929).

[7] Caminetti *v.* United States, 242 U.S. 470, 37 Sup.Ct. 192, 61 L.Ed. 442 (1917).

[8] United States *v.* Gregg, 5 F. Supp. 848 (D.Tex., 1934).

[9] Minnesota Rate Cases, 230 U.S. 352, 33 Sup. Ct. 729, 57 L.Ed. 1511 (1913).

within its constitutional jurisdiction, the Federal domain remains unimpaired and the states may not undertake to regulate persons engaged in operations in that field. However, a state may legislate as to purely local matters.[10] All other state regulation is repugnant to the Federal power.[11] Where Congress has enacted a regulatory law in a proper field, such a statute supersedes all state legislation in conflict therewith.[12] Consequently, any state statute affecting radio broadcasting which is in conflict with the Communications Act of 1934 [13] would be invalid as an interference with interstate commerce.

The jurisdiction of the several states to regulate in various fields has been preserved many times by the "police power" doctrine. This concept, however, can not be extended to include the power of the several states to regulate radio broadcasting in such phases as have been made the subject of Federal regulation by the Communications Act of 1934.[14] The police power of the states can be exercised to regulate only those subjects which have not been embraced by Federal legislation.[15] The mere enactment by Congress of a regulatory statute which does not

[10] Walling *v.* Michigan, 116 U.S. 466, 6 Sup. Ct. 454, 29 L.Ed. 691 (1886); Brown *v.* Houston, 114 U.S. 622, 5 Sup. Ct. 1091, 29 L.Ed. 257 (1885).

[11] *Ibid.*

[12] Chicago, R. I. & P. R. Co. *v.* Hardwick Farmers Elevator Co., 226 U.S. 426, 33 Sup. Ct. 174, 57 L.Ed. 284 (1913); Second Employers Liability Cases, 223 U.S. 1, 32 Sup. Ct. 169, 56 L.Ed. 327 (1912); Reid *v.* Colorado, 187 U.S. 137, 23 Sup. Ct. 92, 47 L.Ed. 108 (1902); Cooley *v.* Port Wardens, 12 How. (53 U.S.) 299, 13 L.Ed. 996 (1851).

[13] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).

[14] *Ibid.*

[15] Chicago, Milwaukee & St. Paul R. Co. *v.* Coogan, 271 U.S. 472, 46 Sup. Ct. 564, 70 L.Ed. 1041 (1926); Pryor *v.* Williams, 254 U.S. 43, 41 Sup. Ct. 36, 65 L.Ed. 120 (1919); Savage *v.* Jones, 225 U.S. 501, 32 Sup. Ct. 715, 56 L.Ed. 1182 (1910). In 2 COOLEY ON CONSTITUTIONAL LIMITATIONS (8th ed., Carrington, 1927) 1274, it is said:

"It is not doubted that Congress has the power to go beyond the general regulations of commerce

embrace the entire field but which circumscribes the present scope of regulation, reveals no intent "to supersede the exercise by the state of its police power as to matters not covered by the Federal legislature." [16]

Having determined that the regulatory power of the several states is excluded where Congress has properly occupied the field, except that the police power of a state may be exercised over such matters as are not covered by the Federal law, an analysis should be made of the various state statutes which seek to regulate radio broadcasting. These laws have a common origin for the most part with the Radio Act of 1927,[17] being products of the period before 1927. In that year, as has been previously noted,[18] the field of radio broadcasting was in confusion and chaos as a result of inadequate Federal legislation to cope with the problem of wave-length interference. In an attempt to eliminate these conditions, the Federal and certain state governments enacted various statutes.

State statutes imposed the control of their respective legislatures either over the station operator or over the receiver. Few statutes established elaborate schemes of regulation in the form of administrative boards and licenses. Beyond the problems created by wave-length interference, several of these laws sought to regulate the subject matter and content of broadcast programs. Some also attempted to settle definitively the question of civil liability for torts resulting from radio broadcasts.

which it is accustomed to establish, and to descend to the most minute directions, if it shall be deemed advisable . . . [citing Gloucester Ferry Co. *v.* Pennsylvania, 114 U.S. 196, 215, 5 Sup. Ct. 826, 29 L.Ed. 158, 166 (1885)] and that to whatever extent ground shall be covered by these directions, the exercise of State power is excluded. Congress may establish police regulations, as well as the States; confining their operation to the subject over which it is given control by the Constitution."

[16] Savage *v.* Jones, 225 U.S. 501, 533, 32 Sup. Ct. 715, 56 L.Ed. 1182 (1910).

[17] 44 STAT. 1162 (1927).

[18] See §§ 28–31 *supra*.

For convenience only, the various state statutes have been divided into several classes:

1. Statutes which delegate regulatory power to an administrative board with a license requirement for the operation of a broadcast station.
2. Statutes which are designed to regulate interference with reception only.
3. Statutes which attempt to regulate the subject matter and content of radio broadcasts.
4. Statutes which prescribe the payment of local license or privilege taxes to operate broadcast stations. Discussion of this last class is reserved for Chapter XII., *infra,* which considers the whole field of state taxation of radio broadcasting.

§ 184. State Statutes Which Delegate Regulatory Power to Administrative Boards with a License Requirement for the Operation of a Broadcast Station.

There are only two state statutes in which any appreciable degree of regulatory power is delegated to an administrative board. These states are New Jersey [19] and Michigan.[20] The two statutes are similar in that the power is given to a board already established to supervise public utilities. There is, however, a fundamental difference in approach. The Michigan Statute, enacted in 1927, is the first in the field. The New Jersey Act was passed in 1930.

§ 185. Analysis of the Michigan Statute.

By its terms, the Michigan legislation is confined to intrastate radio broadcasting which causes interference with reception in Michigan.[21] It does not exclude regulation of a broadcast station, the studio of which is located in Michigan but which maintains its transmission apparatus beyond the State lines. In such a situation, the

[19] N. J., REV. STAT. (1937), § 48:11–1 *et seq.,* Laws, 1930, c. 30.

[20] 2 MICHIGAN COMP. L. (1929), § 11726 *et seq.,* Acts (1927) 131.

[21] *Id.,* at § 11726.

statute provides for the same control over the studio as over transmitters located within Michigan's borders.[22]

The administrative body which has received the delegation of power to regulate radio broadcasting is the Michigan Public Utilities Commission.[23] This Commission is given the power to divide the State into zones for purposes of regulation.[24] Orders made by the Commission are applicable to such zone or zones as are determined by it.[25] The Michigan statute sets up the standard of "just and reasonable" [26] as a guide for the regulatory body. By this standard, the Commission is directed to proceed to the elimination of interference caused by "the simultaneous broadcasting of two or more radio transmitting stations." [27]

To that end, the Commission is ordered to set up a time schedule for broadcast stations.[28] It is provided that this be done by a general order after due hearing.[29] The order must be such as "reasonably to prevent interference".[30]

Unlike the Federal Radio Act of 1927 [31] and the Federal Communications Act of 1934,[32] the Michigan statute provides [33] that preference on the Commission's time schedule shall be reasonably afforded to stations "in the order in which said stations have become established as broadcasting stations". It is submitted that this provision is invalid since it is in conflict with the provisions of the Federal Communications Act of 1934. The Act of 1934 [34] sets up the sole standard of "public interest, convenience and necessity". Priorities under that Act can be granted on that basis only.[35] Furthermore, the licenses granted

22 *Ibid.*
23 *Ibid.*
24 *Id.*, at § 11727.
25 *Id.*, at § 11726.
26 *Ibid.*
27 *Ibid.*
28 *Id.*, at § 11728.
29 *Ibid.*
30 *Ibid.*
31 44 STAT. 1162 (1927).
32 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).
33 2 MICH. COMP. L. (1929), § 11728, Acts (1927) 131.
34 48 STAT. 1081 (1934), 47 U.S.C.A. § 301 *et seq.*
35 White *v.* Fed. Radio Comm., 29 F.(2d) 113 (C.C.A. 7th, 1928). See §§ 10–12, 39 *supra.*

by the Federal Communications Commission contain specific time requirements, breach of which creates sufficient cause for the revocation of the license.[36] Moreover, where an attempt was made to advance the proposition enacted into law by this section of the Michigan statute, it met with a rebuff from the Federal courts.[37]

"The Commission may also make reasonable rules and orders prohibiting the use of such receiving instruments as shall cause interference in radio reception."[38]

In a discussion of this and similar state statutes, it has been pointed out that:[39]

> "In short, almost every receiving set is potentially a source of this type of interference.
>
> "From a consideration of these factors, it is perfectly plain that a complaint of the violation of such a statute could scarcely be traced and never be proved in court. The matter is one which has the thorough and careful consideration of set manufacturers. A set which is capable of interfering with the reception of others will also interfere with its own reception. Manufacturers are therefore compelled to eliminate this difficulty as rapidly as the state of the art permits. It requires no legislation.
>
> "Considered from the standpoint of validity, these statutes present a problem of great interest. A receiving instrument is an indispensable instrumentality of commerce. Whether the state can legislate with reference to oscillation by a receiving apparatus depends on whether those oscillations are necessary to reception. If they are necessary, in an individual apparatus, the Statute is a restriction of interstate commerce. If they are unnecessary, the Statute is an aid to commerce. . . ."

[36] 44 STAT. 1168 (1927) § 14; 48 STAT. 1086 (1934), 47 U.S.C.A. § 312 (1937). See § 39 *supra*.

[37] White *v.* Fed. Radio Comm., 29 F.(2d) 113 (C.C.A. 7th, 1928); Great Lake Broadcasting Co. *v.* Fed. Radio Comm., U. S. DAILY, Jan. 14, 1930, 3101. See § 45 *supra*.

[38] 2 MICH. COMP. L. (1929), § 11729, Acts (1927) 131.

[39] SEGAL & SPEARMAN, STATE AND MUNICIPAL REGULATION OF RADIO COMMUNICATION (1929) 7.

The Michigan statute also provides that the Commission shall not do anything "in contravention to the regulations of the United States".[40] Penalties are provided for violation of the Act and regulations thereunder.[41]

The Michigan statute has never been enforced[42] and therefore further discussion would be academic.

§ 186. Analysis of the New Jersey Act.

The New Jersey statute[43] is more comprehensive in its delegation of power than the Michigan legislation.[44] The essence of the control set forth by New Jersey is the licensing authority given to the Board of Public Utility Commissioners.[45] Such extensive control is not given under the Michigan legislation.[46]

It is to be noted that the New Jersey statute does not apply to "any existing broadcasting station or transmitter, but shall apply to any state transfer of any existing power, wave length, frequency or hours of operation of an existing broadcasting station or transmitter."[47]

The New Jersey legislation sets forth its control in the specific declaration:[48]

> "No radio broadcasting station or transmitter shall be constructed or operated in this state unless and until a certificate of public convenience and necessity therefor shall have been granted by the Board. . . ."

The certificate, however, is also not to be granted where the operation of the station will cause "undue or unreason-

[40] 2 MICH. COMP. L. (1929), § 11730, Acts (1927) 131.

[41] *Id.*, at § 11731.

[42] Letter to the writer from Michigan Public Utilities Commission.

[43] N. J. REV. STAT. (1937) § 48:11-1 *et seq.*, Laws (1930) c. 30.

[44] 2 MICH COMP. L. (1929) § 11726 *et seq.*, Acts (1927) 131.

[45] N. J. REV. STAT. (1937) §§ 48:11-1, 48:11-4, Laws (1930) c. 30.

[46] See § 185 *supra*.

[47] N. J. REV. STAT. (1937) § 48:11-9, Laws (1930) c. 30, § 6.

[48] *Id.*, at § 48:11-1; *id.*, at § 1.

able blanketing or interference with radio transmission and reception.'' [49]

The New Jersey law provides for an application which is complete. *Inter alia,* the applicant must state the frequency and time of operation sought, the type of apparatus intended to be used and the ownership and location thereof.[50] The certificate must specify the time for the commencement and completion of such station, which period may be extended by the Board.[51] The certificate or any right thereunder may not be assigned.[52]

While appropriate penalties are provided, the Attorney General may sue to restrain or enjoin the erection or operation of any broadcast station without a certificate.[53]

It appears that the authority of the Board, as an administrative agency of New Jersey, to regulate radio communication has been asserted in at least two instances.[54] *In re Atlantic Broadcasting Corporation*[55] was a proceeding in which a licensee of the Federal Radio Commission, the predecessor of the Federal Communications Commission, sought an authorization to construct and operate a broadcast transmitter in New Jersey. The applicant already possessed a construction permit from the Federal Radio Commission. The evidence was to the effect that no unreasonable interference with radio broadcasting and reception would result from the operation of the proposed apparatus. The application was granted on condition that jurisdiction be retained by the Board to order such change as might be necessary to prevent unreasonable interference.

The second proceeding involved the granting of a certificate for the operation of a radio telegraph station.[56]

[49] *Ibid.*

[50] *Id.,* at § 48:11–2.

[51] *Id.,* at § 48:11–5.

[52] *Id.,* at § 48:11–7.

[53] *Id.,* at § 48:11–11.

[54] *Re* Atlantic Broadcasting Corp., P.U.R., 1930 E, 301 (1930); *Re* American Radio News Corp., P.U.R., 1930 E, 406 (1930); (1932) 3 AIR L. REV. 453.

[55] *Re* Atlantic Broadcasting Corp., P.U.R., 1930 E, 301 (1930).

[56] *Re* American Radio News Corp., P.U.R., 1930 E, 406 (1930); (1932) 3 AIR L. REV. 453.

§ 187. Validity of New Jersey and Michigan Statutes.

It has already been urged that one section of the Michigan statute is invalid [57] and that one other section is probably invalid.[58] It is now asserted that the remainder of the Michigan statute [59] and the entire New Jersey legislation [60] are invalid. Both laws seek to occupy a field of commerce which is interstate and, therefore, within the plenary power of Congress.[61] Congress, the Federal Communications Commission and the predecessor of the latter have by statute and administrative regulation occupied that part of the field of radio broadcasting into which New Jersey and Michigan seek entry. The only necessary query is whether these two state statutes are in conflict with the laws and statutes of the United States.

This query must be answered in the affirmative since both statutes seek to set up different standards from those established in the Communications Act of 1934.[62] The New Jersey law enacts the standard of "public convenience and necessity".[63] The Michigan law enacts the standard of "just and reasonable".[64] These state statutes are restrictions on interstate commerce in that a broadcaster who is a licensee of the United States under the Congressional power to regulate interstate commerce, is required to conform to the regulations of a state embracing the same activity.

Furthermore, neither statute is a valid exercise of the police power of the respective States. The subject matter is inherently national in scope and is not one properly for police regulation. The health, morals and safety of the public are not involved in the exercise of jurisdiction by the states in the enactment of such regulatory statutes.

[57] See § 185 *supra*.

[58] *Ibid.*

[59] 2 MICH. COMP. L. (1929) § 11726, Acts (1927) 131.

[60] N. J. REV. STAT. (1937) § 48:11–1 *et seq.*, Laws (1930) c. 30.

[61] See §§ 5–9 *supra*.

[62] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).

[63] N. J. REV. STAT. (1937) § 48:11–1, Laws (1930) c. 30, § 1.

[64] 2 MICH. COMP. L. (1929) § 11726, Acts (1927) 131.

Even if such statutes were held to be within the police power of the states, they would nevertheless be unconstitutional because Congress has already entered the field by its own regulation, which from its similarity to the state legislation would necessarily also have to be considered a Federal police regulation. Since radio broadcasting is interstate commerce, Congress may by its own police regulation exclude state police power regulation in conflict therewith.[65]

§ 188. State Statutes Which Seek to Regulate Interference with Reception Only.

Several local statutes have been enacted to deal with the problem of interferences with reception.

VERMONT: In Vermont, it is provided by law that the Selectmen of a town may order the correction of a condition which "unreasonably and unnecessarily" disturbs or interferes with the reception of radio waves. Such order may be made only after complaint, notice and investigation.[66]

MAINE: Since 1927, the law of Maine has been that it is unlawful "to use any radio receiving set which radiates radio waves between 200 meters wave length and 550 meters wave length which causes interference with the reception of any other radio receiving set". Any malicious or wanton interference with the reception on the described wave lengths is deemed a crime.[67]

OREGON: In 1931, an act was passed by the Legislature of Oregon to prohibit interference by electrical means with radio reception.[68] This statute, however, exempts any apparatus in interstate commerce and any apparatus operating under the license or authority of the United States.[69] An exemption is given to X-ray apparatus where it is equipped to avoid all unnecessary or reason-

[65] 2 COOLEY ON CONSTITUTIONAL LIMITATIONS (8th ed., Carrington, 1927) 1274.

[66] VT. PUB. ACTS (1931) 88.

[67] ME. REV. STAT. (1930) c. 141, § 30.

[68] Oregon, Laws (1931) c. 245.

[69] *Id.*, at § 2.

ably preventable interference with radio reception and is not negligently operated.[70]

This law seeks to prohibit the use of any apparatus "which shall cause reasonably preventable electrical interference with radio reception within the corporate limits of any city or town. . . ."[71] The statute makes such use a misdemeanor.[72]

Prior to the enactment of this law, it appears that the practice in Oregon was, where the operation of an electric power plant caused interference, to refer the complaint to the Public Service Commission. On one such complaint, the defendant power company was ordered to repair its equipment to eliminate the hazard to the public but an order to modify the plant equipment to prevent interference with radio reception was refused. This decision was founded on the difficulty of determining the effect of the electrical construction on radio reception.[73]

State statutes which deal with local interferences with reception, when so limited, are in aid of Federal regulation of broadcasting and should be upheld.[74]

§ 189. State Statutes Which Regulate the Subject Matter and Content of Radio Broadcasts: Generally.

Since a state may prohibit by the exercise of its police power the entrance therein or carriage therefrom of articles intrinsically inimical to the welfare, morals or health of the public, may it so regulate the subject matter and content of radio broadcasts as to exclude matters of such nature?[75]

For purposes of this discussion, the problem of free speech and censorship will not be considered.[76] The general principles which determine the jurisdiction of the state to regulate radio broadcasting generally, are appli-

[70] *Id.*, at § 1.
[71] *Id.*, at § 1.
[72] *Id.*, at § 3.
[73] Fields *v.* Skarnania Light & Power Co., P.U.R., 1926 B, 721 (Or. Pub. Serv. Comm., 1926).
[74] *Cf.* Segal & Spearman, *op. cit. supra* n. 39, 7.
[75] See § 191 *infra.*
[76] See Chapter XXXVIII. *infra.*

cable here.[77] Where the activity is commerce and interstate, the power of Congress to regulate is plenary and supreme, and where Congress has entered the field, the state is excluded except that it may regulate in the interests of the welfare, morals and health of the people in the area not occupied by Congress. The intent to exclude the states' police power from regulation of an aspect of interstate commerce must be expressed. Such intent will be implied only where there is a direct conflict between the state and Federal statutes.[78]

§ 190. Same: Jurisdictional Conflicts.

Two tests may be applied to determine the validity of a state statute to regulate an aspect of interstate commerce in pursuance of the police power. These tests are:

1. Has Congress by statute occupied that area of interstate commerce?
2. Is the matter within the exercise of the police power of the state?

When these tests are applied to various state statutes which regulate the subject matter of radio broadcasts, it is found that Congress in its enactments has occupied the field of direct regulation of program content to a certain limited extent only. The Federal Communications Commission has operated within the general confines of the powers delegated to it by Congress and has exercised considerable indirect control over the contents of broadcast programs.[79]

Section 316 of the Communications Act of 1934[80] prohibits as a criminal offense the broadcast by radio of advertisements or information concerning any lottery. Section 317 of the same Act[81] requires the station operator to inform the public when a program is sponsored. Sec-

[77] See § 183 *supra.*
[78] *Ibid.*
[79] See § 559 *infra.*
[80] 48 STAT. 1088 (1934), 47 U.S.C.A. § 316 (1937).
[81] *Id.*, at 1089.

tion 326[82] prohibits the use of "obscene, indecent or profane language". Reference should here be made to the powers of the Federal Trade Commission to control broadcast advertising through "cease and desist orders".[83] A great area of direct regulation of the subject matter and content of broadcast programs, however, has not been completely occupied by Congress.

§ 191. Same: Same: How Resolved.

How much of this unoccupied area can be regulated by the various states in the exercise of their police powers? Where an attempt is made to regulate a matter which is local in nature, although a subject of interstate commerce, a state may constitutionally regulate if no control by Congress over the matter has been established.[84] Despite the fact that the subject of interstate commerce is definitely national in character, as is radio communication,[85] a state, in the valid exercise of its police power, may by its regulation affect it incidentally so long as there results no control or assumption by the state over interstate commerce.[86] Where the article to be regulated is not a legitimate subject of commerce, this rule does not extend thereto.[87]

Radio broadcasting being inherently national, a state statute which seeks to regulate the subject matter or con-

[82] *Id.*, at 1091.

[83] See §§ 541 *et seq. infra.*

[84] See Atlantic & Pacific Tel. Co. *v.* Philadelphia, 190 U.S. 160, 23 Sup. Ct. 817, 47 L.Ed. 995 (1885); Cooley *v.* Port Wardens, 53 U.S. 299, 13 L.Ed. 996 (1851); Wilson *v.* Blackbird Marsh, 27 U.S. (2 Pet.) 245, 7 L.Ed. 412 (1829).

[85] Federal Radio Comm. *v.* Nelson Bros. Bond & Mtge. Co., 289 U.S. 266, 53 Sup. Ct. 627, 77 L.Ed. 1166 (1932).

[86] Lake Shore & Mich. So. Ry. *v.* Ohio, 173 U.S. 285, 19 Sup. Ct. 465, 43 L.Ed. 702 (1899); N. Y., N. H. & Hartford R. R. Co. *v.* New York, 165 U.S. 628, 17 Sup. Ct. 418, 41 L.Ed. 853 (1897); Smitte *v.* Alabama, 124 U.S. 465, 8 Sup. Ct. 564, 31 L.Ed. 508 (1888).

[87] Sligh *v.* Kirkwood, 237 U.S. 52, 35 Sup. Ct. 501, 59 L.Ed. 835 (1915); Rasmussen *v.* Idaho, 181 U.S. 198, 21 Sup. Ct. 594, 45 L.Ed. 820 (1901); Plumley *v.* Massachusetts, 155 U.S. 461, 15 Sup. Ct. 154, 39 L.Ed. 223 (1894).

tent of broadcast programs with its consequent effect upon interstate commerce is valid only if no law of Congress is in conflict therewith. It must be clear, however, that the statute has only an incidental effect upon interstate commerce or that the subject of regulation is not a legitimate subject of commerce. A state statute which prohibits or limits the broadcast of commercial programs advertising intoxicating liquors, tobacco or food and drug products deemed inimical to public health and morals will be upheld as a constitutional exercise of police power.

By regulation of the conduct of judges and attorneys, a state may prevent the broadcast of a program purporting to give legal advice by prohibiting their participation therein.[88]

State regulation of persons and the enforcement of private rights arising by reason of the contents of broadcast programs may continue where no conflict with Federal regulation occurs by reason thereof.

§ 192. State Regulation of Broadcast Advertising by Unlicensed Insurance Companies.

California,[89] Maryland,[90] Massachusetts[91] and Pennsylvania[92] have enacted legislation to prevent the broadcast of advertising matter for insurance companies not licensed to carry on business within the respective states.

Although New York does not have such a statute, an unsuccessful effort was made under Section 1199 of the Penal Law[93] and Section 50 of the Insurance Law[94] to

[88] See Chapter XXXVI. *infra.*

[89] California, Statutes (1933) c. 439, § 9.

[90] Maryland, Laws (1935) c. 184, at 402.

[91] Massachusetts, Acts (1933) c. 25.

[92] Pennsylvania, Laws (1933) 981.

[93] N. Y. PENAL LAW, § 1199. In part, this section reads as follows: "Any person acting for himself or for others, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or *in any manner aids the transaction of any business for any foreign insurance corporation.*" (*Italics supplied.*)

[94] N. Y. INSURANCE LAW, § 50, as amended by N. Y. Laws (1923)

prosecute as unlawful, broadcast advertising for an unlicensed foreign insurance company disseminated by a radio station located in New York.[95] In addition to advertising the lower rates charged by such unlicensed insurance company, the defendant broadcast station invited communications from the listening public and requested that "all inquiries for life insurance be mailed direct to the station broadcasting or to the insurance company".[96]

While it is clear from the facts that the defendant station was not a solicitor or an agent for the unlicensed insurance company, the acquittal of the former would seem to be erroneous because the statutes involved are more inclusive than the limited interpretation which the court made thereof.[97] Both statutes state unequivocally that it is

c. 43, N. Y. Laws (1925), c. 526. In part, this section reads as follows:

"No person or corporation shall act as agent for any foreign insurance corporation or insurer in the transaction of any business within this state . . . or in any way or manner aid such corporation or insurer in effecting insurance or otherwise in this state, unless such corporation or insurer shall have fully complied with the provisions of this chapter."

[95] People *ex rel.* Wood *v.* International Broadcasting Corp. (unreported) N. Y. Gen. Sess., Nov. 7, 1932, Levine, J. The opinion of Judge Levine is set out *in extenso* in HALEY, THE LAW OF RADIO PROGRAMS (U. S. Printing Off., 1938) 10 *ff.*

[96] (1932) 3 AIR L. REV. 187.

[97] In *People* ex rel. *Wood* v. *International Broadcasting Corp., supra* n. 95, Judge Levine said:

"The defendants urge that the acts complained of do not constitute a violation of § 1199 of the penal law since it rendered its services solely as an advertiser. I cannot entertain this view. The defendants concede that messages it broadcast invite inquiries and that the persons who were interested could address such inquiries to the defendant which in turn undertook to forward these inquiries to the foreign insurance company and that the defendant received compensation on the basis of insurance sold to listeners-in. I believe § 1199 of the penal law to be wholesome legislation designed to protect the people of this State against fraudulent schemes of foreign companies who cannot pass our high standards for admission into this State and to engage in the transaction of its business herein. I cannot countenance or permit a foreign insurance company to enter this State unless properly qualified by resorting to the devices of em-

unlawful to aid any transaction of an unlicensed insurance company.[98] There is no doubt that the co-operative activity of the defendant broadcast station constituted an "aid" to the foreign insurance company in effecting its unlicensed business.

It would appear that a result contrary to that in New York would be obtained in West Virginia, Idaho and Kentucky. In Idaho, the Attorney General of that State was of the opinion[99] that the operator of the broadcast station acted as an agent to solicit business for an unlicensed foreign insurance company. The Idaho statute[100] is similar in intent and purpose to the New York provisions.[101] In Kentucky, the Attorney General advised[102]

ploying the radio as an agency in the transaction of its business in this State. I conclude therefore that the defendants did a foreign insurance company business to transact its business.

"With respect to the alleged violation of § 50 of the insurance law I conclude that the defendants did by its act in entering into the contract with the Union Mutual Life Co. become an agent for that company in the transaction of the business of insurance.

"I find, however, a very fatal defect in the prosecution of this case. I find no proof that the defendants under § 1199 of the penal law or § 50 of the State insurance law aided in the procurement or solicitation of any insurance on behalf of foreign insurance company not authorized to do business in this State with a resident of this State. It is true that the defendant did concede receiving inquiries from persons who were interested in obtaining insurance and that defendant received compensation therefor, but I find the record before me silent as to where these inquiries came from within the State or without the State. The mere fact that the defendants did broadcast a radio message in this State on behalf of a foreign insurance company not authorized to do business within this State is not sufficient to justify a conviction under the statutes, unless it be further established that such activity was with a person or corporation or other entity within this State."

[98] N. Y. PENAL LAW, § 1199; N. Y. INSURANCE LAW, § 50. See nn. 93 and 94 *supra*.

[99] (1932) 3 AIR L. REV. 187, n. 6. See HALEY, *op. cit. supra* n. 95, 14.

[100] IDAHO COMP. STAT. (1919) § 5013.

[101] See nn. 93 and 94 *supra*.

[102] OP. ATTY. GEN. (Ky., Mar. 8, 1932), (1932) 3 AIR L. REV. 455.

that a "radio station violated Section 633 of the Kentucky statutes in that it solicited and received applications for a foreign insurance company without first having obtained a license to act as an agent of such foreign company". It was also given as the opinion of the Attorney General of West Virginia [103] that the broadcast of advertising matter and the receipt of applications for insurance, if forwarded to a foreign, unlicensed insurance company by a broadcast station incorporated in West Virginia, constituted the station an agent of the unlicensed insurance company.

§ 193. Same: Pennsylvania, Louisiana and Maryland Statutes.

Statutes specially enacted or amended to meet this problem are identical in Pennsylvania,[104] Louisiana [105] and Maryland.[106] These statutes provide as follows:

> "Section 1 . . . it shall be unlawful . . . to publish by radio broadcasting, in this Commonwealth, any advertisement or other notice, either directly or indirectly, setting forth the advantages of or soliciting insurance for any insurance company . . . which has not been authorized to do business in this Commonwealth.
>
> "Section 2. No person, co-partnership, association or corporation shall accept for publication . . . or for radio broadcasting in this Commonwealth, any advertisement or other notice . . . for any insurance company unless such advertisement . . . is accompanied by a certificate from the Insurance Department . . .
>
> "Section 3. Any person . . . violating any of the provisions shall be guilty of a misdemeanor . . ."

Under the foregoing statute, an absolute liability is imposed upon the operator of a broadcast station for permitting unlicensed insurance companies to make use of his facilities. Investigation must be made of the advertiser's

[103] OP. ATTY. GEN. (W. Va., July 28, 1932), (1932) 3 AIR L. REV. 455.

[104] Pennsylvania, Laws (1933) 981.

[105] Louisiana, Acts (1935) No. 23.

[106] Maryland, Laws (1935) 402.

legal ability to do business within the normal service area of the station so as to prevent the broadcast of an advertisement by foreign, unlicensed insurance companies.

§ 194. Same: Massachusetts and California Statutes.

Legislation on this point has also been enacted in Massachusetts. The following pertinent language appears in the statute:[107]

> "Section 1 . . . no person shall transmit or publish any such advertisement for or on behalf of any such company or source from a radio broadcasting station located in the Commonwealth."

An appropriate penalty is provided. This statute by its terms seems to impose absolute liability upon the station operator for the broadcast of advertisements by unlicensed, foreign insurance companies.

Where an unlicensed insurance company uses the facilities of a broadcast station to disseminate its advertisements in California,[108] the station is liable for violation of the following statute:

> "Any person, firm, corporation or association in this state, broadcasting by radio or otherwise, or in any manner advertising any such insurance company or insurer shall be deemed to have violated the provisions of this section."

§ 195. Validity of State Statutes Regulating Broadcast Advertising of Insurance.

These statutes are valid insofar as they seek to regulate the business of insurance within the respective states. The business of insurance is one which is affected with the public interest.[109] It is properly a subject over which the

[107] Massachusetts, Acts (1933) c. 25.

[108] California, Statutes (1933) c. 439, § 1.

[109] Stipchick *v.* Metropolitan Life Ins. Co., 277 U.S. 311, 48 Sup. Ct. 512, 72 L.Ed. 895 (1928); La Tourette *v.* McMaster, 248 U.S. 465, 39 Sup. Ct. 160, 63 L.Ed. 362 (1919).

police power of the state may be exercised.[110] While the state may not destroy the right of a citizen to enter into insurance contracts with foreign insurance companies,[111] it may nevertheless regulate the activities within the state of unlicensed insurance companies in such a reasonable manner as to protect the public interest and welfare.[112]

§ 196. Municipal Regulation of Radio Broadcasting.

Municipal regulation is merely an aspect of state jurisdiction and regulation of radio broadcasting.[113] The municipal corporation cannot have any more power to regulate radio broadcasting than the state which created the municipality. Hence, the validity of any municipal regulation may be tested by the same principles as apply to state regulation.[114] If a given enactment is valid as a state regulation, then it must also be ascertained whether under the statutes and constitution of the particular state, such regulation is within the scope of the legislative power delegated to the municipal corporation.[115] Where there has been such a delegation, the inquiry must be as to the

[110] German Alliance Ins. Co. *v.* Hale, 219 U.S. 307, 31 Sup. Ct. 246, 55 L.Ed. 229 (1911).

[111] New York Life Ins. Co. *v.* Dodge, 246 U.S. 357, 38 Sup. Ct. 337, 62 L.Ed. 772 (1918); Allgeyer *v.* Louisiana, 165 U.S. 578, 17 Sup. Ct. 427, 41 L.Ed. 832 (1897).

[112] O'Gorman & Young *v.* Hartford Ins. Co., 282 U.S. 251, 51 Sup. Ct. 130, 75 L.Ed. 324 (1930).

[113] See §§ 183 *et seq. supra.*

[114] Thus a "city ordinance is a law of the State within the meaning of § 23 of the Judicial Code as amended, which provides a review by writ of error where the validity of a law is sustained by the highest court of the state in which a decision in the suit could be had." *Zucht* v. *King,* 260 U.S. 174, 176, 43 Sup. Ct. 24, 67 L.Ed. 194 (1922).

[115] Municipal corporations "can exercise no powers but those which are conferred upon them by the act by which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purposes of their association." Shaw, C.J., *Spaulding* v. *City of Lowell,* 23 Pick. (Mass.) 71, 74 (1839); 1 DILLON, MUNICIPAL CORPORATIONS (5th ed., 1911) § 237.

reasonableness of the exercise of the delegated power by the municipal corporation.[116]

The municipal ordinances regulating radio broadcasting may be classified as follows:

1. Ordinances which prescribe the physical characteristics and location of the broadcast station.

2. Ordinances which seek to impose a license requirement to operate a broadcast station.

3. Ordinances which seek to regulate the subject matter and content of broadcast programs.

In the following discussion it will be assumed that there is a proper delegation of power to the municipal corporation and that the regulation is reasonable. In every case it is necessary to examine the specific ordinances and the enabling acts, general or special, which are applicable thereto.

§ 197. Same: Ordinances Which Prescribe the Physical Characteristics and Location of the Station.

Municipal ordinances which deal with wiring and fire protection are considered elsewhere.[117] Any other type of municipal ordinance which attempts to prescribe the location of the transmitter and the height of the antenna would be invalid. This result would be unchanged even if the purpose of the ordinance were to prevent interference. Congress has already entered the field of regulation of interference with broadcast operations. Such local ordinances are in conflict with the Congressional legislation and the Federal administrative regulation.

By the Communications Act of 1934,[118] Congress gave to the Federal Communications Commission, as it had to the predecessor Federal Radio Commission, several broad

[116] People *v.* Gibbs, 186 Mich. 127, 152 N.W. 1053 (1915) (An ordinance regulating hours of business of auctioneers was held to be an unreasonable regulation). See People *v.* Ericsson, 263 Ill. 368, 105 N.E. 315 (1914); Reinman *v.* Little Rock, 237 U.S. 176, 35 Sup. Ct. 511, 59 L.Ed. 900 (1914).

[117] See §§ 237–240 *infra.*

[118] 48 STAT. 1081 (1934), 47 U.S.C.A. § 301 *et seq.* (1937).

powers in order to eliminate interference. The Federal Communications Commission's licenses, rules and regulations are all drawn with great care and particularity as to the location of the station in order to prevent interference.[119]

So long as local zoning laws do not attempt to prescribe the location of the broadcast station, their validity is unquestionable insofar as they deal with local problems. These ordinances may seek to prevent the erection of towers and other structures in certain neighborhoods which tend to destroy the character of the area. Nevertheless, as between the designation in the operating license issued by the Federal Communications Commission and the provisions in the zoning ordinance, the former will prevail.

§ 198. Same: Ordinances Which Impose a License Requirement or Tax to Operate a Broadcast Station.

Ordinances which impose a license requirement or tax to operate a broadcast station are uniformly invalid as a regulation of interstate commerce. No state or municipality may lawfully require any person to pay a tax or comply with any requirement as a condition precedent to that person's participation in interstate commerce.[120] In *Whitehurst* v. *Grimes*,[121] the plaintiff, a licensed amateur radio operator under the Radio Act of 1927,[122] sought relief against a municipal ordinance requiring all persons operating a commercial or private station to pay a license fee. An injunction was issued against the enforcement of the ordinance on the ground that it was an interference with interstate commerce.[123]

[119] See FEDERAL COMMUNICATIONS COMMISSION, *Rules and Regulations*.

[120] See Chapter XII. *infra*.

[121] 21 F.(2d) 787 (D.Ky., 1927). *Accord:* Station WBT *v.* Poulnot, 46 F.(2d) 671 (D.S.C., 1931).

[122] 44 STAT. 1162 (1927).

[123] Whitehurst *v.* Grimes, 21 F.(2d) 787 (D.Ky., 1927). *Accord:* Station WBT *v.* Poulnot, 46 F.(2d) 671 (D.S.C., 1931).

§ 199. Same: Ordinances Which Regulate the Subject Matter of Broadcast Programs.

The validity of ordinances which regulate the subject matter of radio broadcasts would be determined by the same tests as are applied to similar state statutes.[124] Such ordinances may be valid if they affect interstate commerce only incidentally or indirectly without interfering with or burdening that activity. Similarly, their validity cannot be attacked if they attempt to regulate objects not properly or legitimately subjects of commerce. If such ordinances deal with purely local matters and present no conflict with Federal regulation of radio broadcasting, they may validly be enforced.

[124] See § 189 *et seq. supra.*

Chapter XII.

JURISDICTION TO TAX RADIO BROADCASTING.

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§ 200. State Taxation Generally.

The taxation power of a state is limited and controlled by the provisions of the United States Constitution.[1] Each local tax enactment must be examined to determine whether it violates the Federal Constitution. The analysis must not depend upon any mere question of form, construction or definition, but upon the practical operation of the tax imposed.[2]

[1] COOLEY, THE LAW OF TAXATION (4th ed., 1924) § 131 *et seq.*

[2] Shaffer *v.* Carter, 252 U.S. 37, 40 Sup. Ct. 221, 64 L.Ed. 445 (1919); American Mfg. Co. *v.* St. Louis, 250 U.S. 459, 39 Sup. Ct. 522, 63 L.Ed. 1084 (1918); Crew Levick Co. *v.* Pennsylvania, 245

The constitutional limitations upon the power of the state to tax radio broadcasting are:

(1) A state cannot tax property or business beyond its territorial jurisdiction.[3]

(2) Local tax burdens on interstate commerce are unconstitutional under the "commerce clause"[4] of the Constitution.[5]

Since radio broadcasting has been held to be interstate commerce,[6] it is included within the constitutional protection of that activity. All interstate commerce is immune from direct and indirect burdens imposed by acts of state and local governments.[7] The states are thereby restricted to the taxation of intrastate commerce [8] or to the taxation of property used in interstate commerce but situated in

U.S. 292, 38 Sup. Ct. 126, 62 L.Ed. 295 (1917); Mountain Timber Co. *v.* Washington, 243 U.S. 219, 37 Sup. Ct. 260, 61 L.Ed. 685 (1916).

[3] State Tax on Foreign Held Bonds, 15 Wall. (82 U.S.) 300, 21 L.Ed. 179 (1872); Gloucester Ferry Co. *v.* Pennsylvania, 114 U.S. 196, 5 Sup. Ct. 826, 29 L.Ed. 158 (1885); Frick *v.* Pennsylvania, 268 U.S. 473, 45 Sup. Ct. 603, 69 L.Ed. 1058 (1925); COOLEY *op. cit. supra* n. 1, § 94.

[4] UNITED STATES CONSTITUTION, Article I, § 8, Cl. 3.

[5] See § 203 *infra.*

[6] *For taxation purposes:* Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Station WBT, Inc. *v.* Poulnot, 46 F.(2d) 671 (E.D.S.C., 1931); Whitehurst *v.* Grimes, 21 F.(2d) 787 (E.D. Ky., 1927).

Broadcasting has also been held to be interstate commerce by the Federal courts in upholding Federal regulatory legislation. See § 5 *supra.*

[7] COOLEY, *op. cit. supra* n. 1, § 368 *et seq.*

[8] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Cooney *v.* Mountain States T. & T. Co., 294 U.S. 384, 55 Sup. Ct. 477, 79 L.Ed. 934 (1935); Sprout *v.* South Bend, 277 U.S. 163, 48 Sup. Ct. 502, 72 L.Ed. 833 (1927); Crew Levick Co. *v.* Pennsylvania, 245 U.S. 292, 38 Sup. Ct. 126, 62 L.Ed. 295 (1917); Galveston, H. & S. A. R. Co. *v.* Texas, 210 U.S. 217, 28 Sup. Ct. 638, 52 L.Ed. 1031 (1908); Leloup *v.* Port of Mobile, 127 U.S. 640, 8 Sup. Ct. 1380, 32 L.Ed. 311 (1888); Phila. & So. Mail S. S. Co. *v.* Pennsylvania, 122 U.S. 326, 7 Sup. Ct. 1118, 30 L.Ed. 1200 (1887).

the state.[9] A state cannot tax gross receipts from radio broadcasting directly or the privilege to engage in such commerce, nor can it in any other way interfere unduly with the conduct of radio broadcasting since such taxation would contravene the "commerce clause".[10]

Congress alone may exercise its power to tax upon matters within the domain of Federal regulation. Even where no specific taxation legislation has been enacted by Congress, but where it has already entered the field by regulation of a specific phase of interstate commerce, such as radio broadcasting, no legislation infringing upon the jurisdiction of Congress within the limits of its regulatory power, may validly be enacted by state or local governments.[11] This proposition is illustrated by the unconstitutionality of considerable legislation enacted by the states as a means of deriving revenue from interstate commercial activities. These statutes fell because they invaded the field of Federal regulation.[12]

[9] St. Louis Elec. Ry. Co. *v.* Missouri, 256 U.S. 314, 41 Sup. Ct. 488, 65 L.Ed. 946 (1920); Wells Fargo & Co. *v.* Nevada, 248 U.S. 165, 39 Sup. Ct. 62, 63 L.Ed. 190 (1918); Baltic Min. Co. *v.* Massachusetts, 231 U.S. 68, 34 Sup. Ct. 15, 58 L.Ed. 127 (1913); Old Dominion S. S. Co. *v.* Virginia, 198 U.S. 299, 25 Sup. Ct. 686, 49 L.Ed. 1059 (1904).

[10] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Gloucester Ferry Co. *v.* Pennsylvania, 114 U.S. 196, 206 (1885); Union Refrigerator Transit Co. *v.* Kentucky, 199 U.S. 194, 26 Sup. Ct. 36, 50 L.Ed. 150 (1905).

[11] See §§ 7, 8, 9, 183, 189, 191 *supra.*

[12] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Cooney *v.* Mountain States T. &. T. Co., 294 U.S. 384, 55 Sup. Ct. 477, 79 L.Ed. 934 (1935); Sprout *v.* South Bend, 277 U.S. 163, 48 Sup. Ct. 502, 72 L.Ed. 833 (1927); Crew Levick Co. *v.* Pennsylvania, 245 U.S. 292, 38 Sup. Ct. 126, 62 L.Ed. 295 (1917); Galveston, H. & S. A. R. Co. *v.* Texas, 210 U.S. 217, 28 Sup. Ct. 638, 52 L.Ed. 1031 (1908); Leloup *v.* Port of Mobile, 127 U.S. 640, 8 Sup. Ct. 1380, 32 L.Ed. 311 (1888); Phila. & So. Mail S. S. Co. *v.* Pennsylvania, 122 U.S. 326, 7 Sup. Ct. 1118, 30 L.Ed. 1200 (1887).

It is important to note that a radio broadcast station may not avoid taxation by a state on the ground that it is an instrumentality of the Federal government. A radio broadcast station is not a Federal instrumentality even though, as a prerequisite to its operation, a license by the Federal Communications Commission is necessary.[13] The station license, rather than the station itself, is the means employed by the Federal government to execute its constitutional powers over interstate commerce. The business of radio broadcasting is almost universally carried on for private profit and in normal times does not involve the conduct of any governmental function.[14] This is true despite the fact that in many cases the licensed radio broadcast stations are operated by corporations organized under state laws. Irrespective of the franchise or rights acquired by a radio broadcast station from the United States by the grant of a license, such rights are exempt from taxation by a state.[15]

The following discussion of the constitutional aspects of state taxation of radio broadcasting may be divided into (a) property taxes on chattels and other tangible or intangible property and (b) excise taxes upon either the privilege of engaging in or the actual conduct of business.

§ 201. State Excise Taxation of Radio Broadcasting.

Although the distinction is sometimes a narrow one, a tax on an occupation or privilege, whether it is called a "license tax", an "occupation tax" or a "privilege tax", is not a tax upon property. They are separate and distinct species of taxes; they are controlled by entirely different rules and are essentially different in both their

[13] *Cf.* Willcutts v. Bunn, 282 U.S. 216, 51 Sup. Ct. 125, 75 L.Ed. 304 (1931); Broad River Power Co. *v.* Query, 288 U.S. 178, 53 Sup. Ct. 326, 77 L.Ed. 685 (1933).

[14] See §§ 215 and 216 *infra.*

[15] Federal franchises cannot be taxed by the states. *California* v. *Central Pac. R. Co.,* 127 U.S. 1, 8 Sup. Ct. 1073, 32 L.Ed. 150 (1887); Beckhoefer, *State Taxation of Radio Communication* (1931) 1 JOURN. RADIO L. 477, 485.

character and mission. The sole function of a property tax is to raise revenue. It never imposes conditions upon the use of property or the exercise of a privilege. A license or occupation tax is imposed as one of the conditions upon the right to exercise a given privilege, its primary object being to regulate and control the business affected.

The interstate character of the business does not exempt broadcasting corporations from the payment of the tax imposed upon every corporation for the privilege of organization and the exercise of such corporate franchise in the State of incorporation.[16] This is commonly called the organization tax. Organization taxes cannot be levied in such form, manner or amount as to constitute an impost for the right to engage in interstate commerce even though the corporation has been created for that purpose.[17]

A foreign corporation, although engaged in interstate commerce, which is doing business within a state, may be required to pay a license or franchise tax where it clearly appears that the tax is for the privilege of carrying on intrastate business.[18] This tax upon foreign corporations for the privilege of doing business is analogous to the organization tax upon domestic corporations.[19]

[16] *Cf.* City Properties Co. *v.* Jordan, 163 Cal. 587, 126 Pac. 351 (1912); Chicago & E. I. Ry. Co. *v.* State, 153 Ind. 134, 51 N.E. 924 (1898). See also Diamond Glue Co. *v.* United States Glue Co., 187 U.S. 611, 23 Sup. Ct. 206, 47 L.Ed. 328 (1903).

[17] Western Union Tel. Co. *v.* Kansas, 216 U.S. 1, 30 Sup. Ct. 190, 54 L.Ed. 355 (1911); Ludwig *v.* Western Union Tel. Co., 216 U.S. 146, 30 Sup. Ct. 280, 54 L.Ed. 423 (1910); Postal Tel. Co. *v.* City of Portland, 228 Fed. 254 (D.C. Or., 1915); Western Union Tel. Co. *v.* Trapp, 186 Fed. 114 (C.C.A. 8th, 1911); Western Union Tel. Co. *v.* Weaver, 5 F.Supp. 493 (D.C. Neb., 1932).

[18] Ewing *v.* City of Leavenworth, 226 U.S. 464, 33 Sup. Ct. 157, 57 L.Ed. 303 (1917); Gibson County *v.* Pullman Car Co., 42 Fed. 572 (C.C.W.D. Tenn., 1890); Nashville *v.* Alabama, 134 Ala. 414, 32 So. 731 (1902); City of York *v.* Chicago R. Co., 56 Neb. 572, 76 N.W. 1065 (1898).

[19] *Ibid.*

§ 202. Excise Taxes: May Not Be Levied on Business of Radio Broadcasting.

Occupation, privilege or license taxes may not be exacted from radio broadcast station licensees by any state since the business is interstate. A state cannot tax interstate commerce; it cannot lay a tax upon the business which constitutes such commerce or upon the privilege of engaging therein.[20]

The fact that a portion of the business is intrastate and therefore taxable, does not justify a tax either upon the interstate business or upon the whole business without discrimination.[21] Where a corporation is doing both intrastate and interstate business, a state may impose a license tax on its strictly intrastate business, provided the local business is real and substantial and not so connected with interstate commerce as to render a tax upon it a burden upon the interstate business of the corporation.[22]

[20] Sprout *v.* South Bend, 277 U.S. 163, 48 Sup. Ct. 502, 78 L.Ed. 833 (1928); Kansas City, *etc.* Ry. Co. *v.* Memphis R. R., 240 U.S. 227, 36 Sup. Ct. 261, 60 L.Ed. 617 (1915); Barrett *v.* New York, 232 U.S. 14, 34 Sup. Ct. 203, 58 L.Ed. 483 (1913); Crutchen *v.* Kentucky, 141 U.S. 47, 11 Sup. Ct. 851, 35 L.Ed. 649 (1890); Leloup *v.* Mobile, 127 U.S. 640, 8 Sup. Ct. 1380, 32 L.Ed. 311 (1888).

[21] Leloup *v.* Mobile, 127 U.S. 640, 8 Sup. Ct. 1380, 32 L.Ed. 311 (1888).

[22] Williams *v.* Talladega, 226 U.S. 404, 33 Sup. Ct. 116, 57 L.Ed. 275 (1912); Cooney *v.* Mountain States Tel. & Tel. Co., 294 U.S. 384, 55 Sup. Ct. 477, 79 L.Ed. 934 (1935). See Station WBT, Inc. *v.* Poulnot, 46 F.(2d) 671 (E.D. S.C., 1931).

In *Cooney* v. *Mountain States Tel. & Tel. Co., supra,* an injunction was issued against the collection of an annual license tax for each telephone instrument used by a telephone company in the State of Montana. The plaintiff was a Colorado company doing an interstate business. Mr. Chief Justice Hughes said, at page 393:

"Where the tax is exacted from one doing both an interstate and intrastate business, it must appear that it is imposed solely on account of the latter; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the tax; and that one who is taxed could discontinue the intrastate business without also withdrawing from the interstate business."

No allocation may be made of income, capital stock or assets of a broadcast station to its intrastate business for the purpose of a state occupation tax. A state which seeks to impose such a tax would be held to tax the interstate activities of radio broadcast stations, or the privilege to engage therein. This it has no authority to do.[23] Were it possible to differentiate reasonably the intrastate activities of a broadcast station from its interstate operation, undoubtedly a state could levy such an excise tax.[24] In the present stage of the development of radio communication, no such differentiation is possible.[25]

While there is one case to the contrary,[26] it is accepted as the rule to-day that occupation or license taxes may not be levied by a state upon radio broadcasting, which is interstate commerce.[27]

§ 203. Fisher's Blend Station, Inc. v. Washington: State Gross Receipts Tax Unconstitutional.

In the case of *Fisher's Blend Station, Inc.* v. *Tax Commission of Washington*,[28] the United States Supreme Court held that a State occupation tax, measured by the gross

[23] International Paper Co. *v.* Massachusetts, 246 U.S. 135, 38 Sup. Ct. 292, 62 L.Ed. 624 (1917); Baltic Min. Co. *v.* Massachusetts, 231 U.S. 68, 34 Sup. Ct. 15, 58 L.Ed. 127 (1913); Western Union Tel. Co. *v.* Kansas, 216 U.S. 1, 30 Sup. Ct. 190, 54 L.Ed. 355 (1909).

[24] *Cf.* Cooney *v.* Mountain States Tel. & Tel. Co., 294 U.S. 384, 55 Sup. Ct. 447, 79 L.Ed. 934 (1935); Kelver *v.* Stewart, 197 U.S. 60, 25 Sup. Ct. 403, 49 L.Ed. 663 (1905); New York *v.* Knight, 192 U.S. 21, 24 Sup. Ct. 202, 48 L.Ed. 325 (1904); COOLEY, *op. cit. supra* n. 1, §§ 383, 389.

[25] See Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[26] City of Atlanta *v.* Oglethorpe University, 178 Ga. 379, 173 S.E. 110 (1934).

[27] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Whitehurst *v.* Grimes, 21 F.(2d) 787 (E.D.Ky., 1927); Station WBT, Inc. *v.* Poulnot, 46 F.(2d) 671 (E.D.S.C., 1931).

[28] 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936). See Comment (1936) 45 YALE L. J. 498; Note (1936) 49 HARV. L. REV. 473.

receipts from radio broadcasting by stations within the State, is unconstitutional. The Washington Supreme Court [29] whose decision was reviewed on *certiorari,* had conceded that broadcasting was commerce, and that the broadcast by the station of its own sustaining programs, for which no compensation was received, was interstate commerce.[30] The Washington Supreme Court, however, concluded that the business of transmitting commercial broadcasts was not interstate commerce since in such instances, the station furnished its facilities to its customers for broadcasts of their respective programs within the State. This was analogized to the business of providing a bridge for the use of others to cross state lines, which is not commerce.[31] The State Court reasoned that the broadcast station completes its business operations by making its facilities available to commercial advertisers. The Court further found that thereafter, the advertiser is engaged in interstate commerce, but the broadcast station, having fulfilled its obligations, is not.

The United States Supreme Court dismissed this argument by stating: [32]

[29] 182 Wash. 163, 45 P.(2d) 942 (1935).

[30] *Cf.* Van Dusen *v.* Dept. of Labor, 158 Wash. 414, 290 Pac. 803 (1930).

[31] See Henderson Bridge Co. *v.* Kentucky, 166 U.S. 150, 17 Sup. Ct. 532, 41 L.Ed. 593 (1896); Detroit International Bridge Co. *v.* Corporation Tax Board, 294 U.S. 83, 55 Sup. Ct. 332, 79 L.Ed. 777 (1935).

[32] Mr. Justice Stone in *Fisher's Blend Station, Inc.* v. *Tax Commission of State of Washington,* 297 U.S. 650, 653, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

In Note (1935) 84 U. OF PA. L. REV. 251, 252, the following criticism is made of the State Court in the *Fisher's Blend* case:

"Obviously, from a factual viewpoint the Court's reasoning is faulty. In order to insure the transmission of a message it is necessary for the broadcasting company constantly to employ technicians, operators, etc., to regulate the power, volume and clarity of tone. Such a situation is hardly comparable to bridge operation, where once the bridge is constructed and made ready for use, the one crossing the bridge needs generally no aid from the operating company to get to the other side."

> "But it sufficiently appears . . . that appellant and not the customer, generates the electric current and controls the apparatus (generator, transmitter and their controls) by which the sounds are broadcasted . . .; that the broadcasting of radio emanations, as distinguished from the production of the sounds broadcasted, is effected by appellant and not by its customers.
>
> "The sounds broadcasted are not transmitted from the microphone to the ears of listeners in other states. They do not pass as sound waves to the receiving mechanisms. They serve only to enable the broadcaster, by the use of appropriate apparatus to modulate the radio emanations which he generates. These emanations as modulated, are projected through space to the receiving sets."

The United States Supreme Court then held the business of radio broadcasting to be interstate commerce. To declare the gross receipts tax unconstitutional, it was not necessary for the Court to find that any activities of a station were intrastate. So long as some activities are interstate and commerce, an indiscriminate tax on the entire gross receipts is invalid. Mr. Justice Stone, in the *Fisher's Blend* case further said:[33]

> "It is enough that the present is not such a tax, but is levied on gross receipts from appellant's entire operations, which include interstate commerce. As it does not appear that any of the taxed income is allocable to intrastate commerce, the tax as a whole must fail."

It is significant that the *Fisher's Blend* case specifically does not decide the validity of a state tax on the generation of the energy necessary to broadcasting, or of a tax on other local activities of a station as distinguished from the business of broadcasting.[34] Insofar as any local activities of a broadcast station are connected with its

[33] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 656, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[34] *Ibid.*

general communication business, they are not taxable by a state.

It is quite clear that even had the gross receipts tax statute involved in the *Fisher's Blend* case attempted to segregate the local portion of a broadcast station's business, it would be unconstitutional. Such a segregation for tax purposes is valid only where the concern so sought to be taxed is able to withdraw from its intrastate business without concluding its interstate business.[35]

It is again submitted that in view of the present status of radio broadcasting, any attempt by the several states to segregate the local business of broadcast stations is impractical.[36] The electro-magnetic waves move at the speed of light and it is impossible to confine them within state lines. All radio communications travel actually or potentially across state lines. For purposes of taxation, radio broadcasting must be considered entirely interstate commerce. The radio broadcasting business is not so separable as to allow withdrawal from broadcasting to intrastate listeners without a similar relinquishment of the interstate audience.

§ 204. Arizona Gross Receipts and Privilege Tax on Broadcast Advertising Unconstitutional.

Since the *Fisher's Blend* decision, other attempts have been made to levy taxes upon the business of advertising by radio. An enactment in Arizona seeks to tax the gross receipts from radio advertising within its territory for the privilege of carrying on such activities therein.[37] This statute is loosely worded and seems to tax either the broadcast station or the advertiser, or both.[38] The statute makes an attempt to segregate intrastate from

[35] Cooney *v.* Mountain States Tel. & Tel. Co., 294 U.S. 384, 394, 55 Sup. Ct. 477, 79 L.Ed. 934 (1935); Sprout *v.* South Bend, 277 U.S. 163, 171, 48 Sup. Ct. 502, 72 L.Ed. 833 (1928).

[36] See §§ 202, 203 *supra*.

[37] ARIZONA, SESS. L. (1937), c. 2, § 2, subd. c (8) and § 11, subd. a.

[38] *Id.*, § 2, subd. c (8).

interstate radio advertising. Since such segregation is not possible, the declaration limiting the tax to intrastate activities is an impotent gesture. So far as radio broadcast advertising is concerned, the Arizona statute seems to fall within the prohibition of the *Fisher's Blend* decision.

It is submitted that the Arizona statute is unconstitutional insofar as it seeks to impose the requirement that a license be obtained for the privilege of engaging in the business of advertising by radio in that State.[39] This is true despite the fact that a nominal license fee of one dollar is payable thereunder. The statute further expressly provides that the issuance of such a privilege license is conditioned upon payment of the gross receipts tax.[40] The Arizona privilege tax violates the United States Constitution in that segregation of intrastate and interstate operations is practically impossible in broadcast advertising. Moreover, the *Fisher's Blend* case conclusively decided that radio broadcast advertising is interstate commerce; consequently, such operations may not be taxed by the states.[41]

The Arizona statute is typical of tax legislation proposed in many states, but in most states, these bills have not been enacted into law.

§ 205. Real Basis of Unconstitutionality of State Excise Taxation of Radio Broadcasting.

The real basis for the non-allowance of state excise taxation of radio broadcasting is revealed by the question raised where the emissions of the station sought to be taxed lose their receptivity before approaching the state lines. It is held that such a broadcast station is engaged in interstate commerce because it does interfere or may potentially interfere with radio communications passing

[39] *Id.*, § 11.

[40] *Id.*, § 11(b).

[41] Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

interstate.[42] Such a station must have a license from the Federal Communications Commission.[43] A state is even excluded from regulation of a station whose power is so limited.

Since a tax is more than a mere exaction, in that it is a regulation, any effort by a state to impose a license tax upon a radio broadcast station is a regulation of interstate commerce. It was so correctly held in *Whitehurst* v. *Grimes*.[44] The power to regulate radio broadcasting and its incidents is exclusively in the Congress.[45] To allow any state excise taxation of radio broadcasting is to infringe upon that power.

It is submitted that *City of Atlanta* v. *Oglethorpe University*[46] is erroneously decided. In that case, the City of Atlanta, in pursuance of its power conferred by charter, levied an occupation tax in the form of a license requirement upon radio broadcast stations. The Georgia Supreme Court upheld the tax on the ground that the messages received by the station were for intrastate transmission and that the mere fact that some messages may be received beyond the State lines does not make the station's business interstate commerce.

If the Court's conclusion be correct, there is no doubt that the whole system of Federal regulation would have to be scrapped since many stations receive only messages for intrastate transmission. This decision would allow state regulation of radio broadcasting. As such, it cannot be sustained. In view of the holdings in the *Fisher's Blend* case[47] and *Whitehurst* v. *Grimes*[48] that radio broadcasting is interstate commerce, despite the intention

[42] See United States *v.* Gregg, 5 F.Supp. 848 (D.C. Texas, 1934); § 8 *supra.*

[43] *Ibid.*

[44] 21 F.(2d) 787 (E.D. Ky., 1927).

[45] §§ 5–8 *supra.*

[46] 178 Ga. 379, 173 S.E. 110 (1933).

[47] 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936).

[48] 21 F.(2d) 787 (E.D. Ky., 1927).

of the broadcaster to reach only intrastate audiences, the *Oglethorpe* case is erroneous and should not be followed.

The real basis for the rule against state taxation of the business of radio broadcasting is found in the necessity to protect the power of Congress to regulate that industry, free from interference by state governments.

§ 206. State Taxation of Property Located Within State Allowed.

The state possesses the power to tax all personal and real property situated within its territory[49] even though the property is used for purposes of interstate commerce.[50] Whatever its form, if such tax is essentially only a levy upon property[51] and is not discriminatory, it does not violate the "commerce clause".[52] Any law taxing tangible property, which is based on an *ad valorem* measure and which is aimed at the intrinsic worth of the physical property of the broadcaster, presents no constitutional problems.

Difficulty does arise in drawing the line between taxes which burden interstate commerce and those whereby the legislature is simply seeking to impose a property tax within its legitimate power, measured in part by the income

[49] St. Louis R. Co. *v.* Missouri, 256 U.S. 314, 41 Sup. Ct. 488, 65 L.Ed. 946 (1920); Savings, *etc.* Soc. *v.* Multomah County, 169 U.S. 421, 18 Sup. Ct. 392, 42 L.Ed. 803 (1898); Marye *v.* Baltimore & Ohio R. Co., 127 U.S. 117, 8 Sup. Ct. 1037, 32 L.Ed. 94 (1888); McCulloch *v.* Maryland, 4 Wheat. 316, 17 U.S. 315 (1819); New York *v.* Mclean, 170 N.Y. 374, 63 N.E. 380 (1902); COOLEY, THE LAW OF TAXATION (4th ed., 1924), § 384.

[50] Schwab *v.* Richardson, 263 U.S. 88, 44 Sup. Ct. 60, 68 L.Ed. 183 (1923); Maine *v.* Grand Trunk R. Co., 142 U.S. 217, 12 Sup. Ct. 807, 35 L.Ed. 994 (1891).

[51] Adams Express Co. *v.* Ohio, 165 U.S. 194, 17 Sup. Ct. 305, 41 L.Ed. 683 (1897); Postal Tel. Co. *v.* Adams, 155 U.S. 688, 15 Sup. Ct. 268, 39 L.Ed. 311 (1895).

[52] See Marye *v.* Baltimore & Ohio R. Co., 127 U.S. 117, 8 Sup. Ct. 1037, 32 L.Ed. 94 (1888); Old Dominion S. S. Co. *v.* Virginia, 198 U.S. 299, 25 Sup. Ct. 686, 49 L.Ed. 1059 (1905); Western Union Tel. Co. *v.* Taggart, 163 U.S. 1, 16 Sup. Ct. 1054, 41 L.Ed. 49 (1896).

from transactions in interstate commerce. A state has the power to impose such an excise or franchise tax on a radio broadcast station so long as it is in effect a tax on the property of the broadcaster within the state.[53] Such a tax must be in lieu of all other taxes upon the property of the taxpayer.[54] "By whatever name the exaction may be called, if it amounts to no more than the ordinary tax on property or a just equivalent therefor ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution."[55]

The question of whether the legislature is seeking to tax property or interstate commerce is essentially a practical one[56] to be determined by the court, taking the whole scheme of taxation into account.[57]

§ 207. Intangible Property Values of a Broadcast Station May Not Be Apportioned Between States.

Since the tangible property of the broadcast unit usually consists of studios and a transmitter situated in the same state, both the tangible and intangible property have a *situs* and no problem of allocation of the taxable values would arise.

However, in many cases, notably in the New York metropolitan area, the transmitter is located in an adjacent state. In one case, studios are located in both New York and New Jersey, while the transmitting apparatus

[53] *Cf.* Tidewater Pipe Co. *v.* State Board of Assessors, 57 N.J.L. 516, 31 Atl. 220 (1895); Comment (1936) 45 YALE L. J. 495.

[54] In *U. S. Express Co.* v. *Minnesota,* 223 U.S. 335, 32 Sup. Ct. 211, 56 L.Ed. 459 (1911) a state statute taxed express companies on their property employed within Minnesota at a rate of 6% of their gross receipts. The tax so measured was in lieu of all other taxes on the property and was held to be an exercise in good faith of legitimate taxing power. See COOLEY, THE LAW OF TAXATION (4th ed., 1924) § 384.

[55] Fuller, C.J., in *Postal Telegraph* v. *Adams,* 155 U.S. 688, 15 Sup. Ct. 269, 39 L.Ed. 311 (1891).

[56] People *ex rel.* Alpha Portland Cement Co. *v.* Knapp, 230 N.Y. 48, 129 N.E. 202 (1920).

[57] Galveston, Harrisburg Ry. Co. *v.* Texas, 210 U.S. 217, 28 Sup. Ct. 638, 52 L.Ed. 1031 (1907).

is situated in New Jersey only. In such cases, there would seem to be a conflict of tax jurisdiction over the intangible values accruing to the station as property. May either State look beyond its borders to reach that type of property or is it taxable by one State only?

The only reason why a state may look beyond its borders in levying taxation is as clearly stated by Mr. Justice Holmes:[58]

> "The only reason for allowing a State to look beyond its borders when it taxes the property of foreign corporations is that it may get the true value of the things within it, when they are a part of an organized system of wide extent, that gives them a value above what they would otherwise possess."

This is best illustrated in the railroad and telegraph cases where the problem of taxing intangible values is acute. In such cases, the tax has been held to constitute no undue burden on interstate commerce where the intangible property is properly allocated to the State.[59] For this purpose, the courts have approved the so-called "unit rule".[60] Under this rule, the tax authority values the entire property as a unit and apportions a part of it to the taxing jurisdiction by a comparison with some constant factor.

> *E.g.* "The mode which the State of Pennsylvania adopted to ascertain the proportion of the company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of

[58] Wallace *v.* Hines, 253 U.S. 66, 40 Sup. Ct. 435, 64 L.Ed. 782 (1920).

[59] *Telegraph cases:*
Ratterman *v.* Western Union Tel. Co., 127 U.S. 411, 8 Sup. Ct. 1127, 32 L.Ed. 229 (1888); (Atty. Gen. of) Mass. *v.* Western Union Tel. Co., 141 U.S. 40, 11 Sup. Ct. 889, 35 L.Ed. 628 (1891).

Railway cases:
Pullman Palace Car Co. *v.* Penn., 141 U.S. 18, 11 Sup. Ct. 876, 35 L.Ed. 613 (1888); Wallace *v.* Hines, 253 U.S. 66, 40 Sup. Ct. 435, 64 L.Ed. 782 (1920).

[60] State Railway Tax Cases, 92 U.S. 575, 23 L.Ed. 663 (1875).

the company as the number of miles over which it ran cars in the state bore to the whole number of miles over which its cars were run." [61]

The method requires only two elements; first, a constant factor such as mileage, property or gross receipts, which can be ascertained both totally and locally; second, a valuation of the total property owned regardless of its location.

It is submitted that this method may not be applied to radio broadcasting. Clearly, mileage is not available as a constant factor. Gross receipts also are not a constant factor because the location of the transmitter is not inherently determinant of the receipts from a state. Moreover, physical property is not the predominant basis of the assessment; it is the going concern value of the station. In view of these considerations, any attempt to apportion the going concern value between two states is impractical where the transmitter is located in another state. The state where the station has its *situs* may, however, tax its intangible value.

§ 208. State or Local Tax on Sales of Broadcast Facilities Invalid.

Whether or not a valid agreement by a station granting the use of its radio broadcast facilities to another is a sale rendering the transaction subject to statutes imposing a tax on sales, is determined by the wording of the statutes. Even if such an agreement were deemed a sale, it should not be taxed as such because it would be invalid as a tax on interstate commerce.[62]

[61] Pullman Palace Car Co. *v.* Penn., 141 U.S. 18, 11 Sup. Ct. 876, 35 L.Ed. 613 (1888).

[62] United Artists Corp. *v.* Taylor, 248 App. Div. 207, 288 N.Y. Supp. 946 (1936), *aff'd.* 273 N.Y. 334, 7 N.E.(2d) 254 (1937). See §§ 202, 203 *supra*. *Cf.* Matter of Gdynia-American Line, Inc. *v.* Taylor, 250 App. Div. 41, 293 N.Y.Supp. 613 (1937); Baum, *Legal Phases of Local Sales Tax,* (1937) II. LEGAL NOTES ON LOCAL GOVERNMENT, 329.

§ 209. State Taxation of Radio Receiving Sets.

In 1930, a South Carolina statute was enacted[63] which imposed a tax upon the privilege of owning or operating a radio receiving set, the amount of the tax varying according to the purchase price of the set. Station WBT, Inc., a New York corporation which operated a broadcast station in South Carolina, brought a suit to enjoin the collection of the tax.[64] The United States District Court held that because communication by radio constitutes interstate commerce, the State tax on receiving sets was unconstitutional as a burden upon interstate commerce.[65]

In deciding that radio communication is interstate commerce,[66] the courts dealt only with broadcasting operations rather than reception alone. The *Station WBT* case did not attempt to distinguish broadcasting from reception and merely held "communications by radio to be interstate commerce".[67] The problem was adverted to in the following *dictum* by Judge Wilkerson, in *United States* v. *American Bond & Mortgage Co:*[68]

> "It does not seem open to question that radio transmission and reception among the states are interstate commerce . . . the joint action of the transmitter provided by one person and the receiver owned by another is essential to the result, but that result is the transmission of intelligence, ideas and entertainment. It is intercourse and that intercourse is commerce."

63 S. C. ACTS, 1930, No. 768.

64 Station WBT, Inc. *v.* Poulnot, 46 F.(2d) 671 (E.D.S.C., 1931). In this case, the Court ruled that the plaintiff, although not a taxpayer, could maintain the suit to enjoin the collection of the tax because it directly affected its business.

65 *Ibid.* See Note (1931) 2 AIR L. REV. 273; Note (1931) 40 YALE L. J. 990; (1931) 44 HARV. L. REV. 992.

66 Fisher's Blend Station, Inc. *v.* Tax Commission of State of Washington, 297 U.S. 650, 56 Sup. Ct. 608, 80 L.Ed. 956 (1936); Station WBT, Inc. *v.* Poulnot, 46 F.(2d) 671 (E.D.S.C., 1931); Whitehurst *v.* Grimes, 21 F.(2d) 787 (E.D. Ky., 1927).

67 46 F.(2d) 671, 675 (E.D. S.C., 1931).

68 United States *v.* American Bond & Mtge. Co., 31 F.(2d) 448 (N.D. Ill., 1929), *aff'd.* 52 F.(2d) 318 (C.C.A. 7th, 1931).

Broadcasting is the *sine qua non* of reception. The direct connection between the two operations constitutes the essence of communication. It is interstate communication which serves to permit regulation of radio as interstate commerce.[69] Broadcasting and reception are the component elements of radio communication and are activities in interstate commerce. An apparatus for the reception of broadcast communications is therefore an instrumentality of interstate commerce.

§ 210. Nature of Tax on Radio Receiving Sets.

Since an instrumentality of interstate commerce may be situated within a state, the problem arises as to whether a state may levy a tax thereon. It is important to determine the nature of the tax. A state may impose an ordinary property tax upon property located within its territory although same is employed in interstate commerce.[70] However, a privilege tax by a state upon the right to use such property in interstate commerce is unconstitutional as a burden upon interstate commerce.[71]

The decision in *Station WBT, Inc.* v. *Poulnot*[72] was based upon the nature of the tax sought to be imposed by the State. The Court held that North Carolina did not enact a general property tax upon receiving sets, but rather levied a license tax for the privilege of using an instrumentality of interstate commerce.

If one accepts the analysis which the Court made of the North Carolina tax statute, one cannot criticize its decision of unconstitutionality. The basic premise, however, was not thoroughly considered since the Court accepted the label by which the legislature designated the tax. The Court failed to analyze the actual effect which the tax would have upon interstate commerce.

If the tax were levied strictly upon property, it would not be unconstitutional. If the tax were levied upon the

[69] See §§ 5–8 *supra*.
[70] See § 206 *supra*.
[71] See §§ 200–203, 205 *supra*.
[72] 46 F.(2d) 671 (E.D.S.C., 1931).

privilege of using property to engage in interstate commerce, it would be necessary to determine whether it thereby creates a burden on interstate commerce. Because the North Carolina tax was not so analyzed by the Court, which summarily disposed of the problem, it would seem that it is still open to argument in a proper case that a state tax upon radio receiving sets would be constitutional as not imposing a burden upon interstate commerce.

One writer has pointed out:[73]

> "Radio receiving sets, once in the hands of listeners-in, are but remotely related to the interstate business of broadcasting. Essentially local in character, a tax upon such sets, although termed a license tax, is in effect not dissimilar to an ordinary excise upon luxuries. . . ."

It is submitted that this argument is fallacious because of its assumption that a receiving set is only remotely related to interstate communication when in the possession of the radio audience. It seems clear that reception is necessary to complete interstate communication generated by broadcasting. Receiving sets in the hands of the public are therefore unquestionably instrumentalities of interstate commerce because they are used for this purpose.

It is conceivable, however, that a radio receiving set may be dealt with at a point where it has not yet entered the stream of interstate commerce. A state excise tax upon such phases would be constitutional since no burden is thereby imposed upon interstate commerce. A sales tax upon receiving sets does not ordinarily affect their use in interstate communication, and is therefore valid.

The fact that the South Carolina statute in the *Station WBT* case provided that the proceeds of the tax were to be used for the support of a state institution[74] does not supply a supporting element to render it constitutional, namely, that the tax is one of police regulation.

[73] Note (1931) 40 YALE L. J. 990, 992. See also (1931) 44 HARV. L. REV. 992.

[74] See S. C., ACTS 1930, No. 768.

The use of radio receiving sets involves no police supervision and can not be compared with telegraph companies whose facilities are maintained and protected under local police supervision. Taxes upon telegraph companies for such purposes have been held constitutional as a police regulation with an incidental tax to pay the expenses of such regulation.[75]

A state which maintains a regulatory agency to prevent interference within its borders with interstate broadcast communication, may validly impose a tax upon receiving sets located in its territory so long as the proceeds of such a tax are used for the limited purpose of maintaining the state's regulatory agency.[76] Such a tax would be incidental to an enactment which is within the police power of the state and in aid of interstate commerce. Since the proceeds of such a tax would be used only for the expenses of such police regulation, it is unimportant whether the tax is termed an excise or a property tax.

[75] Atlantic & Pacific Telegraph Co. *v.* Philadelphia, 190 U.S. 160, 23 Sup. Ct. 817, 47 L.Ed. 995 (1903); Western Union Telegraph Co. *v.* (Borough of) New Hope, 187 U.S. 419, 23 Sup. Ct. 730, 47 L.Ed. 240 (1903).

[76] In *Sprout* v. *South Bend,* 277 U.S. 163, 48 Sup. Ct. 502, 72 L.Ed. 833 (1928) it was held that a license tax to cover the expense of administering safety statutes, may be imposed upon agencies engaged in both interstate and intrastate commerce, but it must be shown that the proceeds thereof are used to that end.

Chapter XIII.

PUBLIC UTILITY ASPECTS OF BROADCAST STATIONS.

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§ 211. Under the Act of 1912.

This early legislation [1] was designed to regulate radio communication as it was then known. The powers granted by Congress to the Secretary of Commerce were those which necessarily enabled him to regulate point-to-point communication which was the only commercial radio then in existence.[2] Licensees complied with the provisions of the Act of 1912 which contained no reference to the standard of public interest, convenience or necessity.[3]

[1] 37 STAT. 302 (1912), 47 U.S. C.A. § 51 (1928).

[2] For a fuller discussion of the Act of 1912 see § 25 *supra*.

[3] 37 STAT. 302 (1912), 47 U.S. C.A. § 51 (1928).

Although the point-to-point operators were licensed by the Secretary of Commerce, the commercial radio communications business conducted by such operators was properly under the jurisdiction of the Interstate Commerce Commission insofar as rates, charges and other discriminatory matters were concerned.[4] These point-to-point operators necessarily came within the scope of the Interstate Commerce Act as common carriers. Their communications by radio were an advanced development of telegraphy and were essentially competitive with the commercial telegraph and cable companies already regulated as common carriers by the Interstate Commerce Commission.[5]

This common carrier status was confirmed by the fact that point-to-point radio operators had dedicated their business to the public upon the same standards as their competitors. They offered their transmission facilities to anybody paying their charges. They made no selection of their clients. Moreover, the communications business in all its aspects was then clearly affected with the public interest so that a duty was imposed to furnish reasonable services at reasonable charges without any discrimination. Although the Act of 1912[6] imposed no common carrier status upon the radio communications industry, such characteristics were impressed by the Interstate Commerce Act and by the nature of the service performed.

As a supplement to point-to-point communications, there has developed, since 1920, commercial radio broadcasting as it is now known. The rapid growth of this new branch of the radio communications industry resulted in great confusion and wild scrambling for wave-lengths by licensees of the Secretary of Commerce. The latter's regulation under the Act of 1912 proved ineffectual to cope with the situation, and consequently the maximum benefits to the

[4] Interstate Commerce Act, 36 STAT. 544 (1910), *modified by* Transportation Act, 41 STAT. 474 (1920), 49 U.S.C.A. § 1 (1927).

[5] *Ibid.*

[6] 37 STAT. 302 (1912), 47 U.S. C.A. §§ 51–62 (1928).

public from the broadcasting industry were not achieved. The chaotic condition within the industry prevented the public from exhausting the fullest possibilities of this new scientific achievement.[7] To remedy the situation, Congress enacted the Radio Act of 1927.[8]

§ 212. Under the Act of 1927.

It is clear that the common carrier status of the point-to-point radio operators continued under the Act of 1927.

It was in this legislation that the standard of public interest, convenience or necessity[9] was established for the broadcasting industry. Congress gave recognition to the fact that the business of radio communication was a private enterprise affected with the public interest.

Under other provisions of the Act of 1927, the question soon arose as to whether Congress had impressed upon the broadcasting business common carrier characteristics. If this query were affirmed, the jurisdiction of the Interstate Commerce Commission would have extended to broadcast stations so as to regulate their rates for available facilities and other operations.

The problem centered about the interpretation of Section 14 of the Act of 1927, which provided as follows:[10]

> "Any station license shall be revocable by the (Radio) Commission . . . whenever the Interstate Commerce Commission . . . in the exercise of authority conferred upon it by law, shall find and shall certify to the Commission that any licensee bound so to do, has failed to provide reasonable facilities for the transmission of radio communications, or that any licensee has made any unjust and unreasonable charge, or has been guilty of any discrimination, either as to charge or as to service or has made or prescribed any unjust or unreasonable classification, regulation, or practice with respect to the transmission of radio communications or service."

[7] See §§ 27, 28 and 30 *supra*.

[8] 44 STAT. (1927) § 9. See § 31 *supra*.

[9] 44 STAT. 1168 (1927) § 9.

[10] 44 STAT. 1168 (1927) § 14.

There were three tests laid down by this Section. The first inquiry was directed to the jurisdiction of the Interstate Commerce Commission over the broadcast station involved. The second test was whether the licensee was bound under his license to provide reasonable facilities at reasonable rates without discrimination. A question of fact was also presented as to whether the licensee, who had been found to satisfy the jurisdictional requirements of the first two tests, had actually failed to comply with the provisions of Section 14.

The Federal Radio Commission issued three types of licenses under the Act of 1927.[11] Its licensees were broadcast stations, point-to-point operators and amateurs. Obviously, the Interstate Commerce Commission had no jurisdiction over amateur operators.

§ 213. Authority of Interstate Commerce Commission to Make Findings as to Operations of Broadcast Stations.

It was necessary to determine whether the Interstate Commerce Commission had any power under the Interstate Commerce Act to pass upon the question of reasonableness of rates or facilities of broadcast stations. The Interstate Commerce Commission had such powers over common carriers. Section 1, subd. 3 of the Interstate Commerce Act [12] defines "common carrier" as follows:

> ". . . all . . . telegraph, telephone, and cable companies operating by wire or wireless, . . . and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire . . ."

Section 1, subd. 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, also provides: [13]

[11] Porter, *Interstate Commerce Commission — Jurisdiction Over Radio* (1933) 4 AIR L. REV. 304, 306, n. 9.

[12] 36 STAT. 544 (1910), *modified by* Transportation Act, 41 STAT. 451, 474 (1920), 49 U.S.C.A. § 1 (1927).

[13] *Ibid.*

> "The term 'transmission' as used in this Act shall include the transmission of intelligence through the application of electrical energy or other use of electricity, whether by means of wire, cable, *radio apparatus* or other wire or wireless conductors or appliances and all instrumentalities and facilities for and services in connection with the receipt, forwarding and delivery of messages, communications, or other intelligence so transmitted . . . " (*Italics supplied.*)

To ascertain whether radio broadcast stations are common carriers within the meaning of the quoted sections, it is necessary to analyze the operations and nature of the broadcasting industry and the obligations imposed upon operators of broadcast stations by the Act of 1927 and by the licenses issued thereunder.

§ 214. Responsibilities of Licensees Under the Act of 1927.

The Federal Radio Commission granted licenses upon condition that the broadcast stations be operated in the public interest, convenience or necessity. Licenses were conditions precedent to the business operations of broadcast stations.

Licensees were obliged by the terms of the licenses to make continued use of their facilities so that programs would be broadcast to the public during the entire period of operating time allotted to each station.[13a]

The issuance of a limited number of licenses for a definite brief term, the allotment of time to licensees on a sharing basis, the elimination of many stations, the attempt to make a fair and equitable distribution of licenses throughout the country, the limitations upon station power, the requirement of purity of station signals and the necessity of obtaining leave to construct a broadcast station and similar administrative requirements were all corrective measures established by the regulatory body under the

[13a] Except as limited by Rule 151 of the Federal Communications Commission which re-enacts the identical rule of the Federal Radio Commission.

Act of 1927.[14] These regulations were direct attempts to eliminate the confusion and inadequacies of reception which were suffered by the public, the members of which were unable to gain full use and enjoyment of their receiving apparatus.

The sale of receiving sets had increased steadily while interference between broadcast stations continued unabated. Unnecessary static and lack of orderly station operations persisted. The evils existing in the broadcasting industry before the 1927 enactment were mainly listener problems which Congress by legislation and administration sought to rectify.

It was necessary to set up a standard for the operation of broadcast stations so that they would be regulated to protect the interests of the vast multitude of listeners. This standard is found in the criterion that broadcasting operations shall be in the public interest, convenience or necessity.[15] A direct obligation was thus imposed upon licensed broadcast stations to make use of their facilities and to broadcast programs consonant with the interest, convenience and necessity of the listening public.

Was it possible for broadcast stations to satisfy their obligations to the public as contained both in the letter and spirit of the Act of 1927 if they were deemed to be common carriers within the meaning of the Interstate Commerce Act?

Insofar as commercial broadcast programs are concerned, the answer can be only in the negative. If broadcast stations were compelled to accept as common carriers any and all advertising or messages offered to them, at rates and charges fixed as reasonable by governmental regulatory bodies, they would be unable to exercise that selective discrimination in the presentation of programs which is essential in the fulfillment of the requirements of the Act of 1927 and the licenses granted thereunder.

[14] 44 STAT. 1164 (1927) § 1 *et seq.*

[15] 44 STAT. 1164 (1927) § 1 *et seq.*

It is paradoxical to impose upon broadcast stations the obligation to present to the public whatever material their advertisers see fit to include in their programs, and at the same time to compel them to conduct their operations in the public interest, convenience and necessity. Broadcast stations can not retain the discriminatory powers necessary for such required operations and simultaneously be charged with the duties of common carriers. It seems clear that the Act of 1927 did not have for its intent the classification of broadcast stations as common carriers but rather impressed upon that private industry certain characteristics of a public utility insofar as the listening public was concerned.

§ 215. Broadcast Stations Are Not Common Carriers at Common Law.

Apart from statutory considerations, the query is presented as to whether broadcast stations may be considered common carriers at common law. Certain industries which held themselves out to the public as being willing and able to perform their functions at uniform reasonable rates without discrimination as to customers have been deemed to be common carriers under the common law.[16] Broadcast stations have never held themselves out as common carriers nor have they intended to dedicate their operations as such. All commercial programs are broadcast under private contracts and for those patrons to whom station operators see fit to make their facilities available.[17]

[16] Dwight *v.* Brewster, 1 Pick. (18 Mass.) 50 (1822). ELLIOTT ON BAILMENTS (2d ed., 1929) § 22, 124.

In ELLIOTT, *op. cit. supra,* the author says:

". . . the question becomes important as to whether one carrying goods is a private or common carrier, and the answer is held to depend on whether the carrier has held himself out, expressly or impliedly, as willing to carry the particular class of goods between the points of carriage for all who may apply to him *indiscriminately* and without differentiation, for thus only does his employment become common and public in character . . .".

[17] Note that one may be a common carrier as to part of one's

In *Sta-Shine Products Co., Inc.* v. *WGBB of Freeport, New York,*[18] a complaint was made to the Interstate Commerce Commission by a prospective broadcast advertiser. In the complaint it was alleged that the rates, charges, rules, regulations and practices of the respondent broadcast station were unreasonable and unjustly discriminatory. The complaint was dismissed by the Interstate Commerce Commission.

In its decision in that proceeding, the Interstate Commerce Commission approved the proposition that the business of a broadcast station is essentially one of advertising, as is the business of a newspaper or magazine. In both businesses, advertising matter can not be obtained unless sufficient public interest is manifested in the medium.

In order to carry on its business profitably, the broadcast station can not serve any and all who desire to make use of its facilities. On the contrary, for the development and success of the business of the broadcast station, its programs must be selected with a design to meet and further public interest in the programs and in radio broadcasting generally.[19]

So long as broadcast stations in the United States retain their present commercial status, it is not possible to impress upon their operations the characteristics of common carriers at common law.

§ 216. The Nature and Area of Radio Broadcasting Preclude Common Carrier Status.

It has already been demonstrated that too many broadcasters refused to recognize the physical limitations of the broadcast band allotted to the United States, with resultant confusion, chaos and interference.[20] The limited

business and not as to its entirety. *Terminal Taxi Co.* v. *District of Columbia,* 241 U.S. 252, 36 Sup. Ct. 583, 60 L.Ed. 984 (1915); *Kansas City So. Ry. Co.* v. *United States,* 282 U.S. 760, 51 Sup. Ct. 304, 75 L.Ed. 684 (1930); ELLIOTT ON BAILMENTS (2d ed., 1929) § 123.

[18] 188 I.C.C. 271 (1932).

[19] *Ibid.*

[20] See §§ 27, 28 *supra.*

number of wave-lengths, the few cleared channels, the varying station wattages and other similar handicaps definitely distinguish radio broadcasting from other means of communication. Consequently, to throw open to the public generally the facilities of all broadcast stations at standard rates and charges fixed as reasonable by governmental bodies without discrimination as to clientele would be destructive of all order within and efficient administration of the broadcasting industry. Certainly, station operations could no longer be required to satisfy the standard of public interest, convenience or necessity, which the Act of 1934 imposes.

The Federal Radio Commission expressed very strongly the disadvantages of considering the operations of broadcast stations as those of a common carrier. The Commission said:[21]

> "The public would be deprived of the advantage of the self-imposed censorship exercised by the program directors of broadcasting stations who, for the sake of the popularity and standing of their stations, will select entertainment and educational features according to the needs and desires of their invisible audience. In the present state of the art there is no way of increasing the number of stations without great injury to the listening public, and yet thousands of stations might be necessary to accommodate all the individuals who insist on airing their views through the microphone. If there are any such persons, as there undoubtedly are, the results would be, first, to crowd most or all of the better programs off the air; and second, to create an almost insoluble problem —*i.e.*, how to choose from among an excess of applicants who shall be given time to address the public and who shall exercise the power to make such a choice.
>
> "To pursue the analogy of telephone and telegraph public utilities is, therefore, to emphasize the right of the sender of

[21] A statement filed with the Court of Appeals of the District of Columbia in the WENR, WLS and WCBD appeals; SEGAL AND SPEARMAN, STATE AND MUNICIPAL REGULATION OF RADIO COMMUNICATION (1929) 10.

messages to the detriment of the listening public. The Commission believes that such an analogy is a mistaken one when applied to broadcasting stations; the emphasis should be on the receiving of service and the standard of public interest, convenience, or necessity should be construed accordingly."

It has been observed that broadcast stations are not common carriers within the meaning of the Interstate Commerce Act [22] and the Radio Act of 1927.[23] Such legislation refers clearly to point-to-point radio communications which are classified as common carriers by the very nature of their communications operations and because they hold themselves out to be such.[24] The point-to-point communications business is manifestly distinguishable from broadcast station operations. While broadcast stations are not common carriers under the statute or at common law, the definite and peculiar characteristics of a qualified public utility which are possessed by broadcast stations are nevertheless not removed or affected. These conclusions are recognized and given effect in the Communications Act of 1934.[25]

§ 217. Broadcast Stations Are Not Common Carriers but Are Affected with the Public Interest Under Communications Act of 1934.

The Communications Act of 1934 consolidated Federal regulation over all branches of the communications business operated by means of electrical energy or other electrical conductors, including radio apparatus. Regulation of all common carriers in this field is given by this Act to the Federal Communications Commission. Section 153(h) specifically deals with the question of broadcast stations as common carriers by declaring:

[22] 36 STAT. 544 (1910), *modified by* Transportation Act, 41 STAT. 474 (1920), 49 U.S.C.A. § 1 (1927).

[23] 44 STAT. 1168 (1928) § 14.

[24] See § 211 *supra*.

[25] 48 STAT. 1064 (1934), 47 U.S.C.A. § 151 *et seq.* (1937).

"... a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

The provisions of Section 14 of the Act of 1927 are not re-enacted in the Communications Act of 1934.

The qualified public utility characteristics of radio broadcasting are retained and reinforced, so far as the listening public is concerned, by the maintenance and re-enactment of the standard of public interest, convenience and necessity for the grant of licenses to broadcast stations. Moreover, it is still the policy of the Federal Communications Commission to grant short term licenses which are still separated into three classifications. This later legislation reaffirms the intention of Congress to provide a system of regulation of the radio broadcasting industry, which maintains as its primary purpose the administration of the broadcasting facilities of the nation in such a manner that the maximum advantages thereof are received by the listening public.

§ 218. Implications of Radio Broadcasting as a Qualified Public Utility.

The doctrine of radio broadcasting as a public utility from the limited standpoint of the listener, carries with it many interesting queries. Has the listener the right of uninterrupted reception? If so, may that right be protected in the courts? Is the power to regulate this qualified public utility lodged exclusively within the jurisdiction of Congress? To what extent may the states and municipalities regulate broadcasting in its public utility aspects?[26]

Where it was urged as a defense in an action for defamation that the defendant broadcast station was a common carrier, the Supreme Court of Nebraska rightly held that such a defense was not available in that action.[27]

[26] See § 184 *et seq. supra.*

[27] Sorenson *v.* Wood, 123 Neb. 348, 243 N.W. 82 (1932).

The regulation of broadcast stations by the Federal Communications Commission in determining operations in the public interest, convenience or necessity provides adequate safeguards to the listening public. Although broadcast stations have public utility characteristics from the point of view of the listener, no extension of the present system of regulation seems necessary. No new private rights need be enforced by the courts to protect the public in a field already so completely regulated by an administrative agency.

§ 219. Public Interest: Past Conduct May Be Considered.

The burden of showing the public interest is upon the applicant for any instrument of authorization.[28] But may the Commission consider the past conduct of a station operator in determining the public interest in a modification or renewal of a broadcast license?

It is within the scope of the Federal Communications Commission's regulatory jurisdiction to consider the applicant's conduct in the previous use of his operating license.[29] There is probably no better way in which the Commission can determine whether the broadcast station will be operated in the public interest. The best guide is the licensee's programs in the past, as for instance:

(1) The ratio of commercial to sustaining programs
(2) The quality of both types of programs
(3) The proportion of purely amusement, cultural, educational and political features

Since radio broadcasting to be in the public interest should not be a mere adjunct of a particular business but should be of a public character, the past conduct of the licensee should be investigated.[30] However, such an administrative examination manifestly possesses inherent censorship implications.[31]

[28] See § 61 *supra*.

[29] KFKB Broadcasting Assn., Inc. *v.* Fed. Radio Comm., 47 F.(2d) 670 (App. D.C., 1931). See § 559 *infra*.

[30] *Ibid.*

[31] See § 564 *infra*.

Chapter XIV.

THE PROGRAM OPERATIONS OF BROADCAST STATIONS.

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§ 220. Sustaining Programs.

Broadcast stations are operated as private enterprises [1] and upon the statutory standard of public convenience, interest or necessity. Program operations must adhere to this standard in the form of sustaining or commercial broadcasts.[2] The latter represent the source of revenue by which the stations maintain themselves.[2a]

The use of a station's facilities, for which no direct

[1] See §§ 215, 216, 217 *supra*.

[2] See § 219 *supra*.

[2a] WGAR Broadcasting Co., 4 F.C.C.Rep. 540, 549 (1937).

or indirect payment is made, in connection with the broadcast by the station of programs unrelated to an advertiser or sponsor, may be classified as sustaining features of the station's operations. There are instances where the broadcast facilities of a station are offered in exchange for a quality program containing an insignificant minimum of sponsor identification. Although such programs are quasi-commercial in character, they may be deemed to occupy the same status as sustaining programs because no payment is made to the station for the broadcast thereof. Such programs are often broadcast for local advertisers although retaining the original sponsor identification. When such programs are so used commercially, they cease to have the characteristics of sustaining programs.

When payment is made to the station for the broadcast of commercial announcements in connection with programs which might otherwise be classified as sustaining programs, the question arises as to whether the character of the entire program has been changed thereby.

§ 221. When Program Is Deemed Commercial.

Obviously, when the broadcast station receives payment for the use of its facilities during the entire period of broadcast time required for a program, the latter is deemed a commercial operation of the station. Where, however, the income received by the station from an advertiser for its facilities does not correspond with the *bona fide* rates for the entire period of broadcast time required by the program, as in the case of the broadcast of commercial announcements in connection with an otherwise sustaining program, it may be stated that the program broadcast during the unsponsored time retains its sustaining status. It is essential that the portion of the program broadcast during the unsponsored time be completely unrelated to the commercial portion thereof.

Moreover, the requirement of Section 317 of the Communications Act of 1934[3] that all commercial broadcast programs be announced as such provides a basis for determining whether a program is a sustaining or commercial operation.[4]

§ 222. Content of Sustaining Programs.

The production by a broadcast station of sustaining programs impresses upon the station the same characteristics as program producers generally. Necessarily, provision must be made for clearances from authors of scripts and others possessing proprietary interests in the program content.[5]

The liability of the broadcast station for infringement of the copyrights upon works broadcast in sustaining programs is clear.[6] In addition to liability for public performance, the station may be liable for unauthorized mechanical reproduction of copyrighted works included in recordings manufactured by the station.[7] By agreement, the broadcast station may assume liability for the payment of mechanical reproduction royalties due copyright owners by manufacturers of recordings which are converted from sustaining to commercial broadcast uses.[8]

The relation between the station and the performing artists and other program personnel must be the subject of express agreement so that no unlawful appropriation of the talents of the respective program personnel may be committed by the station.[9]

[3] 48 STAT. 1089 (1934), 47 U.S.C.A. (1937).

[4] In *United States Broadcasting Corp. et al.*, 2 F.C.C.Rep. 208, 219 (1935), the Commission said:

"When the matters presented over the station were commercial, for the financial gain of the business of the organization, they should be presented as commercial and not cloaked under the guise of religious talks."

[5] See Chapter XXV. *infra.*

[6] See § 649 *infra.*

[7] See §§ 667–672, 674 *infra.*

[8] See § 655 *et seq. infra.*

[9] See §§ 536, 537 *infra.* See Waring *v.* WDAS Broadcasting Station, Inc., 327 Pa. 433, 194 Atl. 631 (1937).

Unquestionably, the station is primarily liable for its sustaining programs which are defamatory,[10] violate rights of privacy [11] or property,[12] or which constitute unfair competition.[12a]

§ 223. Same: Musical Compositions.

The owners of the non-dramatic performing rights of copyrighted musical compositions grant licenses to the broadcast stations rather than to the program sponsors and producers. Such performance licenses generally constitute a blanket sanction to make non-dramatic broadcast performances in programs transmitted by the licensed station of all copyrighted musical compositions included in the respective catalogues of the members of such performing rights societies. This license, however, makes provision for the rights of the copyright owners through their performing rights society, to restrict and limit the performance of certain musical compositions within their repertoires. This restricted list varies from time to time and constitutes the principal instrumentality by which the copyright proprietors may prolong the popularity and business life of their works.

Where a musical composition is included in the score of a motion picture or theatrical production, it is considered essential that the number of performances of the composition be limited during the period of exhibition of the picture or the run of the play. Special permission must be obtained by broadcast stations from the performing rights society before musical works appearing on the restricted list may be performed. A violation by the station of the restriction may not only constitute a breach of the license agreement but also subject the broadcast station, the program sponsor and the producer to liability for copyright infringement.[13]

[10] See Chapter XXIX. *infra.*

[11] See Chapter XXVIII. *infra.*

[12] See Chapter XXXII. *et seq. infra.*

[12a] See Chapter XXXV. *infra.*

[13] See Chapter XLIII. and §§ 609, 650 *infra.*

The giving of notice to the broadcast station of the restriction upon the performances of a designated work is essential. The granting of special permission to render broadcast performances of works appearing on the restricted list may be contingent upon the agreement of the broadcast station to announce, in substance, the fact that the composition is included within the score of a named motion picture or theatrical production. Although such credit announcement has advertising implications for the motion picture or theatrical production, it does not affect the character of the broadcast program in which it is included. The time required to make such credit announcements is an integral part of the program as transmitted by the station for the sponsor thereof. No diminution of broadcast time may be claimed by the producer who obtains the necessary sanction and voluntarily includes a restricted composition in his broadcast program. The acts of the broadcast station in obtaining clearances permitting the performance of compositions on the restricted list are done on behalf of the program sponsor or producer.

Where the production which is the source of the musical composition is mentioned as part of a sustaining program broadcast by the station, the latter cannot require the motion picture or theatrical producer to compensate it for the broadcast time during which the announcement was made. Such an announcement is made voluntarily by the broadcast station as the program producer in consideration for the grant of a special performing license of compositions included upon the restricted list. The same rules apply irrespective of whether or not the motion picture or theatrical production is presented concurrently with the broadcast performance.

Where a broadcast program originates in a studio to which a large audience is invited by the sponsor or broadcast station, the public performance of musical compositions in such a broadcast studio or theater, if unauthorized,

would be an infringement of the copyrights upon such works.[14] This is particularly true where musical compositions are performed in such studios or theaters as prologues and epilogues to the actual broadcast performances.

It is not uncommon for the broadcast artist, in an effort to secure the good will of the audience toward the sponsor of the broadcast program, to render supplemental performances before and after the actual transmission of the program. Such supplemental performances are not included within the license granted by performing rights societies to broadcast stations. Unless special sanction is obtained therefor, such supplemental performances are infringements. Moreover, it has been observed that additional artists are engaged by certain sponsors to assist in the entertainment of the studio audience even though such artists do not participate in the broadcast program as disseminated from the broadcast theater. *A fortiori,* the unauthorized public performances of copyrighted works by such artists are actionable infringements.

§ 224. Remote Broadcasts of Sustaining Programs.

Many sustaining programs which are broadcast by stations originate in places remote from the station's studio and transmission apparatus. Typical examples are after-dinner speeches, concerts and other orchestral performances taking place in hotels or theaters, and parades, sports contests and other public events. Although the broadcast of such sustaining programs may be desirable from the point of view of the station, the expense of announcers, engineers and transmission connections may be borne by persons in control of the originating source of such programs without changing their character from sustaining to commercial broadcasts. The same result obtains even if identifying or crediting announcements are made by the broadcast station.

[14] Such a performance would be for profit. See § 636 *infra.*

The failure of the hotel or other person in control of the source from which such programs originate to pay the station's charges for such remote sustaining programs, justifies the station in refusing its facilities therefor, despite the fact that similar programs have been transmitted and broadcast by the station from the establishment for several years.[15]

§ 225. Broadcast Performance of Phonograph Records.

The practice of reproducing as part of the broadcast program phonograph records designed for private non-commercial performance in the homes, involves an unlawful appropriation of the common law property rights of the performing artists whose talents have unauthorizedly been made the subject of broadcast performance.[16]

The copyright proprietor of works contained in such records may also assert that the broadcast performance thereof by the station, in deviation from the limited manufacturing license previously granted to the recording company, constitutes an infringement of the exclusive right of the copyright owner to reproduce his works mechanically for extended commercial use including broadcasting.[17]

§ 226. Broadcast Performance of Electrical Transcriptions.

There are many factors which make necessary the performance in broadcast programs of electrical transcriptions.[18] The latter are recordings which are reproduced for broadcast purposes only.

These transcriptions have three distinct sources. The broadcast station may subscribe to a library service by which electrical transcriptions are supplied for broadcast by the station in both sustaining and commercial programs as and when the station may determine. The broadcast

[15] See VARIETY, December 22, 1937, p. 39; *Id.*, February 11, 1938, p. 34.

[16] Waring *v.* WDAS Broadcasting Station, Inc., 327 Pa. 433, 194 Atl. 631 (1937). See §§ 536, 537 *infra*.

[17] See also §§ 256, 257 *infra*.

[18] See § 668 *infra*.

station may also receive from advertisers and others who enter into facilities contracts for spot broadcasts, electrical transcriptions containing the sponsored program or announcements for reproduction solely during the interval of broadcast time contracted for. The third type of electrical transcription is that produced and manufactured by or for the broadcast station for its own purposes.

The broadcast of electrical transcriptions involves numerous problems concerning the contents thereof. The relation between the station and the person supplying such recordings must also be determined.

§ 227. Contents of Electrical Transcriptions.

Like other broadcast programs, recordings may contain musical, dramatic, literary and other works as well as the performance, interpretations and renditions thereof. An electrical transcription embodies various property rights independent of the broadcast performance of such reproduction devices. The unauthorized manufacture of an electrical transcription is an infringement of the common law property or of the copyrights upon the works contained therein.[19] Even if such recordings are authorized by the owners of such works, it is necessary for the broadcast station to obtain a license to make broadcast performances thereof by means of the authorized electrical transcription.[20] Moreover, it is necessary for the broadcast station to observe and fulfill all restrictions imposed upon the manufacture of electrical transcriptions with respect to the time of use or type of program. The rights of the performing artists whose creative efforts are recorded in electrical transcriptions must also be preserved by broadcast stations who have notice thereof.

[19] Subject of course, to the applicability of the compulsory license provisions of § 1(e), 35 STAT. 1075 (1909), 17 U.S.C.A. (1937). See §§ 655, 662, 668 *infra*.

[20] Irving Berlin, Inc. *v.* Daigle, 31 F.(2d) 832 (C.C.A. 5th, 1929), *rev'g* 26 F.(2d) 149 (E.D. La., 1928). See § 669 *infra*.

§ 228. Relation of Broadcast Station to the Transcription Library Service.

Electrical transcriptions which are supplied to broadcast stations by the manufacturers or producers of such programs as a broadcast program service are rarely the subject of a sale in the legal sense. The broadcast station is given a limited and qualified right of possession of the transcription with a license to use it in its broadcast programs during the term of the agreement. The latter is usually made subject, expressly or by custom, to the rights and restrictions, if any, existing with respect to the contents of such recorded programs. Even if replacement is made of worn or broken transcriptions, the broadcast station acquires no greater rights therein than originally conferred.

Should the electrical transcription be sold to the broadcast station, the transfer would relate only to the physical property. The intellectual property in the contents of the recording is not defeasible by the sale of the transcription.[21] The transaction may include the transfer of such recording rights as may have been originally conferred upon the manufacturer thereof, subject, however, to the necessary limitations of the scope of the transcription itself and the intended broadcast performance thereof.[22] Re-recording from transcriptions so sold is not permissible unless express consent is obtained from all persons concerned.[23] The same rules apply in connection with the sale of the master matrix of such recordings.

[21] Stephens *v.* Cady, 14 How. (U.S.) 528, 14 L.Ed. 528 (1852); Stevens *v.* Gladding, 17 How. (U.S.) 447, 15 L.Ed. 155 (1854). *Cf.* Patterson *v.* J. S. Ogilvie Pub. Co., 119 Fed. 451 (C.C.S.D.N.Y., 1902)

[22] See Waring v. WDAS Broadcasting Station, Inc., 327 Pa. 433, 194 Atl. 631 (1937); Universal Film Mfg. Co. *v.* Copperman, 218 Fed. 577 (C.C.A. 2d, 1914).

[23] See Universal Film Mfg. Co. *v.* Copperman, 218 Fed. 577 (C.C.A. 2d, 1914); Fonotipia, Ltd. *v.* Bradley, 171 Fed. 951 (C.C.S.D.N.Y., 1909).

A warranty may be implied that electrical transcriptions supplied as a program service to broadcast stations are reasonably fit for the purposes for which they are sold.

§ 229. Relation of Broadcast Station to Electrical Transcriptions Supplied by Its Advertisers.

The delivery to a broadcast station of an electrical transcription for spot broadcast purposes or other program uses, establishes a different relation. The transcription is entrusted to the possession of the station for the sole and limited purpose of reproducing it on behalf of the advertiser during the designated broadcast period set forth in the facilities contract.

The relation between the program sponsor and the broadcast station with respect to the electrical transcription is that of bailor and bailee. The transcription must be returned to the advertiser upon demand therefor. If untimely demand is made, the broadcast station may disclaim possession and offer proof of unavailability.

The unauthorized broadcast of transcriptions placed in the custody of the station for limited purposes constitutes a breach of contract for which the station will be liable in damages to the advertiser. The broadcast performance of the transcription during a period of time not contracted for may constitute an unauthorized broadcast.[24] The owners of property rights in the contents of such transcriptions may sue for infringement thereof by reason of unauthorized broadcasts of the program by the station.[25]

Upon rescission of the facilities contract for breach thereof by the broadcast station, the advertiser may secure the return of all transcriptions not yet broadcast by the station. In any case, the advertiser is the owner of all transcriptions delivered to the station irrespective of whether or not they have been the subject of broadcast

[24] Fenning Film Service, Ltd. *v.* Wolverhampton, [1914] 3 K.B. 1171 (Eng.).

[25] *Ibid.* See Waring *v.* Dunlea, Eq. No. 183, E.D.N.C., 1938 (unreported).

performance. Upon the failure or refusal of the broadcast station to return the advertiser's transcriptions after demand therefor, the advertiser may hold the station liable for conversion [26] or may bring replevin to regain physical possession of the transcriptions.[27]

§ 230. Electrical Transcriptions Manufactured for or by the Broadcast Station.

A growing tendency has been noted for broadcast stations to operate recording devices for the production of electrical transcriptions for various uses. In instances where broadcast stations do not maintain and operate such devices, electrical transcriptions are produced by a recording service agency upon special order by the station.

It is ordinarily not advisable for a broadcast station to produce an electrically transcribed program which is limited to reproduction by one station. Where, however, the same program is required to be broadcast during different periods or by several associated stations, it becomes desirable to reduce the program to electrical transcription form. This may be accomplished either by instantaneous or by studio recording.[28] The instantaneous transcription may be an "off-the-air" or "line" recording. An "off-the-air" recording is the capture of the performance of a program as broadcast over the station's facilities and the manufacture of an electrical transcription thereof directly upon the reception of the broadcast of the program. A "line" recording is the transcription of a broadcast program which is recorded simultaneously with the transmission of the broadcast by being communicated to the recording device over telephone wires. A studio recording is a transcription of a performance rendered in the studio of the recording laboratory.

Irrespective of the type of recording used by the station in the manufacture of its own electrical transcriptions,

[26] Biograph Co. *v.* International Film Traders, 76 N.Y. 436, 134 N.Y.Supp. 1069 (1912).

[27] Lubin *v.* Swaab, 240 Pa. 182, 87 Atl. 597 (1913).

[28] See §§ 670, 671 *infra.*

plural liability may ensue. Apart from the infringement of the statutory copyright [29] and common law property [30] in the works included in the transcribed program, the station as the manufacturer is liable for infringement of the rights of the participating artists, speakers and announcers if their performances are unauthorizedly recorded.[31]

The owner or producer of a broadcast program which is transcribed and used for commercial programs without his consent may secure redress for the unlawful appropriation of his program. The fact that the announcements in the transcription advertise a different product from that advertised in the broadcast program does not diminish the injury to the owner of the appropriated program. Even if the original announcements are deleted and the program is rebroadcast for sustaining purposes, an unlawful appropriation takes place.[32]

Where the broadcast station operates its own recording device and manufactures electrical transcriptions, it must obtain appropriate licenses to manufacture as well as to perform the record from all persons possessing interests therein.

§ 231. Ownership of Master Matrices of Electrical Transcriptions.

In all instances where electrical transcriptions are manufactured for use by other persons, the relation between the manufacturer and the owner or producer of the program must be considered. This relation appears not to have been construed judicially. The function of the transcription manufacturer is analogous to that of a printing establishment. The recording company offers its facilities to manufacture copies or pressings of broadcast programs transcribed upon master matrices. The recording process in commercial operations involves the transcription of the

[29] See Chapter XLV. *infra.*

[30] See Chapter XXXIX. *infra.*

[31] *Semble* Waring *v.* WDAS Broadcasting Station, Inc., 327 Pa. 433, 194 Atl. 631 (1937).

[32] See § 537 *infra.*

program upon a master matrix from which the pressings are stamped or reproduced in quantities. The manufacturing agreement usually involves a stipulated price for the master matrix as well as an additional charge for each pressing reproduced therefrom.

At common law[33] and by statute,[34] the manufacturer of electrical transcriptions has an artisan's lien upon the master matrix made by him as well as upon all pressings therefrom of which he is lawfully in possession.[35] This lien can be asserted only for reasonable manufacturing charges which have not been paid by the program producer. This possessory lien is waived by the manufacturer's surrender of possession of the master matrix or of the records pressed therefrom[36] or by his claim of ownership thereof.[37]

Where the program producer supplies his own master matrix to a manufacturer for the purpose of stamping pressings therefrom, the manufacturer has no lien upon such master matrices because his labor has not enhanced the value thereof.[38]

§ 232. Commercial Broadcast Programs.

All non-sustaining programs broadcast by a station are commercial programs. In many instances, the station serves as the producer of commercial broadcasts transmitted on behalf of advertisers and other program sponsors.[39] The station may also act as the manager or booking agent of the program's personnel.[40] The services and facilities to be rendered by the broadcast station to

[33] Conrad *v.* Little, 115 N.Y. 387, 22 N.E. 346 (1889); Smith *v.* O'Brien, 46 Misc. 325, 94 N.Y. Supp. 673 (1905).

[34] *E.g.* N. Y. Cons. L. (CAHILL, 1930) c. 33, § 180, Laws, 1909, c. 38.

[35] Danzer *v.* Nathan, 145 App. Div. 448, 129 N.Y.Supp. 966 (1911).

[36] Smith *v.* O'Brien, 46 Misc. 325, 94 N.Y.Supp. 673 (1905).

[37] Maynard *v.* Anderson, 54 N.Y. 641 (1873).

[38] De Vinne *v.* Rienhard, 9 Daly 406 (N.Y., 1880); Jeanette Doll Co., Inc. *v.* Cusmano, 120 Misc. 782, 199 N.Y.Supp. 751 (1923).

[39] See § 350 *infra.*

[40] See Chapter XXVI. *infra.*

the advertiser or other sponsor of the commercial program broadcast by the station must be expressly included within the scope of the facilities contract.[41]

The advertiser is usually represented by an advertising agency in transaction with the broadcast station. In many instances, negotiations by the broadcast station for the use of its facilities in commercial broadcast programs are conducted by its sales representatives.

§ 233. Relation Between Broadcast Station and Facilities Salesmen.

The employment by a broadcast station of a salesman or other representative to solicit local or other accounts for the purpose of offering the facilities of the station to advertisers or other program sponsors, creates the typical master and servant relation. The scope of the territory or accounts which the salesman shall solicit must be defined in the employment agreement. It is immaterial whether a station's sales representative is engaged upon a salary or commission basis, or both. Unless the agreement of employment is for a specific period of time, the employment is at the will of either party. Where the contract is for a specific period of time, the rules which govern employment contracts generally, apply.[42]

Where the broadcast station unjustifiably discharges a sales representative before the term of employment expires, the station will be liable for the agreed compensation, less such amounts by way of mitigation of damages as the salesman may earn during the unexpired period of the contract.[43] In such cases, the discharged sales representative is under a duty to seek other employment to mitigate damages.[44]

[41] See Chapter XVI. *infra.*

[42] See §§ 361, 362, 363 *infra.*

[43] May *v.* N. Y. Motion Pict. Corp., 45 Cal. App. 396, 187 Pac. 785 (1920); Woolbridge *v.* Shea, 186 App. Div. 705, 175 N.Y.Supp. 130 (1919). See § 385 *infra.*

[44] Goudal *v.* C. B. De Mille Pict. Co., 118 Cal. App. 407, 5 P.(2d) 432 (1931); Evesson *v.* Ziegfeld, 22 Pa. Super. 79 (1902). See § 385 *infra.*

§ 234. Compensation to Salesmen After Termination of Employment.

Upon termination of the employment, a question arises as to the liability of the station for compensation to its former salesmen based upon the use of the station's facilities by advertisers or other program sponsors solicited and obtained by the former employee.

It is a common practice for advertisers to agree to make use of the station's facilities over an extended period of time in order to carry out a program campaign which may endure for consecutive periods of thirteen weeks or more. Since arrangements may have been entered into by the station as a result of the direct solicitation and negotiation by its sales representative who does not continue to be employed by the station during the entire term of the facilities contract so consummated, it is a matter of agreement between the station and its sales representative to determine whether the latter is entitled to compensation or commissions for the entire term of the facilities contract negotiated by him, irrespective of whether he continues to be employed by the station. Similarly, the station's liability for commissions on the exercise of options included in facilities contracts negotiated by a former salesman is a matter of agreement. Where the employment agreement is specifically limited to the payment of commissions or other compensation to the salesman for all programs broadcast by the station during the period of the employment, the salesman would not be entitled to compensation for facilities used after the termination of the employment.

Where the employment agreement provides that the station shall be obligated to pay commissions to the salesman on the proceeds of all facilities contracts negotiated by him, the salesman is entitled to commissions on such contracts irrespective of the continuance of his employment by the station during the entire term thereof.[45]

[45] See Williams *v.* Edw. A. Thompson, Inc., 124 Misc. 742, 209 N.Y.Supp. 309 (1925). Where the agreement provides that the sales-

Where the sales representative agrees to perform the employment contract for a fixed period, payment of his compensation thereunder is dependent upon his performance of the contract as an entirety.[46] The lawful termination of the employment before the expiration of the contract, by justifiable discharge or otherwise, renders the sales representative unable to recover commissions which would accrue after such termination upon sales made by him prior to the termination of the agreement. Where such employment agreement is rescinded, the sales representative may recover the reasonable value of his services rendered.[47]

Unless the employment agreement imposes upon the sales representative the obligation to repay the broadcast station for all unearned advances received by him, the sales representative is not liable therefor.[48]

Oral employment agreements which require performance during a period of more than one year are unenforceable unless a memorandum or other writing binding the parties sought to be charged is introduced.[49] Where a valid oral employment agreement is in effect, the sales representative may recover commissions due upon facilities contracts requiring performance for a period of more than one year.

man shall receive commission on all orders filled by the station, he may recover commissions on his orders for all facilities supplied after he has left the employment. *McCaskey* v. *Cumberland Glass Co.*, 193 App. Div. 856, 184 N.Y.Supp. 360 (1920).

[46] Coletti *v.* Knox Hat Co., Inc., 242 N.Y. 468, 169 N.E. 648 (1930).

[47] *Ibid.*

[48] *In re* Schem's Estate, 157 Misc. 612, 284 N.Y.Supp. 274 (1935); Weinstein-Goodkind, Inc. *v.* Donovan, 148 Misc. 847, 266 N.Y.Supp. 670 (1933).

[49] See Statutes of Fraud of respective states.

Chapter XV.

BROADCAST STATIONS AND THEIR STUDIOS.

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§ 235. Broadcast Studios.

There are various types of broadcast studios. Many broadcast stations provide few or no facilities for the accommodation of an audience to witness the actual broadcast of a program. Some studios are used solely as the originating place of production of broadcast programs transmitted by the station. These studios usually have no characteristics of theaters and are subject merely to regulation in the same manner as other private property.

However, numerous broadcast studios are so maintained as to accommodate audiences of varying sizes. The facilities necessary for studio audiences and the adaptability of the studio for such purposes impress upon the broadcast

station the same legal duties and rights with respect to such studios as operators of theaters generally. Established theaters, too, have been converted into broadcast studios because of the large audiences which they can accommodate. All studios which accommodate audiences rather than a few observers may be classified as broadcast theaters. The legal significance of broadcast theaters will be discussed herein.

§ 236. Same: Broadcast Theaters.

A lease of an established theater for use as a broadcast theater should contain express provisions permitting such use.[1] Since the regulatory powers of the Federal Communications Commission may prohibit its licensees from using an unapproved broadcast theater, a lease which specifically provides that such a license must be obtained, may be terminated if the Commission's sanction is not granted.[2]

Unless the lease expressly designates who shall perform the necessary construction and alteration work to convert a theater into a broadcast studio, such work must be done by the lessee[3] and no structural changes may be made

[1] See LEWIS, LAW OF LEASES OF REAL PROPERTY (2d ed., 1930) 775

[2] Fred Muller Brewing Co. *v.* Fleming, 143 S.W. 300 (Tex. Civ. App., 1911). *Cf.* Conservative Realty Co. *v.* St. Louis Brewery, 133 Mo. App. 261, 113 S.W. 229 (1908). Where the parties know that a license is necessary but do not insert it as a condition of the lease, the failure to obtain such a license does not terminate the lease. *Raner* v. *Goldberg,* 244 N.Y. 438, 155 N.E. 733 (1927).

[3] Where lessor agrees to construct "a . . . modern theater building", he is bound to erect the structure itself and include therein the fixtures usually necessary and adapted for use in such a building, as for example, heating, plumbing, lighting apparatus, seats and curtains. He need not install the piano, furniture, rugs or other similar movables. *Neher* v. *Viviani,* 15 N.M. 460, 110 Pac. 695 (1910).

If the manufacturer of seats which are screwed to the floor of the broadcast theater fails to make the required statutory statement for the filing of a conditional sales contract with the materialman, such a contract is void as against the theater owner. *Pike* v. *Naylon Securities Co.,* 140 Misc. 734, 251 N.Y.Supp. 659 (1931).

without the permission of the lessor.[4] All alterations must comply with appropriate municipal regulations.[5] The regulations of the Federal Communications Commission may become a part of the lease if specified therein. If such alterations do not comply with the agreed governmental regulations, the lease is void and unenforceable.[6]

§ 237. Local Regulation of Broadcast Theaters.

Theaters have a direct relation to the public welfare and morals. Local regulation of theaters is also necessary to maintain the health and safety of members of the public who congregate in such places of amusement. The state and municipal governments have jurisdiction to regulate theaters in the exercise of the reserved police powers.[7]

The power of the state legislature to regulate or prohibit amusements considered harmful to the community extends only to such measures as are reasonable in their application, and which tend in some degree to promote, protect or preserve the public health, safety, morals or comfort.[8] A statute cannot be sustained if it is not a

[4] Barbara Hope Theatres *v.* S. Kaplan & Co., 223 App. Div. 83, 277 N.Y.Supp. 22 (1928).

[5] Hart *v.* City Theatres Co., 71 Misc. 427, 128 N.Y.Supp. 678 (1911) *revd.* 156 App. Div. 673, 141 N.Y.Supp. 386 (1913), *revd.* 215 N.Y. 322, 109 N.E. 497 (1915).

[6] *Ibid.* See Keener *v.* Moslander, 54 So. (Ala.) 881 (1911).

[7] Greenberg *v.* Western Turf Assn., 140 Cal. 357, 73 Pac. 1050 (1903); People *v.* Flynn, 189 N.Y. 180, 82 N.E. 169 (1907); Wallack *v.* City of New York, 3 Hun 84 (N.Y., 1874), *aff'd.* 67 N.Y. 23 (1876); People *v.* Weller, 237 N.Y. 316, 143 N.E. 205 (1924), *aff'g judgment* 207 App. Div. 337, 202 N.Y.Supp. 149 (1923), *judgment aff'd.* 268 U.S. 319, 45 Sup. Ct. 556, 69 L.Ed. 978 (1925).

[8] People *v.* Steele, 231 Ill. 340, 83 N.E. 236 (1907); Commonwealth *v.* McGann, 213 Mass. 213, 100 N.E. 355 (1913); *In re* Opinion of the Justices, 247 Mass. 589, 143 N.E. 808 (1924); People *v.* King, 110 N.Y. 418, 18 N.E. 245 (1888); People *v.* Ewen, 141 N.Y. 129, 36 N.E. 4 (1894).

A statute which excludes certain persons from operating theaters solely on the basis of their other business interests has no reasonable relation to the exercise of police power and cannot be sustained on that ground. See *Paramount Pictures, Inc.* v. *Langer,* 23 F.Supp. 890, 895 (D.N.D., 1938).

valid exercise of police power but rather a vexatious and arbitrary interference with the rights of private property.[9]

The exercise by a municipality of the power delegated to it by the state legislature to regulate theaters and other places of amusement must be reasonable and not arbitrary or capricious.[10] Such regulating ordinances must not be repugnant to the enabling charter or statute under which the power so to legislate was delegated.[11] These ordinances must of course be consistent with the general laws and public policy of the state.

Since broadcast stations are operated under licenses from the Federal Communications Commission, to what extent may state or local regulation interfere with the operation of broadcast theaters?[12] So long as the regulation by the state or local governments is reasonable and extends only to matters within the scope of the police power, there is no conflict with the Federal authority. The broadcast station must comply with such state or municipal regulations of broadcast theaters as relate to the purely local aspects of studio operation.

§ 238. Same: Specific Instances: Construction and Location of Broadcast Theaters.

The state, or a municipality under delegated authority, may regulate broadcast theaters by prescribing methods

[9] *Ex parte* Quarg, 149 Cal. 79, 84 Pac. 766 (1906); People *v.* Steele, 231 Ill. 340, 83 N.E. 236 (1907); *In re* Opinion of the Justices, 247 Mass. 589, 143 N.E. 808 (1924).

[10] City of North Little Rock *v.* Rose, 136 Ark. 298, 206 S.W. 449 (1918); People *ex rel.* Klinger *v.* Rand, 91 Misc. 276, 154 N.Y.Supp. 293 (1915); Vincent *v.* City of Seattle, 115 Wash. 475, 197 Pac. 618 (1921); Mehlos *v.* Milwaukee, 156 Wis. 591, 146 N.W. 882 (1914).

[11] Waters *v.* Leech, 3 Ark. 110 (1840); City of North Little Rock *v.* Rose, 136 Ark. 298, 206 S.W. 449 (1918); City of Chicago *v.* Weber, 246 Ill. 304, 92 N.E. 859 (1910); Indianapolis *v.* Miller, 168 Ind. 285, 80 N.E. 626 (1907); Standard Athletic Club *v.* Cushing, 30 R.I. 208, 74 Atl. 719 (1909); Mehlos *v.* Milwaukee, 156 Wis. 591, 146 N.W. 882 (1914).

[12] See §§ 196, 197 *supra* and 238, 239, 240 *infra*.

of construction of buildings used for such purposes.[13] Regulations may also be validly made concerning the seating,[14] the quality and type of materials used[15] and other components of broadcast theaters.

Under the Communications Act of 1934, the Federal Communications Commission must authorize the construction and location of all broadcast stations within the United States.[16] However, this would not prevent the state or municipal government from prescribing the rules for physical construction of buildings erected or used for broadcast theaters. Nor would it preclude the operation of a municipal zoning law which prevents the erection of business buildings in a residential or restricted neighborhood, provided the ordinance did not prescribe the location of the station.[17]

§ 239. Same: Fire and Police Protection: Aisles, Passageways and Exits.

Local regulations may validly require broadcast stations to maintain broadcast theaters so that aisles, passageways and exits are kept open and free from obstruction.[18] Likewise, a duty may be imposed to keep fire escapes ready for use and available throughout each broadcast performance.[19] In the interest of public safety, a municipality

[13] City of Chicago *v.* Weber, 246 Ill. 304, 92 N.E. 859 (1910); McGee *v.* Kennedy, 114 S.W. 298 (Ky. C.A., 1908); Jewel Theatre Co. *v.* State Fire Marshal, 178 Mich. 399, 144 N.W. 835 (1915); Greenough *v.* Allen Theater, 33 R.I. 120, 80 Atl. 260 (1911).

[14] City of Chicago *v.* Weber, 246 Ill. 304, 92 N.E. 859 (1910); Jewel Theatre Co. *v.* State Fire Marshal, 178 Mich. 399, 144 N.W. 835 (1915).

[15] City of Chicago *v.* Weber, 246 Ill. 304, 92 N.E. 859 (1910); McGee *v.* Kennedy, 114 S.W. 298 (Ky. C.A., 1908); Jewel Theatre Co. *v.* State Fire Marshal, 178 Mich. 399, 144 N.W. 835 (1915); Greenough *v.* Allen Theater, 33 R.I. 120, 80 Atl. 260 (1911).

[16] 48 STAT. 1082 (1934), 47 U.S.C.A. §§ 303(d), (e), 319 (1937). See §§ 43 and 53 *supra*.

[17] People *v.* Busse, 248 Ill. 11, 93 N.E. 327 (1910).

[18] Sturgis *v.* Coleman, 38 Misc. 302, 77 N.Y.Supp. 886 (1902); Sturgis *v.* Hayman, 84 N.Y.Supp. 126 (1903).

[19] *Ibid.*

has the right to have firemen or policemen inspect the theaters and remain throughout the performance.[20] It cannot, however, compel the proprietor of the theater to pay the expense of the attendance of such officers.[21]

§ 240. Local Licensing of Broadcast Theaters.

Insofar as regulation of theaters generally is concerned, the legislature of a state or of a municipality to which such jurisdiction has been delegated, may require theaters and other places of public amusement to obtain a license as a condition precedent to operation as such.[22] A license tax may also be validly imposed upon such licensees of the local governments.[23] Jurisdiction so to regulate theaters may be based either upon the police power or the power to tax for purposes of revenue.[24]

The local governments may not use their regulatory power over theaters as an excuse for regulating broadcast theaters in such a manner as to interfere with radio broadcasting. Each local regulation must be scrutinized to determine its legal foundation. The local police powers cannot be infringed upon by the defense that a broadcast theater is also the subject of regulation by the Federal Communications Commission. The municipality within its delegated police powers, may validly require a broadcast theater to be licensed by it.[25] Where, however, the license

[20] City of Hartford *v.* Parsons, 87 Conn. 412, 87 Atl. 736 (1913); Norris *v.* McFadden, 159 Mich. 424, 124 N.W. 54 (1909).

[21] City of Chicago *v.* Weber, 246 Ill. 304, 92 N.E. 859 (1910). But see City of Hartford *v.* Parsons, 87 Conn. 412, 87 Atl. 736 (1913).

[22] People *v.* Weller, 207 App. Div. 337, 202 N.Y.Supp. 149 (1923), *judgment affd.* 237 N.Y. 316, 143 N.E. 205 (1924), *judgment affd. sub nom.* Weller *v.* People of State of N. Y., 268 U.S. 319, 45 Sup. Ct. 556, 69 L.Ed. 978 (1925).

[23] Curdts *v.* South Carolina Tax Comm., 131 So.Car. 362, 127 S.E. 438 (1925), *affd.* 273 U.S. 669, 47 Sup. Ct. 471, 71 L.Ed. 831 (1927).

[24] Wallack *v.* City of New York, 3 Hun 84 (N.Y., 1874), *judgment affd. sub nom. Id. v.* Society, *etc.*, 67 N.Y. 23 (1876).

[25] Drydock Savings Institute *v.* Valentine, N.Y.L.J., Aug. 19, 1937, p. 457, col. 1.

tax discriminates against broadcast theaters by levying a higher tax than that which is payable by theaters generally, such a license regulation is based upon the taxing power rather than the police power of the state. A local license tax upon broadcast theaters which is founded upon the taxing powers rather than the police power is invalid as an unconstitutional invasion of the exclusive jurisdiction of the Federal government to regulate radio broadcasting.[26] A license tax so attacked must be shown to be a regulation of interstate commerce.[27]

§ 241. Admissions and Tickets to Broadcast Theaters.

A ticket entitling the holder thereof to attend and witness the broadcast of a program from a studio is merely a revocable license.[28] It may be revoked at the will of the person issuing the ticket.[29] At common law, the operator of the broadcast station or the advertiser in control of the broadcast theater may exclude anyone.[30] The refusal to admit the holder of a ticket is a breach of contract only.[31] An action for refusal to admit the holder of a ticket sounds in contract rather than in tort.

Any reasonable condition may be attached to the distri-

[26] See §§ 201, 202, 203 *supra*.

[27] *Ibid.*

[28] Marrone *v.* Washington Jockey Club, 227 U.S. 633, 33 Sup. Ct. 401, 57 L.Ed. 679 (1913); *In re* Opinion of the Justices, 247 Mass. 589, 143 N.E. 808 (1924); People *v.* Flynn, 189 N.Y. 180, 82 N.E. 169 (1907); Collister *v.* Hayman, 183 N.Y. 250, 76 N.E. 20 (1905).

[29] *Ibid.*

[30] Meisner *v.* Detroit, *etc.* Co., 164 Mich. 545, 118 N.W. 14 (1908); Woolcott *v.* Shubert, 217 N.Y. 212, 111 N.E. 829 (1916); Aaron *v.* Ward, 203 N.Y. 351, 96 N.E. 736 (1911); Horney *v.* Nixon, 213 Pa. 20, 61 Atl. 1088 (1905).

[31] Marrone *v.* Washington Jockey Club, 227 U.S. 633, 33 Sup. Ct. 401, 57 L.Ed. 679 (1913); Shubert *v.* Nixon, 83 N.J.L. 101, 83 Atl. 369 (1912); People *v.* Flynn, 189 N.Y. 180, 82 N.E. 169 (1907); Taylor *v.* Cohn, 47 Or. 538, 84 Pac. 388 (1906); Horney *v.* Nixon, 213 Pa. 20, 61 Atl. 1088 (1905).

bution of the ticket, even if it is sold.[32] The terms of admission may be regulated in any reasonable way.

Although broadcast stations must be operated in the public interest, convenience or necessity, the operation of a broadcast theater is such a private business[33] that, in the absence of statutory prohibition, the broadcast station may refuse to admit anyone who presents a ticket to a broadcast theater.[34] This is consistent with the rule applicable to theaters generally.

Tickets to broadcast theaters are usually distributed gratuitously.[35] The admission license, in the case of a gratuitous ticket, being without consideration, may be revoked at any time. There is nothing to prevent a broadcast theater from charging an admission fee for the privilege of attending the actual broadcast of a program. The maintenance of a broadcast theater by a station entails considerable expense. Where the sponsor of a broadcast program compensates the station for the use of the broadcast theater, he may distribute tickets without charge if he so desires. In all other cases, the station should be permitted to charge a reasonable admission fee in order to defray the operating expenses of the broadcast theater.[36] It is conceivable, however, that under exceptional circumstances in which the sale of tickets to broadcast performances by the station is not merely incidental to its broad-

[32] Collister *v.* Hayman, 183 N.Y. 254, 76 N.E. 20 (1905); People *v.* Newman, 109 Misc. 622, 180 N.Y. Supp. 892 (1919).

[33] See Chapter XIII. *supra.*

[34] Meisner *v.* Detroit, *etc.* Co., 164 Mich. 545, 118 N.W. 14 (1908); Woolcott *v.* Shubert, 217 N.Y. 212, 111 N.E. 829 (1916); Aaron *v.* Ward, 203 N.Y. 351, 96 N.E. 736 (1911); People *v.* Flynn, 189 N.Y. 180, 82 N.E. 169 (1907); Horney *v.* Nixon, 213 Pa. 20, 61 Atl. 1088 (1905); Boswell *v.* Barnum, 135 Tenn. 35, 185 S.W. 692 (1916).

[35] Several broadcast stations have instituted the practice of charging admission fees to broadcast theaters in connection with certain programs. See VARIETY, March 24, 1937, October 6, 1937; BILLBOARD, March 27, 1937.

[36] See Purcell *v.* Daley, 19 Abb. N. Cas. 301 (N.Y., 1886).

cast operations, such acts might be considered evidence that the station is not being operated in the public interest, convenience or necessity.

If tickets are sold, the broadcast station may refuse to sell tickets to any person.[37] It may charge what it chooses for admission and limit the number admitted.[38] Moreover, the station may make it a condition of admission to its broadcast theater, by a legend to that effect on the ticket, that the ticket may not be sold or transferred and that admission will be refused a transferee.[39] Persons in control of a broadcast theater may make whatever contract they please in connection with their private enterprise. This contract is expressly incorporated in the ticket upon its issuance.

Where a ticket to a broadcast theater is distributed gratuitously, the sale thereof in violation of the injunction upon the ticket gives the buyer no right to admittance, since a condition of the contract of which the buyer had knowledge has been breached. The license contained in the ticket may be revoked either before or after admission. A ticket holder may be ejected from a broadcast theater for cause.[40]

§ 242. Same: Statutory Provisions.

The Federal government[41] and several states[42] have enacted statutes making it unlawful to discriminate against members of the public because of their race, creed or color. These statutes, being in derogation of the common law,

[37] Collister *v.* Hayman, 83 N.Y. 250, 76 N.E. 20 (1905).

[38] *Ibid.*

[39] *Ibid.*

[40] People *v.* Flynn, 189 N.Y. 180, 82 N.E. 169 (1907).

[41] 18 STAT. Part 3, 335 (1875). This statute was declared unconstitutional in its entirety in *Butts* v. *Merchants' Transportation Co.*, 230 U.S. 126, 33 Sup. Ct. 964, 57 L.Ed. 1422 (1913).

[42] Including Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee and Wisconsin.

have been strictly construed and unless the exclusion is based upon the specified statutory grounds, the individual excluded has no remedy against the proprietor. In *Woollcott* v. *Shubert*,[43] where the defendants sought to exclude a newspaper critic from their theaters, it was held that the defendants were not violating the New York Civil Rights Law[44] since the discrimination against him was not based on race, creed or color.

In those states which have not imposed statutory infirmities on the rights of theater owners, the refusal of the operator of a broadcast theater to admit a person because of race, color or creed might be considered evidence that the operation of the broadcast station is not in the public interest, convenience or necessity.

§ 243. Liability for Personal Injuries Resulting from Negligence of Owners and Operators of Broadcast Theaters.

All persons admitted to broadcast theaters by the operators thereof, are invitees. The owner or operator of a broadcast theater is under a duty to all invitees to guard against all risks which may reasonably be anticipated. The standard of due care must be exercised in the maintenance of the premises. Within the scope of this duty are included the care and maintenance of the stage, seats, balcony, handrails and similar equipment, as well as the fitness thereof for the accommodation of crowds and other reasonably anticipated occurrences.

Persons in control of broadcast theaters are not insurers and are liable for damages resulting from their negligence only. Since liability is founded upon a breach of duty, it is necessary that the latter be defined by a standard of conduct to which those in control of broadcast theaters must adhere. A proper and regular inspection of the premises is required by some courts.[45] It must be shown that actual

[43] 217 N.Y. 212, 111 N.E. 829 (1916).

[44] N. Y. Civil Rights Law, §§ 40, 41, Laws, 1913, c. 265.

[45] Firszt *v.* Capital Park, 98 Conn. 627, 120 Atl. 300 (1923); Sullivan *v.* Detroit Ferry Co., 255 Mich. 575, 238 N.W. 221 (1931);

or constructive notice of the defective condition was received by the broadcast theater operator. In some cases, the doctrine of *res ipsa loquitur* may be invoked in actions for personal injuries sustained in a broadcast theater.[46]

Liability will also be imposed upon persons in control of broadcast theaters for structural defects contained therein resulting in personal injury. Likewise, the operator of a broadcast theater will be liable for acts and omissions of his agents and employees committed within the scope of their employment.[47]

If the broadcast station is not operated by the holder of the license from the Federal Communications Commission but is in the control of a lessee with the approval of that administrative board, then the licensee is not liable for negligence in the maintenance of the station's broadcast theater. The lessee may be held liable for negligence occurring in the premises within his control.[48]

§ 244. Liability for Personal Injuries Resulting from Negligence of Other Persons in Control of Broadcast Theaters.

The advertiser or other sponsor of a broadcast program who obtains the broadcast facilities of a station under an agreement which includes the use of a broadcast theater, is not liable for negligence occurring therein if he has no control over the premises.

Similarly, the producer of a broadcast program so pre-

Lusk *v.* Peck, 132 App. Div. 426, 116 N.Y.Supp. 1051 (1909). *Cf.* Birmingham Amusement Co. *v.* Norris, 216 Ala. 138, 112 So. 633 (1927).

[46] See Kehoe *v.* Central Park Co., 52 F.(2d) 916 (C.C.A. 3d, 1931); Stair *v.* Kane, 156 Fed. 100 (C.C.A. 6th, 1907); Reinzi *v.* Tilyou, 252 N.Y. 97, 169 N.E. 101 (1929); Sasso *v.* Randforce Amusement Co., 243 App. Div. 552, 275 N.Y.Supp. 891 (1934); Bonita Theatre *v.* Bridges, 31 Ga. App. 807, 122 S.E. 255 (1924).

[47] Dickson *v.* Waldron, 135 Ind. 507, 34 N.E. 506 (1893); Fowler *v.* Holmes, 3 N.Y.Supp. 816 (1889); Kessler *v.* Deutsch, 44 Misc. 209, 88 N.Y.Supp. 846 (1904).

[48] Dyer *v.* Robinson, 110 Fed. 99 (S.D., Ohio, 1899); Mirsky *v.* Adler, 123 N.Y.Supp. 816 (1910).

sented is not liable for negligence in the broadcast theater over which he has no control. If the terms of the agreement between the advertiser and the broadcast station constituted a transfer of control of the broadcast theater to the advertiser or program producer during the period when the negligence occurred, then it becomes a question of fact to determine whether the injuries resulted from a breach of duty on the part of the transferee. If so, the liability of the program sponsor or producer for their respective negligence is clear. If the broadcast theater is found to be within the control of the broadcast station rather than the transferee, the former is liable for negligence to invitees.

Ushers, page boys and other employees in a broadcast theater are generally the agents of the broadcast station rather than of the advertiser of the program to which they may be assigned.

§ 245. Liability for Loss or Damage to Property in Broadcast Theaters.

The operator of a broadcast station is liable for property left with his agents and employees only when it is lost through negligence.[49] Since a gratuitous bailment is generally created in such instances, the broadcast station owner cannot be held to be an insurer.[50]

§ 246. Broadcast Programs on Sunday.

The operation of a broadcast station is controlled by the terms of the license granted by the Federal Communications Commission. It is necessary for licensees to operate the station during the entire time allotted by the license.[51] Sunday is universally considered a desirable

[49] Burnstein *v.* Alcazar Amusement Co., 199 Ill. App. 384 (1916).

[50] Pattison *v.* Hammerstein, 17 Misc. 375, 39 N.Y.Supp. 1039 (1896).

[51] Except as modified by Federal Communications Commission Rule 151.

broadcast day because the radio audience is at its maximum during the day of leisure.

A Sunday broadcast is legal. At common law, performances on Sunday are not objectionable.[52] However, there are many early statutes which prohibit work on Sunday, subject to certain exemptions. A statute prohibiting Sunday entertainment is constitutional[53] and is a valid exercise of police regulation.[54]

The state legislatures were the only bodies authorized to regulate Sunday theatrical performances prior to the advent of radio broadcasting. Obviously, a license by the Federal Communications Commission which by its terms compels a station to broadcast programs on Sunday, is directly contradictory to state statutes which prohibit labor on Sunday in a place of public amusement or entertainment. Since such a prohibition has heretofore been held to be a reasonable exercise of the police power, would it be deemed superseded by the entrance of the Federal government into the field of regulation of broadcasting operations?

The police power of the state will not be impaired unless its exercise would impose an unreasonable restraint upon interstate communication. A state may not validly enact a statute which has for its purpose the prohibition of the transmission of interstate broadcast programs on Sunday. A local regulation which merely prohibits the operation of a broadcast theater on Sunday may conceivably be considered a reasonable exercise of the police powers upon the theory that the interstate business of broadcasting is not directly affected thereby. If, however, such a regulation withdrawing theater facilities has for its effect an unwarranted interference with the operation of the broadcast station, it will not be enforced.

[52] Wirth *v.* Calhoun, 64 Neb. 316, 89 N.W. 785 (1902).

[53] State *v.* Barnes, 22 N.D. 18, 132 N.W. 215 (1911).

[54] Majestic *v.* Cedar Rapids, 153 Iowa 219, 133 N.W. 117 (1911).

Chapter XVI.

CONTRACTS BETWEEN STATIONS AND ADVERTISERS FOR USE OF BROADCASTING FACILITIES.

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§ 247. Nature of Facilities Contract.

The agreement by a broadcast station to permit an advertiser or other customer to broadcast programs or announcements or both during part of the broadcast time allocated to the station under its operating license, and by means of the station's technical facilities, is known as a facilities contract. In practical parlance, this agreement is known as a contract for the "sale of time". Legally, however, no sale takes place since there is no *res* which is the subject of sale. A facilities contract generally involves the rendition of services only. This analysis is confirmed by the fact that the station is vested with a statutory responsibility for and a duty to control all programs broadcast over its wave length.

In the *Brooklyn Cases,*[1] the Federal Communications Commission considered the requirement of Section 310(b) of the Communications Act of 1934[2] which re-enacted a large part of Section 12 of the Radio Act of 1927. Section 310(b) of the Act of 1934 provides:

> "The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full

[1] United States Broadcasting Corp., *et al.*, 2 F.C.C.Rep. 208 (1935).

[2] 48 STAT. 1086 (1934), 47 U.S. C.A. (1937).

> information, decide that said transfer is in the public interest, and shall give its consent in writing."

The Commission held that a station's delegation of operating time to an individual who is also given the complete charge and supervision over programs broadcast during such period, constituted the transfer of a right incident to the operating license and therefore violated Section 310(b).[3] The Commission held that the station had for all practical purposes unlawfully divested itself of responsibility for or authority over the programs so broadcast over the station's facilities. The Commission ruled as follows on this point:[4]

> "Complete supervision of and control over programs, including careful examination of their content, directly affects the rendition of a public service. The right to determine, select, supervise, and control programs is inherently incident to the privilege of holding a station license. In fact, the right becomes a responsibility of a licensee, as he must be held to strict accountability for the service rendered."

The facilities contract as such embraces the obligation of a station to make available for the advertiser a stipulated period of broadcast time for use in connection with the designated broadcast program and announcements. The agreement may also extend beyond technical facilities and include the obligation on the part of a station to provide such additional services as announcers, musicians, artists and other program talent.[5] The parties may also agree that the station shall supply scripts and other program material and supervise the broadcast production thereof. The station may also agree to present its broad-

[3] United States Broadcasting Corp., *et al.*, 2 F.C.C. Rep. 208 (1935); WCBD, Inc., 3 F.C.C. Rep. 467 (1936).

[4] United States Broadcasting Corp. *et al.*, 2 F.C.C.Rep. 208, 225 (1935).

[5] On the question of liability for social security taxes and injuries to such employees see Chapters XX. and XIX. *infra* respectively.

cast production of program scripts supplied by the advertiser.

As a consequence of a contract for the use of broadcasting facilities by an advertiser, the question arises as to whether various incidental facilities afforded by the station are included. Such incidental facilities are the furnishing of studios for rehearsal and broadcast of the programs concerned, publicity and general public relations affecting the programs, the receipt, sorting and care of mail and other communications relating to the programs received from the listening public, assistance in dealer exploitation and other sales promotion efforts, and similar extra-technical services not directly identified with the station's transmission of the broadcast programs.

Where the advertiser's program or any part thereof originates from a point outside of the station's studios, the contract should recite whether the stipulated rate includes such additional communication costs as telephone line charges.[6] This problem becomes important when the station is already defraying telephone wire costs between

[6] The telephone company, as a public utility, dependent, of course, upon the state statute creating it, is under the obligation to furnish wire service to the broadcast stations at reasonable non-discriminatory rates. Where the telephone company is not under such statutory duty, if it undertakes such service to one station, it must render it to all. *Re New York Tel. Co.*, P.U.R. 1932A, 262; *Postal Tel.-Cable Co.* v. *Associated Press*, 228 N.Y. 370, 127 N.E. 256 (1920). The Federal Communications Commission has held that it has exclusive jurisdiction to regulate the wire service which a telephone company furnishes to broadcast stations even though the wires do not cross state or national boundaries. *Jamestown Telephone Corp.*, 4 F.C.C.Rep. 326 (1937); *Capital City Telephone Co.*, 3 F.C.C. Rep. 189 (1936). In practice, the telephone companies furnish more than bare telephone lines in station-to-station communication. They maintain transformers, amplifiers and other equipment necessary for the transmission of sound of the required balanced tonal quality for broadcasting service. The Federal Communications Commission has regarded such telephone companies as connecting carriers and has regulated them as such. *Jamestown Telephone Corp., supra; Capital City Telephone Co., supra.*

its studios and the remote point of origin involved, as part of its sustaining or other program service.

§ 248. Same: Whether Written Agreement Necessary.

The facilities contract may be oral or in writing.[7] Where, however, its performance extends for more than a period of one year, the Statute of Frauds will render oral facilities contracts unenforceable.[8] The existence of a memorandum of the facilities contract which is signed by the party sought to be charged with performance thereof, will render the Statute of Frauds inapplicable.

§ 249. Same: Where the Facilities of the Station Are Made Available by Contract Between the Advertiser and the Network or System.

The facilities of a broadcast station may be made available to broadcast advertisers through indirect means as in the case of a wide coverage program arranged for broadcast over a group of stations by a single contracting agency. The typical instance is a national or regional broadcast service, rendered by a network or system to an advertiser, which includes the broadcast facilities of the constituent stations.[9]

The contract for the facilities of the several stations is usually embodied in the agreement between the advertiser and the system.[10] The latter, by its own agreement with the constituent stations, generally acquires the right or option to the use of each station's facilities for stipulated periods.[11] The system may be an independent contractor or the authorized agent of the constituent stations,

[7] The facilities contract may also be under seal. In such a case, consideration is not essential to the validity of the contract. WILLISTON ON CONTRACTS (Rev. Ed., 1936) § 217. However, many modern statutes have abolished or modified the common law distinction between sealed and unsealed written contracts. *Id.*, at § 218. See Uniform Written Obligations Act.

[8] WILLISTON, *op. cit. supra*, §§ 495 *et seq.*

[9] See Chapter XVII. *infra.*

[10] See § 296 *infra.*

[11] See § 288 *infra.*

depending upon the terms of their agreement and their respective acts. In many instances, individual committments are obtained from each station by the advertiser or the system with respect to each program.

The contract between the system and the advertiser may be so drawn as to constitute an agreement for the benefit of the stations as third parties. Likewise, the advertiser may be deemed to be the third party beneficiary of the agreement between the system and the constituent stations by the terms thereof.

Uniformity in supplying broadcast facilities for spot broadcasting exists for most stations under standard conditions adopted in 1933 by the National Association of Broadcasters in co-operation with the American Association of Advertising Agencies.[12]

§ 250. Facilities Contracts Affected by Operation of Law.

The facilities contract is rooted in the operation of the station in the public interest, convenience or necessity, in pursuance of the terms of the operating license and the Communications Act of 1934.[13] By operation of law, therefore, all regulations of the Federal Communications Commission and its construction and application of the Communications Act of 1934 which affect the use of the station's facilities must be deemed incorporated in facilities contracts between licensed broadcast stations and their customers.[14]

[12] BROADCASTING YEARBOOK (1937) 214.

[13] 48 STAT. 1064 (1934), 47 U.S.C.A. §§ 151 *et seq.* (1937). See §§ 16, 17, 18, 35 *supra.*

[14] This statement is based upon the common law rule that laws existent at the time of the making of the contract are a part of the agreement as though set forth therein. *Seaboard Air Line Ry. Co.* v. *Railroad Commission,* 155 Fed. 792 (C.C.N.D. Ala., 1907); *People* ex rel. *New York* v. *Nixon,* 229 N.Y. 356, 128 N.E. 245 (1920). A constitutional law enacted subsequently to the making of the contract and intended to apply thereto will also apply to the agreement. *Compania De Inv. I.* v. *Industrial Mortgage Bank,* 269 N.Y. 22, 198 N.E. 617 (1935), *cert. den.* 297 U.S. 705, 56 Sup. Ct. 443, 80 L.Ed. 993 (1935). Cer-

Although the broadcast station is directly responsible for the contents of all programs broadcast over its facilities,[15] broadcast periods are made available to its customers for the furtherance of the latter's private motives, subject however, to governmental regulation and the terms of the facilities contracts. A blank period of time may be made available to advertisers by a station so long as the latter does not divest itself of the duty to supervise and control the contents of all programs transmitted over its facilities during such period.[16]

Since broadcast stations are not common carriers,[17] there is no requirement of law that the station shall accept programs or advertisements from all who seek their transmission by the station.[18] A statutory exception exists,

tainly, therefore, if the distinction between the quasi-legislative and quasi-judicial acts of the Federal Communications Commission [see *American Tel. & Tel. Co.* v. *United States,* 14 F.Supp. 121 (S.D.N.Y., 1936), *affd.* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1936); §§ 100, 101 *supra*] is followed, the general orders, rules and regulations of the Commission made in pursuance of its quasi-legislative powers should be deemed part of the facilities contract. Some doubt must be expressed as to whether the same result would follow as to those portions of the Commission's quasi-judicial decisions, actions and orders which construe and apply the Communications Act of 1934. It may be argued that the contracting parties should not be held to have contracted with reference to administrative decisions, to which the doctrine of *stare decisis* does not seem to apply and in which the deciding body is subject to strict review on questions of law. Whatever doubt and difficulty the broadcast station may anticipate on this score in its desire to protect its instrument of authorization may be obviated by an express provision in the facilities contract.

Clause (a) of § 7 of the *Standard Conditions Governing Contracts and Orders for Spot Broadcasting,* BROADCASTING YEARBOOK (1937) 214, does not seem to be broad enough to include constructions and applications of the statute by the Federal Communications Commission. This clause is restricted to "laws and regulations now in force, or which may be enacted in the future".

[15] See § 559 *infra.*

[16] United States Broadcasting Corp., *et al.,* 2 F.C.C.Rep. 208 (1935).

[17] 48 STAT. 1065 (1934), 47 U.S.C.A. § 153(h) (1937).

[18] See Chapter XIII. *supra.*

however, in the form of Section 315 of the Act of 1934 [19] which compels a station to afford equal opportunities for the use of its facilities to all other candidates for a public office, once the station has permitted one legally qualified candidate so to do.[20]

Since a broadcast station does not possess the status of a common carrier, it need not maintain uniform rates. The provisions of the Communications Act of 1934 which affect all persons other than station licensees, control the use of a station's facilities by persons contracting therefor. Among such provisions are Section 316 which prohibits the broadcast of lottery or gift enterprise programs [21] and Section 326 [22] which interdicts the broadcast utterance of obscene, indecent or profane language.[23]

It is essential that the law which is invoked to affect a facilities contract be one which is validly enacted within the jurisdiction to regulate broadcasting.[24]

§ 251. Same: Length or Duration of Period of Broadcast Time Which Is the Subject of Facilities Contract.

Although, for the sake of convenience, broadcast time is referred to in facilities contracts in such unit designations as hours, half hours, quarter hours and minutes, it is well established that such designations do not extend to the full period of time specified.

By operation of law, broadcast stations are required to make identifying announcements of the station's call letters and location before or after each program broadcast by it. If quarter-hour programs are broadcast, the station's identifying announcements must be made as frequently as four times per hour. It is also the practice to make identifying announcements of the respective networks or sys-

[19] 48 STAT. 1088 (1934), 47 U.S.C.A. (1937).

[20] See § 566 *infra*.

[21] 48 STAT. 1088 (1934), 47 U.S.C.A. (1937). See Chapter XXXI. *infra*.

[22] 48 STAT. 1091 (1934), 47 U.S.C.A. (1937).

[23] See § 567 *infra*.

[24] See Chapter I. *supra*.

tems associated with the program.[25] These identifying announcements are referred to as station-breaks and chain-breaks respectively and necessarily result in a diminution in the period of broadcast time made available to the advertiser under the facilities contract.

Rule 175 promulgated by the Federal Communications Commission with respect to station-breaks has been amended so as not to cut into broadcast programs too arbitrarily. The identifying announcements need not be made exactly thirty minutes apart but must be made as near to that interval as is practicable. The identifications may be made within a five minute period of the half-hour and hour points.

Rule 175 reads as follows:

> "Each licensee of a broadcast station shall announce the call letters and location as frequently as practicable during the hours of operation, and in any event before or after each program being broadcast. In no event shall more than 30 minutes elapse between such announcements, and in so far as practicable these announcements shall be made on the hour and half hour. These requirements are waived when such announcements would interrupt a single consecutive speech, play, symphony concert or operatic production of longer duration than 30 minutes; and in such cases the announcement of the call letters and location shall be made as soon as possible."

Although the identifying announcements may be made within a few seconds, the remainder of the station-break period is generally reserved to the broadcast station. Consequently, it may make such use of the station-break period as it sees fit, once the required identification is made.

The station-break period represents a substantial source of revenue to broadcast stations by reason of its use for sponsored time signals, commercial slogans and such limited advertisements as brief spot announcements. By operation of law, therefore, the broadcast time specified

[25] See Chapter XVII. *infra.*

in program units in facilities contracts is diminished so as to reserve to the station the station-break period. The so-called quarter-hour program may be limited to fourteen minutes and forty seconds. Correspondingly, a diminution results for longer program periods in direct relation to the number of station-break inroads made therein.

§ 252. Same: Requirement That Sponsored Programs Be Announced as Such.

Section 317 of the Communications Act of 1934[26] provides as follows:

> "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."

In view of the foregoing requirement that a broadcast announcement be made to the public that a specific program is sponsored or paid for, it seems clear that the time necessary for such announcement is an integral part of the program and is included within the period of time made available to the advertiser under the facilities contract. Moreover, as a practical matter, the mandate of Section 317 is utilized as the basis for the commercial announcements in the broadcast program. It is not necessary that the precise language of the statute be used in making the required announcement. It is sufficient that the public be unequivocally informed of the sponsored or commercial nature of the program.

§ 253. Same: Requirement That Recordings Be Announced as Such.

The Federal Communications Commission by its Rule 176 renders it compulsory for announcement to be made

[26] 48 STAT. 1089 (1934), 47 U.S.C.A. (1937).

of the fact that recorded program material is broadcast by the stations.[27] Since this requirement has a direct

[27] Rule 176 provides:

"Each broadcast program consisting of a mechanical reproduction, or a series of mechanical reproductions, shall be announced in the manner and to the extent set out below:

1. A mechanical reproduction, or a series thereof, of longer duration than fifteen minutes, shall be identified by appropriate announcement at the beginning of the program, at each fifteen minute interval, and at the conclusion of the program; provided, however, that the identifying announcement at each fifteen minute interval is waived in case of a mechanical reproduction consisting of a single, continuous, uninterrupted speech, play, symphony concert or operatic production of longer duration than fifteen minutes;
2. A mechanical reproduction, or a series thereof, of a longer duration than five minutes and not in excess of fifteen minutes, shall be identified by an appropriate announcement at the beginning and end of the program;
3. A single mechanical reproduction of a duration not in excess of five minutes, shall be identified by appropriate announcement immediately preceding the use thereof;
4. In case a mechanical reproduction is used for background music, sound effects, station identification, program identification (theme music of short duration), or identification of the sponsorship of the program proper, no announcement of the mechanical reproduction is required.
5. The exact form of the identifying announcement is not prescribed but the language shall be clear and in terms commonly used and understood by the listening public. The use of the applicable identifying words such as 'a record', 'a recording', 'a recorded program', 'a mechanical reproduction', 'a transcription', 'an electrical transcription', will be considered sufficient to meet the requirements hereof. The identifying words shall accurately describe the type of mechanical reproduction used, i.e. where a transcription is used it shall be announced as a 'transcription' or an 'electrical transcription' and where a phonograph record is used it shall be announced as a 'record' or a 'recording'."

The Federal Communications Commission has held that this rule is necessary to protect the listening public from deception and to safeguard the artists and producers

relation to the essential characteristics of the program as disseminated by or on behalf of the advertiser, the broadcast time necessary for such announcements is included within the interval embraced by the facilities contract and is not in diminution thereof.

If the recorded program is a presentation of a symphony, opera, play or other continuous presentation of a connected series of records, it is not necessary to announce each record as such. The earlier rule was to the contrary.

§ 254. Station's Rules and Regulations as Affecting Facilities Contracts.

Broadcast stations may include in their facilities contracts a provision that the advertiser shall comply with the rules and regulations established by the station with respect to its program policy and to the use of its facilities. Such rules and regulations may be incorporated by express reference in the facilities contract. The station's rules and regulations must in every case be reasonable and in such form as not to render the agreement totally unenforceable against the station.[28]

The facilities contract may provide that modifications of the existing rules and regulations may likewise become conditions thereof.

§ 255. Parties to Facilities Contracts.

The broadcast station and the advertiser are the primary parties to a facilities contract. Intermediaries such as the station's sales representative and the advertising agency may enter into the transaction. Where such intermediaries execute the facilities contract, it is a matter of interpretation of the agreement to determine whether the intermediaries are bound thereto as parties principal.[29]

from unreasonable injury. *World Broadcasting System, Inc.*, 3 F.C.C.Rep. 40, 43 (1936).

[28] See § 400 *infra.*

[29] See Chapter XXI. *infra.*

§ 256. Rates, Discounts and Commissions.

Since a broadcast station is neither a common carrier nor regulated as to rates, it may discriminate in its charges between one advertiser and another.[30] It is not prohibited from making unreasonable discriminations with reference to charges.

A broadcast station may accept from the advertiser any agreed consideration for the use of its facilities. These rates generally involve payment of fixed sums established by rate cards and are dependent upon the amount of broadcast time involved. Rates contingent upon the success of the program may, however, be charged. A broadcast station may agree to accept compensation for its facilities in accordance with the increased sales derived by the advertiser within the local area of the station. Such compensation usually involves payment dependent upon the number of inquiries received by the advertiser as a result of the program broadcast by the station. The rates, therefore, may be upon a cost per inquiry basis.[30a]

A broadcast station may, if it so desires, accept stock or other securities issued by an advertiser for its facilities. A station may also accept merchandise or other articles in trade transactions with the advertiser in exchange for its facilities. Broadcast stations may also establish special rates for religious, charitable or educational uses of their facilities.

A station is permitted to offer discounts for cash as well as cumulative discounts for extended use of its facilities by advertisers. A station may allow reductions in its charges for longer periods of consecutive broadcast time used by

[30] While broadcast stations possess this right of rate discrimination and while rates vary from station to station and from chain to chain, the practice, especially of the networks and systems, is to publish rate cards which establish uniform rates for advertisers. See BROADCASTING YEARBOOK (1938) 165 *et seq.*

[30a] But see National Assn. of Broadcasters, *Code of Ethics* (1935) § 6, BROADCASTING YEARBOOK (1938) 355.

the advertiser. Likewise, the station may offer combination rates for its facilities in connection with a series of non-continual broadcast periods. A reduction in card rates is permissible for programs broadcast in series form.

The agreement may also be upon a blanket basis, whereby facilities are made available to the advertiser for a specified term with fixed rates for individual programs, program strips and spot announcements.

Although broadcast stations are required to pay copyright performing license fees based upon their gross income, and although their employment budget for musicians may depend upon a similar yardstick, it is almost invariably true that such operating costs are absorbed by the stations and are included within the fixed rates for facilities charged to the advertiser who has no direct obligation for such increased overheard expenses of the station. The facilities contract may, of course, provide otherwise.

It is the general practice for broadcast stations to absorb all commissions to sales representatives out of the proceeds of facilities contracts. Likewise, the gross sums payable to the station by the advertiser under facilities contracts are usually subject to a commission of fifteen per cent. thereof as compensation for the advertising agency. The facilities contract may, however, provide for the payment of net sums to the broadcast station and for the assumption by the advertiser of payment of compensation to his advertising agency.

§ 257. Same: Time of Payment Thereof.

The agreement for the station's facilities should include a provision specifying the time, place and method of payment of the agreed rates. It appears to be a common practice for monthly or weekly remittances to be made to the broadcast station for its facilities used by the advertiser during the preceding period. The facilities contract may, however, provide for payment in advance, or earlier or later settlement of the advertiser's obligation to the

station for broadcast time and other services rendered under the facilities contract.

The time of payment of sales commissions to the station's sales representatives is also a matter of contract. Payment of the advertising agency commission may be deducted from the amount due the station, which is usually remitted by the advertising agency on behalf of its client. Where the advertiser remits payment to the station directly, the advertising agency's commission should be remitted by the station promptly after receipt of payment.

§ 258. Specific Provisions of Facilities Contract: Character of Programs.

By reason of the legal requirement that a broadcast station shall not divest itself of control or supervision over the broadcast programs transmitted by it so as to comply with the operation standard of public interest, convenience or necessity,[31] facilities contracts invariably provide that the advertiser shall submit all commercial announcements and other program material to the station for its approval. It is necessary that such an opportunity to examine and edit the program content be provided within a reasonable time before the program is broadcast.

The station's decision as to the character of the content of the broadcast program submitted by the advertiser is necessarily final and cannot be overruled by the advertiser. Reasonable opportunity should be afforded the advertiser by the station to enable the former to adhere to the suggestions or criticisms of the station and to enable the advertiser to fulfill performance of the facilities contract.

Where the station is justified in refusing to broadcast commercial announcements as submitted by the advertiser, the facilities contract is not breached by the station in broadcasting merely an announcement that the program is sponsored by the advertiser.

[31] See United States Broadcasting Corp., *et al.*, 2 F.C.C.Rep. 208 (1935).

§ 259. Same: Right of Station to Delete Offensive Programs.

A broadcast station may take such reasonable action as it may deem necessary to retain its operating license. It may, therefore, delete, interrupt, suspend or otherwise terminate broadcast programs containing offensive matter for which the station may be chargeable. This right is usually made the subject of a provision of the facilities contract.

Although the latter agreement may include an indemnity obligation on the part of the advertiser to the station with respect to the consequences of the offensive character of the program, the station may take such reasonable precautions as it may deem necessary to avoid the creation of the principal obligation. In exercising its rights and in taking such summary action, the broadcast station assumes the risk that a judicial review of its conduct may regard the deletion or interruption of a program as having been unreasonable, arbitrary or unnecessary. It is a question of fact in each case to determine whether under all of the circumstances, the broadcast station acted reasonably or was justified in deleting or interrupting the advertiser's program.[32]

Among the instances giving rise to such summary action by the broadcast station are the broadcast of programs containing obscene, indecent and profane language,[33] information concerning lotteries and gift enterprises,[34] defamatory matter,[35] violations of rights of privacy,[36] infringements of copyrights and other literary property [37] and similar grounds for liability of the station. Should an honest mistake of law be made, the broadcast station will nevertheless be liable for an unreasonable, summary program deletion.

[32] *E.g.* VARIETY, April 27, 1938, p. 34, col. 2.

[33] See § 567 *infra.*

[34] See Chapter XXXI. *infra.*

[35] See Chapter XXIX. *infra.*

[36] See Chapter XXVIII. *infra.*

[37] See Chapter XLII. *infra.*

§ 260. Same: Liability for Copyright Infringement.

In connection with the broadcast of copyrighted works, both the station and the advertiser are deemed to be infringers of copyright if the broadcast thereof is unauthorized. In view, however, of the fact that the broadcast station generally holds a copyright performance license, the copyright owner does not seek additional royalty from the advertiser.

Where the broadcast program includes copyrighted works not within the repertoire of the performing rights society from which the station holds a performing license, the facilities contract may provide for an indemnity obligation on the part of the advertiser to the station with respect to infringement liability therefor.

§ 261. Same: Transcription Costs.

The agreement for the use of a broadcast station's facilities does not usually impose an obligation upon the station to provide electrical transcriptions or other recordings for use as program material during the period contracted for. Unless provision therefor is made in the facilities contract, the advertiser is liable for the cost thereof.

The facilities contract may, however, obligate the station to supply electrical transcriptions of the advertiser's commercial announcements for use in connection with spot broadcasts thereof. Reference should be made to the party upon whom the burden of paying such recording costs falls.

The station's known policy, rules or regulations may prevent the advertiser from using phonograph records or electrical transcriptions, or both, during the agreed period of broadcast time. This restriction is a matter of interpretation of the facilities contract.

§ 262. Same: Studio Facilities.

The facilities contract should also make provisions concerning the use of the broadcast station's studios, the size

thereof and the services of the broadcast station which are to be furnished therewith. Provision may also be made for the imposition of liability upon the advertiser or other person acquiring control of studio facilities under the facilities contract for damages resulting to persons and property in the studio or broadcast theater.[38] The cost of printing and distribution of tickets for the admission of the public to the broadcasts in the studio should also be stipulated. Moreover, the agreement should contain some reference to the control of the studio by the advertiser insofar as the question of liability for negligence is concerned.

§ 263. Same: Exclusive Provisions.

Unless the facilities contract contains a provision to the effect that the broadcast station shall not make similar facilities available to the advertiser's competitors, the agreement cannot be deemed to be an exclusive one. Provisions may occasionally be made under which the station is obligated not to broadcast programs of competitors within specified intervals of the broadcast time made available to the advertiser.

§ 264. Same: Failure of Advertiser to Broadcast.

Where the advertiser fails to perform the facilities contract and neglects or refuses to broadcast an approved program during the agreed period, the broadcast station may substitute another program of comparable quality and hold the advertiser liable for the costs of the broadcast performance thereof. Similar liability is imposed upon an advertiser whose failure to broadcast is a result of his inability to offer a program conforming to the station's standards.

[38] See § 244 *supra*.

§ 265. Same: Failure of Station to Make Agreed Facilities Available.

Except in instances of excusable non-performance by the broadcast station of its facilities contract,[39] the advertiser may hold the station liable for breach thereof. The agreement may, however, provide for a limitation of liability on the part of the station to supply a similar period of broadcast time or to make a refund to the advertiser of the agreed rates for the broadcast period not provided.

Where a broadcast station, through a mechanical error, interrupts or otherwise inadvertently discontinues a program during the broadcast thereof, the station is liable for breach of the facilities contract. The damages of the speaker or advertiser may be mitigated, however, by the diligence of the station in offering to provide a suitable period of broadcast time for the presentation of the interrupted program or address. These damages may be further mitigated by the announcement on the part of the station of an apology or other excuse for the interruption of the original program.

Since broadcast stations are obliged to operate in the public convenience, interest or necessity, it is essential that facilities contracts be subject, expressly or by necessary implication, to such modifications and amendments as may be necessary to insure compliance by the station with the statutory standard of operation. Compliance therewith requires that the station should be possessed of the limited privilege to withdraw a commercial program for which it has agreed to make its facilities available. This privilege may be exercised only for the purpose of broadcasting a program of supervening public interest and importance. This privilege should be exercised solely to accomplish a genuine public service. It is essential, therefore, that the supervening program be non-commercial and that the substitution not be a colorable avoidance of the station's responsibility under the facilities contract.

[39] See § 279 *infra*.

Unless the agreement provides otherwise, the station is obliged to refund payment for such superseded broadcast time. The advertiser should have the election to broadcast his program at such comparable periods as the station may have available for that purpose. It is also reasonable to impose upon the station the duty to give adequate notice to the advertiser of the unavailability of the agreed broadcast facilities so as to avoid unnecessary expense for talent, publicity and other costs incident to the advertiser's scheduled program.

Where the supervening program requires less time than that contracted for, the advertiser should also have the right to elect to broadcast his program in condensed form or any part thereof during the unused portion of the period or to forego his scheduled broadcast and accept a refund or select another period of available broadcast time.

§ 266. Same: Indemnity Obligations.

Facilities contracts generally provide that the advertiser shall indemnify the broadcast station for liability or defense expenses or both resulting from programs broadcast by the advertiser during the agreed period.

The indemnity obligations may extend to the payment of wire charges, program talent, script writers, production and recording costs and other special services, for which the station may have obligated itself on behalf of the advertiser under the facilities contract.

Where the program content involves the infringement of copyrighted works not included within the performance license held by the station, the agreement may provide for indemnity of the station by the advertiser for liability therefor. Similar provision may be made for acts of unfair competition resulting from the broadcast of the program by the advertiser. Provision for indemnity of the station by the advertiser by reason of defamatory statements broadcast by the latter is also often provided.

§ 267. Same: Agreement to Make Sustaining Program Available to Advertiser.

Where the station agrees to make available to the advertiser all necessary talent and program material or otherwise to assist the advertiser in preparing an agreed program for broadcast under the facilities contract, provision should be made for the compensation to be paid to the station therefor.

Broadcast stations frequently make available to advertisers, programs which are being broadcast as sustaining features, for their sponsored use during the agreed broadcast period.

It is a question of interpretation of the facilities agreement to determine whether the station agrees to act as the producer of the program or merely to cooperate in making the program available for production by the advertiser. Where the station is the producer of the program, it may be held liable to the advertiser if the program as broadcast for the latter, is not of the same general type, quality and standard as the sustaining program. This may be analogized to a sale by sample. In general, the cast must be substantially similar to that of the sustaining program so that no diminution of the program's value takes place.

§ 268. Same: Other Services by the Station.

The agreement may provide for the rendering by the station of additional services in connection with the articles advertised in programs broadcast by it. Such services may include the direct sale by the station to listeners desiring to purchase the advertised product.

The station may agree to stimulate the sale of the advertised product among dealers in its territory or to render a complete merchandising service in addition to the broadcast advertising. In such cases, the station is the sales agent of the advertiser and is accountable as such for all funds received and all goods on hand.

The station may agree to act on behalf of the advertiser in receiving, sorting and handling correspondence and telephone communications from the radio audience relating to the advertiser's program.

§ 269. Failure of Advertiser to Fulfill Obligations to Radio Audience.

Where an advertiser, in making use of the station's broadcast facilities, communicates to the public an offer of a prize in connection with a broadcast contest program [40] and subsequently fails to award the prize, the broadcast station thereby suffers an injury to its reputation and good-will.

The facilities contract should provide an obligation on the part of the advertiser to fulfill such promises to the listening public. Where the agreement so provides, the station may defray the cost of the prize and recover the expense thereof from the advertiser under the facilities contract.

§ 270. Specific Obligations of Broadcast Station to Advertiser.

A broadcast station owes a duty to its customers not to provide the latter's competitors with mailing lists or other specific information of business value which may be obtained by or for the advertiser from a program's audience.

The property of the advertiser which comes into the possession of the broadcast station by reason of the use of the latter's facilities by the advertiser should be offered or delivered to the owner thereof. Failure of the station to do so may give rise to a fiduciary obligation with respect to such property. A similar result may obtain by implication of a negative covenant on the part of the station not to lessen or interfere with the rights of the advertiser under the facilities contract.

[40] On the question of lottery programs see Chapter XXXI. *infra.*

§ 271. Obligation of Station to Provide Advertiser with Proof of Broadcast.

In instances where the station agrees to make its facilities available for spot broadcast programs involving a non-simultaneous broadcast of a single program over a group of stations, the question arises as to whether there is any obligation on the part of the station to furnish the advertiser with proof that the agreed programs or announcements were broadcast during the periods specified in the facilities contract. Unless the latter agreement expressly imposes such an obligation on the broadcast station, no duty to furnish proof of broadcast can be made a condition of payment of the agreed rates.

The rules of the Federal Communications Commission pursuant to sub-section (j) of Section 303 of the Act of 1934[41] provide that each station must keep a log of its programs, the amount of power used and the communications or signals sent. As to programs, the log must show the kind of programs transmitted, such as drama, music, speech *et cetera*. The time of beginning and ending of each program must be entered in the log. Upon an application for renewal of a broadcast station license, the log is annexed to the papers as a necessary inclusion therein.[42]

If the log indicates that the agreed program of the advertiser was broadcast and also gives the advertiser's or the program's name, it should constitute *prima facie* proof that the agreed broadcast was transmitted. This presumption of broadcast may be rebutted by the advertiser's proof to the contrary.

Article 1 [d] of the Standard Conditions Governing Contracts for Spot Broadcasting,[43] which were adopted in 1933, provides that invoices rendered by the station for broadcasts made by it must be in accordance with the station log. The invoice, moreover, must state whether it is in accordance with the log.

[41] 48 STAT. 1082 (1934), 47 U.S.C.A. (1937).

[42] DILL, RADIO LAW (1938) 117.

[43] BROADCASTING YEARBOOK (1937) 214.

The agreement may provide that the station shall supply an affidavit by an official of the station that the transcription or script service was broadcast as specified in the facilities contract.

§ 272. Miscellaneous Provisions of Facilities Contracts.

Facilities contracts usually specify the extent of the services which the broadcast station agrees to render. The personnel to be supplied by the station in the performance of a basic facilities contract ordinarily consists of the members of its regular technical engineering staff and the staff announcer who may be assigned to the program by the station.[44] Any additions or changes in personnel which the station agrees to supply to the advertiser should be the subject of express inclusion in the facilities contract.

The agreement may provide a warranty by the advertiser to the station that the commercial announcements and other advertising content of the program are truthful and accurate.

Provision may also be made concerning the number and duration of commercial announcements to be made by the advertiser. Veto power may be reserved by the station so as to limit excessive commercial announcements during the program.

The facilities contract should provide that the program be designed and used for broadcast to the general public rather than as a vehicle for the transmission of a personal message to a specific person or persons.

The station may also be given the right under the facilities contract to make off-the-air recordings of the broadcast program for its file purposes or other express uses.

The facilities contract may refer to specified periods of time or merely provide that the station shall guarantee its facilities for use by the advertiser during a definite inter-

[44] *Cf.* BROADCASTING YEARBOOK (1938) 171, col. 2; *Id.* (1937), 206, col. 2.

val within a larger period of time. The agreement may provide that the station shall also furnish facilities for telephone responses from the audience to the advertiser's program. The performance of such agreements, however, is of course subject to the requirements and restrictions of the telephone companies concerned.

§ 273. Assignability of Facilities Contract.

Contracts relating to the furnishing of technical facilities of specific broadcast stations may be assigned to successor operators of such stations whose assumption of control over the station's facilities has been approved by the Federal Communications Commission.[45] In the event that the facilities contract provides for the rendition of services of a personal nature, even though the station be operated by a corporation, such conditions of the contract are not assignable without the consent of the advertiser.[46]

The advertiser may not assign the rights and benefits obtained by him under the facilities contract without the consent of the station.[47] This restriction is a necessary incident of the station's obligation to operate in the public interest. The station must at all times remain free to reject the broadcast advertising of such products and sponsors which may contravene its program standards or its established rules and regulations. The assignment of the facilities contract by the advertiser may operate with injustice to the station, which might be committed by other facilities contracts not to broadcast programs of the type proposed by the advertiser's assignee.

§ 274. Termination of Facilities Contract.

The fixed period of the term or duration of the facilities contract will control despite the fact that such term may

[45] See §§ 52, 59 *supra*.

[46] Paige *v.* Faure, 229 N.Y. 114, 127 N.E. 898 (1920). See WILLISTON ON CONTRACTS (Rev. Ed., 1936) § 412.

[47] *Cf.* Hudson River Water Power Co. *v.* Glens Falls Portland Cement Co., 107 App. Div. 548, 95 N.Y.Supp. 421 (1905).

extend beyond the maturity of the station's operating license in effect at the time of the execution of the contract.[48] The facilities agreement may contain a provision, however, that the term thereof shall be subject to the coextensive existence of a valid operating license issued to the station during said period.

In any case, the facilities contract may be terminated by mutual rescission[49] or by the occurrence of specific contingencies expressed in the agreement. A clause may also be included which exempts the station from liability in the event that it is unable to render its facilities to the advertiser because mechanical difficulties over which the station has no control, result in an interruption or suspension of the broadcast.

The parties may also provide for the right of the advertiser to cancel the contract by reason of labor difficulties in the advertiser's business. The advertiser is liable for failure to broadcast during the agreed period unless an exempting provision is contained in the facilities contract. Conversely, the station may insert a clause exempting it from liability by reason of its failure to provide facilities to the advertiser as a result of a strike, operation of law or causes which may be beyond the control of the station.[50]

The facilities contract may also contain a cancellation clause to protect the advertiser against changing rates. It may, of course, also contain provisions for non-cancellation.

The renewal of the facilities contract should be the subject of express agreement. Where provision therefor is made, the required conditions of notice of election to renew or terminate must be complied with and fulfilled.

[48] Broadcast stations have been licensed on a six-months basis for many years. See § 38 *supra.*

[49] Rodgers *v.* Rodgers, 235 N.Y. 408, 139 N.E. 557 (1923).

[50] The existence of a strike does not excuse delay in the performance of a contract. *Happel* v. *Marasco,* 37 Misc. 314, 75 N.Y. Supp. 461 (1902). Where the contract provides against strikes but not lockouts, the delay due to a lockout is not excused. *Mahoney* v. *Smith,* 132 App. Div. 291, 116 N.Y.Supp. 1091 (1909).

§ 275. Same: Death, Incompetency or Bankruptcy of Parties.

The death of either of the parties to a facilities contract does not effect a termination of rights and liabilities thereunder. This rule does not apply in instances where the scope of the contract extends beyond the furnishing of broadcast facilities and includes the rendering of personal services by one of the parties. In such a case, the task of the court is to separate the personal service aspects of the contract from the non-personal service features thereof. If it is possible so to separate the rights and liabilities under the contract, the personal service obligations will terminate.[51] Where such separation is impossible, the court must determine whether on the whole the facilities agreement is one for personal services. The effect of the death of a party to such a facilities contract must necessarily depend upon the court's construction of the agreement.

The termination of facilities contracts by the judicial declaration of the incompetency of one of the parties depends upon the same rules and construction as are applied by the courts in instances where the death of a party takes place.

The adjudication of bankruptcy of either of the parties to a facilities contract likewise involves questions of construction of the agreement to determine whether it has any personal service characteristics. If the question is answered in the affirmative, a party is relieved from performing such separable provisions of the agreement. If answered in the negative, the trustee of the bankrupt party may elect to continue performance of the facilities contract if authorized by the court to carry on the business of the bankrupt.[52]

Special provision may be made in facilities contracts which will govern the rights and liabilities of the parties in the event of their death, incompetency or bankruptcy.

[51] WILLISTON ON CONTRACTS (1920) § 1940.

[52] Hanna *v.* Florence Iron Co., 222 N.Y. 290, 118 N.E. 629 (1918); WILLISTON ON CONTRACTS (Rev. Ed., 1936) § 880.

§ 276. Liability for Breach of Facilities Contract.

A party to the facilities agreement is liable to the other for all of the damages resulting from his breach thereof. Unless the advertising agency or the station's sales representative is bound as a party principal by the terms of the facilities contract, such agent is not liable for breach thereof. The advertising agency or the station's sales representative may be liable, however, for breach of warranty of authority. In order to hold the principal liable, it is essential that sufficient evidence be introduced to establish that the agent was possessed of authority to enter into the contract and that the sub-agent employed by the advertising agency had similar authority.[53]

Facilities contracts may provide that the waiver by the station of a breach or partial breach by the advertiser shall not be deemed a continuing waiver so as to preclude the station from enforcing its rights for similar or other breaches subsequently committed by the advertiser.

The advertiser is not liable for the payment of facilities rates where his program was not broadcast by reason of the station's defective equipment.[54] The attempt by the station to recover for facilities not provided by it is ground for refusal by the Federal Communications Commission to renew the operating license.[55]

[53] People's Broadcasting Corp. *v.* Geo. Batten Co., 231 App. Div. 446, 247 N.Y.Supp. 569 (1931), *aff'd.* 258 N.Y. 551, 180 N.E. 328 (1931).

[54] Where the advertiser has paid in advance the full amount payable under the facilities contract, upon breach of the agreement he may recover the full amount paid even if the station has done work and furnished materials, provided that the contract is an entire contract. Under an entire contract, the station is obligated to perform fully before it can retain the compensation paid. *Barney's Clothes* v. *WBO Broadcasting Corp.*, 165 Misc. 532, 1 N.Y.Supp.(2d) 42 (1937). It is a breach of a facilities contract, which is entire, to shorten the agreed program and to make fewer announcements than the number promised, if such acts are deliberate. *Barney's Clothes* v. *WBO Broadcasting Corp.*, supra.

[55] United States Broadcasting Corp., *et al.*, 2 F.C.C.Rep. 208 (1935).

§ 277. Damages for Breach of Facilities Contract.

The successful plaintiff who is entitled to recover for breach of the facilities contract may in any case receive nominal damages.[56] Such an award establishes the right of the plaintiff and the wrong of the defendant. An award of more than nominal damages cannot be made unless the plaintiff makes proof of his damage.[57]

The defendant is liable for all the direct and proximate damages which result from his breach of the facilities contract.[58] He will also be compelled to compensate for those damages sustained by the plaintiff which were consequences of the breach, but not in the natural course of events from the breach itself, provided that these consequences were reasonably within the contemplation of the parties to the contract when they made it.[59]

The requirement that damages must be certain means that there must be certainty of proof that the injury has resulted.[60] The general rule is usually expressed as follows:[61]

[56] Mortimer *v.* Otto, 206 N.Y. 89, 99 N.E. 189 (1912). See § 383 *infra.*

[57] Brown *v.* Reynolds, 212 App. Div. 802, 207 N.Y.Supp. 815 (1925); Warth *v.* Greif, 121 App. Div. 434, 106 N.Y.Supp. 163 (1907), *judgment affd.* 193 N.Y. 661, 87 N.E. 1129 (1908). See § 384 *infra.*

[58] Losei Realty Corp. *v.* City of N. Y., 254 N.Y. 41, 171 N.E. 899 (1930). See § 383 *infra.*

[59] Chapman *v.* Fargo, 223 N.Y. 32, 119 N.E. 76 (1918); Stevens *v.* Amsinck, 149 App. Div. 220, 133 N.Y.Supp. 815 (1912).

[60] See § 383 *infra.*

[61] Wakeman *v.* Wheeler & Wilson Mfg. Co., 101 N.Y. 205, 209, 4 N.E. 264 (1886); Mortimer *v.* Bristol, 190 App. Div. 452, 180 N.Y.Supp. 55 (1920).

Whether or not prospective profits may be recovered in an action for breach of a facilities contract was considered in *Pearce* v. *Puget Sound Broadcasting Co.,* 170 Wash. 472, 16 P.(2d) 843 (1932). The contract in that case was between an advertising agency and a broadcast station for a period of one year. The advertising agency produced a program in which it advertised certain products, for which it was paid by the sellers of these products. It endeavored to secure additional sponsors for this program. The station breached the contract by notifying the agency that it had to change the broadcast time period specified in

"... when it is certain that damages have been caused by a breach of contract, and the only uncertainty is as to their amount, there can rarely be good reason for refusing, on account of such uncertainty, any damages whatever for the breach."

Where the broadcast station sues for breach of the facilities contract, the measure of its damages is the difference between the full contract price and the cost of performance on its part,[62] less any amount which the advertiser may show in mitigation.[63] Where the action is brought prior to the expiration of the term of the contract, damages are awarded as though it had already expired.[64] The recovery will be for the entire duration of the contract term.[65]

It is submitted that it is preferable to insert in a facilities contract a provision liquidating the damages to be paid in satisfaction of the loss or injury which follows from a breach of the agreement.[66] However, in such a

the agreement because that hour had been given to another sponsor. The breach occurred after the plaintiff agency had broadcast its programs for three months. The defendant station contended that prospective profits could not be recovered on the ground that they were too conjectural and speculative since the evidence did not show that plaintiff's business was established as a going concern and "not a mere experiment". It was therefore urged that there was no reasonable basis of ascertainment of damage. The trial court ruled otherwise and its holding was affirmed on appeal. Plaintiff's program was held to be a going business and the profits therefrom were found to be reasonably anticipatory.

[62] Poinsettia Dairy Products, Inc. *v.* Wessel Co., 123 Fla. 120, 166 So. 306 (1936).

[63] Hamilton *v.* McPherson, 28 N.Y. 72 (1863); Losei Realty Corp. *v.* City of N. Y., 255 N.Y. 41, 171 N.E. 899 (1930).

[64] Everson *v.* Powers, 89 N.Y. 527 (1882).

[65] Carvill *v.* Mirror Films, 178 App. Div. 644, 165 N.Y.Supp. 676 (1917); Cottone *v.* Murray's, 138 App. Div. 874, 123 N.Y.Supp. 420 (1910).

[66] Liquidated damages constitute the compensation which the parties have agreed must be paid in satisfaction of the loss or injury flowing from the breach of contract. *Wirth & Hamid Fair Booking, Inc.* v. *Wirth,* 265 N.Y. 214, 218, 192 N.E. 297 (1934).

case, the parties must avoid imposing a penalty for non-performance. The courts consistently refuse to enforce a liquidated damages clause which is found to be a penalty.[67] Where the contract is held to impose a penalty, the suing party is left to his usual measure of damages at law.

In order for a liquidated damages clause to be held valid, the actual damage contemplated as a result of the breach must be uncertain and difficult of ascertainment.[68] Where the actual damage from a breach of a facilities contract is readily ascertainable, the court will not enforce the liquidated damages provision.[69]

Moreover, the validity of a liquidated damages clause is dependent upon whether, at the time of the creation of the facilities contract, the amount provided in the clause

[67] Poinsettia Dairy Products, Inc. *v.* Wessel Co., 123 Fla. 120, 166 So. 306 (1936) (action against advertiser on facilities contract.).

[68] *Ibid;* Mosler Safe Co. *v.* Maiden Lane Safe Dep. Co., 199 N.Y. 479, 93 N.E. 81 (1910); Ressig *v.* Waldorf Astoria Hotel Co., 185 App. Div. 4, 172 N.Y. Supp. 616 (1918). The old rule was that the intent of the parties controlled the determination of whether the contract provided for a penalty. *Conried Metropolitan Opera Co.* v. *Brin,* 66 Misc. 282, 123 N.Y.Supp. 6 (1913). This rule was modified to require, for the validity of a liquidated damages provision, that the parties must at the time of execution of the agreement, intend to make a genuine pre-estimate of the probable damages. *Wise* v. *United States,* 249 U.S. 361, 39 Sup. Ct. 303, 63 L.Ed. 647 (1919). The modified rule held that the use of the words "liquidated damages" or "penalty" is evidence on the issue of whether a genuine pre-estimate was intended. *Tuten* v. *Morgan,* 160 Ga. 90, 127 S.E. 143 (1925); *Pastor* v. *Solomon,* 26 Misc. 125, 55 N.Y.Supp. 956 (1899).

In MCCORMICK ON DAMAGES (1936) § 150, the modern rule is expressed as follows:

". . . if, in light of the facts known to the parties at the time of the making of the contract, the sum agreed on was a reasonable forecast of the probable damages, the liquidated damages clause is enforceable, regardless of what later turns out to be the amount of the actual damages."

[69] Poinsettia Dairy Products, Inc. *v.* Wessel Co., 123 Fla. 120, 166 So. 306 (1936).

was a reasonable forecast of the probable damages.[70] If the amount agreed upon in liquidation of the damages is obviously excessive with reference to the facilities contract, it will be held to be a penalty and unenforceable.[71] An example of an amount considered excessive with reference to a facilities contract is a provision that upon breach of the contract by the advertiser, the broadcast station shall be entitled to the full contract price still unpaid. Such an amount is deemed excessive because the station is not entitled to the full contract price unless it completes performance of all conditions and obligations on its part to be performed.[72] Where the breach is one that prevents its complete performance of its part of the contract, the station is entitled only to the difference between the contract price and the cost of performance.[73] Clearly, in such a case, a provision for payment of the full contract price by way of liquidated damages is excessive, is a penalty and is unenforceable.

§ 278. Specific Performance of Facilities Contracts.

In a proper case, an advertiser may present sufficient grounds for equitable relief and may obtain specific performance of a facilities contract under which a designated period of the station's broadcast time is to be made available for his use.

In view of the fact that there is no constant radio audience for a given program or for a specific period of broadcast time, and by reason of the indefiniteness of the damages which may be sustained by the advertiser to whom the agreed station facilities were not made avail-

[70] MCCORMICK ON DAMAGES (1936) § 150. A reasonable forecast is the specification of a sum reasonably proportioned to the actual loss. See *Kothe* v. *R. C. Taylor Trust,* 280 U.S. 224, 226, 50 Sup. Ct. 142, 74 L.Ed. 382 (1930); *Wirth & Hamid Fair Booking, Inc.* v. *Wirth,* 265 N.Y. 214, 192 N.E. 297 (1934); MCCORMICK ON DAMAGES (1936) § 149.

[71] Poinsettia Dairy Products, Inc. *v.* Wessel Co., 123 Fla. 120, 166 So. 306 (1936).

[72] *Ibid.*

[73] *Ibid.*

able,[74] a court would probably be inclined to order the broadcast station specifically to perform its obligations under the facilities contract. This rule must, of course, be founded upon the existence of grounds for equitable jurisdiction generally.

In decreeing specific performance, the court will not compel the broadcast station to broadcast programs which endanger its operation in the public interest. Equity will act only in cases where the station has clearly committed an unjustifiable breach of the facilities contract.

If the station's obligation is indefinite [75] or cancelable [76] or if provision is made for liquidated damages,[77] specific performance of the facilities contract will not be ordered.[78]

There is little likelihood that a court would order specific performance against the advertiser in an action brought by the broadcast station upon a facilities con-

[74] But see Pearce *v.* Puget Sound Broadcasting Co., 170 Wash. 472, 16 P.(2d) 843 (1932) (action at law for breach of facilities contract.).

[75] McCall Co. *v.* Wright, 198 N.Y. 143, 91 N.E. 516 (1910); Port Jervis, M. & N. Y. R. Co. *v.* New York, L. E. & W. R. Co., 56 Hun 647, 10 N.Y.Supp. 852 (1890), *aff'd.* 132 N.Y. 439, 30 N.E. 855 (1892) (railroad terminal facilities contract.).

[76] Churchill Evangelistic Assn. *v.* Columbia Broadcasting System, 142 Misc. 210, 255 N.Y.Supp. 134 (1931), *aff'd.* 236 App. Div. 624, 260 N.Y.Supp. 451 (1932).

[77] Subject to the exception that if the parties intended the performance of the covenant sought to be specifically enforced and not merely the payment of damages in case of a breach thereof, the covenant will be specifically enforced, although they inserted a liquidated damages clause. *Wirth & Hamid Fair Booking, Inc.* v. *Wirth,* 265 N.Y. 214, 192 N.E. 297 (1934). See § 392 *infra.*

[78] Where the facilities contract requires the performance of a succession of acts, completion of which is not possible in one transaction, and which will be continuous and necessitate protracted supervision by the court, it has been held that specific performance thereof should not be ordered. *Daily States Pub. Co.* v. *Uhalt,* 169 La. 893, 126 So. 228 (1930). The same court denied an injunction to restrain breach of a contract to furnish broadcast facilities on the ground that generally the writ of injunction cannot be used to effectuate specific performance indirectly. *Ibid. Cf.* §§ 388 *et seq. infra.*

tract for breach thereof by the advertiser. The broadcast station may more readily prove its damages against the advertiser and recover the agreed rates for its facilities.

Where, however, the advertiser is obligated to broadcast a specific program under the facilities contract, which program enjoys the popularity and favor of a substantial audience in the station's area, the advertiser's breach of the obligation to broadcast such program may result in irreparable damages to the station. The withdrawal of or failure to broadcast such a desirable program may serve to injure the station's reputation and diminish its good will among the listeners in its coverage area. Damages to the station in an action at law would be difficult to prove and in most cases speculative and unascertainable. Specific performance may be decreed against the advertiser to relieve the station in instances of such a breach of the facilities contract.

§ 279. Excuse for Non-Performance of Facilities Contract by Broadcast Station.

A broadcast station is not liable for its failure to provide agreed facilities to an advertiser because of acts of God, public emergencies or other causes beyond its control. It has been held that strikes which hinder the operation of a broadcast station do not serve as excuses for its non-performance of facilities contracts.[79]

Express provisions relieving the station of liability for failure to supply its agreed facilities will be enforced. Typical instances are superseding broadcast programs as part of national or regional network transmission and sustaining broadcasts of substantial public interest. Where the station's inability to broadcast is a consequence of unforeseen mechanical difficulties and defective apparatus, or either of such causes, the station's omissions will not constitute a breach of the facilities agreement unless otherwise provided.

[79] Happel *v.* Marasco, 37 Misc. 314, 75 N.Y.Supp. 461 (1902).

Interruptions, suspension of or other partial interferences with the agreed facilities, resulting from the unforeseen inability of the station to broadcast the advertiser's program in its entirety, may also be excusable. Proportionate refund or credit should be given by the station to the advertiser for substantial deprivation of facilities. In this connection, Article 3[b] of the Standard Conditions Governing Contracts for Spot Broadcasting[80] provides that *pro rata* credit be given by the station to interruptions of one minute or more occurring during the entertainment portion of the advertiser's broadcast program. It is also provided that interruptions during the commercial announcement portion of the broadcast shall be given a credit by the station in the same proportion to the total facilities charge which the omitted commercial announcement interval bears to the total commercial announcement in the program. Provision is also made for the obligation of the station to defray a *pro rata* share of the advertiser's live talent costs where fifty per cent or more of the total program time is unavailable by reason of such interruptions. Acts of God, public emergency or legal restrictions are specific exceptions to the latter obligation of the station.

Where during the term of a station's facilities contract with an advertiser, the Federal Communications Commission finds that the broadcast of that advertiser's program is not in the public interest, the station should be relieved of its obligation to perform the unexpired portion of the agreement. In this instance, the station will be excused from non-performance by operation of law. In any event, the station's obligation to provide broadcast time is modified by the required station-break period of interruption of the advertiser's program.[81]

A clause in a facilities contract which relieves the station from liability for non-performance "for any reason whatsoever" is so broad as to emasculate the station's obliga-

[80] BROADCASTING YEARBOOK (1937) 214.

[81] See § 251 *supra*.

tion to provide its facilities. Such a contract lacks mutuality and should be unenforceable.

§ 280. Revocation or Refusal to Renew Station License.

Broadcast stations frequently enter into facilities contracts for periods extending beyond the term of the operating license effective at the time such agreements are executed. It is important to consider the significance of administrative action deleting the station which is obligated to perform outstanding facilities contracts. In instances where the station is prohibited from further operation by an order of the Federal Communications Commission which is legislative in character,[82] the station is excused from its failure to perform its extant facilities contracts by operation of law.[83]

The refusal to renew or revocation of a station's license which is based upon the station's own conduct has a debatable effect upon the performance of the station's facilities contracts in existence at that time.[84] It may be argued that by implication of law the station is obligated to comply with all legal requirements so as to continue to hold a valid operating license throughout the duration of its facilities contracts.[85] Undoubtedly, however, the station's non-performance of such executory agreements is a direct consequence of the operation of law.

It would appear to be the better view to excuse the station's non-performance of its facilities contracts in such instances. The New York Court of Appeals took a similar position in excusing an insurance company from performing an executory contract with a general agent on the ground of operation of law manifested by an injunction secured at the instance of the State Attorney General, which restrained the insurance company from operating its

[82] See American T. & T. Co. *v.* United States, 14 F.Supp. 121 (S.D.N.Y., 1936), *affd.* 299 U.S. 232, 57 Sup. Ct. 170, 81 L.Ed. 142 (1936). See §§ 100, 101 *supra.*

[83] See WILLISTON ON CONTRACTS (1920) § 1938.

[84] *Cf.* WILLISTON, *op. cit., supra,* § 1939.

[85] *Ibid.*

business because of its failure to maintain the reserve fund required by law.[86] The United States Supreme Court refused to accept the reasoning of the New York Court of Appeals by holding that an adjudication in bankruptcy does not excuse performance of executory contracts by an involuntary bankrupt.[87] The Supreme Court held that it must be deemed an implied provision of every agreement that the promisor will not allow himself, through insolvency or acts of bankruptcy, to be disabled from performance.[88]

Although the United States Supreme Court reached a desirable result upon the facts of the case, it is submitted that its reasoning should not apply to the instant problem. The parties to a facilities contract, who enter into an agreement for a term extending beyond the maturity of the station's operating license, with knowledge of the inevitable administrative review of the station's activities, should be deemed to have intended that non-performance of their agreement which results from the disenfranchisement of the station should be excusable.[89]

§ 281. Excuse for Non-Performance by Advertiser.

The advertiser is also relieved of liability for failure to perform a facilities contract by reason of acts of God, public emergencies or other causes beyond his control. Where the advertiser's failure to produce the program results from the non-appearance of the program personnel or any other cause within the control of the advertiser, the latter will not be relieved from liability for breach of the facilities contract.

Specific provisions in the agreement will be enforced to excuse the non-performance thereof by the advertiser upon the giving of the stipulated notice of inability to perform

[86] People *v.* Globe Mut. Life Ins. Co., 91 N.Y. 174 (1883).

[87] Central Trust Co. *v.* Chicago Auditorium Assn., 240 U.S. 581, 36 Sup. Ct. 412, 60 L.Ed. 811 (1915).

[88] *Ibid.*

[89] But see WILLISTON ON CONTRACTS (1920) § 1939.

and payment of the station's costs of program substitutions.

Where the advertiser is enjoined from broadcasting a program which infringes another's copyright or other literary property, the advertiser's inability to broadcast will not be excused. Similarly, where the broadcast of the program is enjoined as unfair competition. A cease and desist order issued against the advertiser by the Federal Trade Commission, which affects a broadcast program, will likewise continue in effect the advertiser's obligation to perform the facilities contract.

Chapter XVII.

SIMULTANEOUS TRANSMISSION OF BROADCAST PROGRAMS BY NETWORKS AND SYSTEMS.

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§ 282. Generally.

The facilities of broadcast stations may be combined for the simultaneous broadcast of a single program. A combination of facilities of various broadcast stations for such a purpose may be achieved by different intercommunication methods. The distances between the broadcast stations concerned have a direct bearing upon the method of intercommunication used.

The most common means of connecting broadcast stations to achieve a combination of their respective facili-

ties is telephonic communication. This is accomplished by broadcast transmission lines between the localities in which the broadcast stations are situated. The cost of transmission of a broadcast program from one station to another over these lines is fixed by rates established by the telephone companies involved.[1] The program communication is effected by means of a switchboard. These broadcast transmission lines are well suited for the faithful transmission of sound and are almost never affected by static and atmospheric conditions which militate against the transmission of tonal qualities.

Broadcast programs may also be transmitted from station to station by the use of telegraph or electric wires. From the point of view of transmission quality, the telegraph system with supplemental equipment renders a service in some areas comparable to telephonic communication. The carriage of sound waves over electric wires which is only feasible in limited areas, appears to be least satisfactory.

The direct communication of programs from one broadcast station to another may also be accomplished within the broadcasting medium. Broadcast stations which have receiving apparatus within the range of the directional antenna of the transmitting apparatus from which a pro-

[1] Section 202(b) of the Communications Act of 1934 provides that the Commission shall have power, in regulating charges and services of telephone carriers, to regulate their charges and services in connection with the use of wires in chain broadcasting or incidental to radio communication of any kind. In *Capital City Telephone Co.*, 3 F.C.C.Rep. 189 (1936) and in *Jamestown Telephone Corp.*, 4 F. C.C.Rep. 326 (1937), the Commission held that it has exclusive jurisdiction to regulate the wire service which a telephone company furnishes to broadcast stations even though the wires do not cross state or national boundaries.

In practice, the telephone companies furnish more than bare telephone lines in station-to-station or studio-to-transmitter communication. The companies maintain transformers, amplifiers and other equipment necessary for the transmission of sound of the required balanced tonal quality for broadcasting service.

gram originates, have the capacity to rebroadcast a program so received. In addition to the rebroadcast of programs transmitted over wave-lengths allocated to commercial stations, programs may be received over short-wave frequencies and rebroadcast by receiving stations over their regular wave-lengths.

Apart from existing legal restrictions and infirmities upon the rebroadcast of programs,[2] such station-to-station communication within the broadcasting medium is affected by interferences resulting from conflicting wave-lengths, static and atmospheric conditions. The apparent consequence of such technical difficulties is the hazard of transmission uncertainty and the lack of dependability of this means of communication.

It is conceivable but not practical that a broadcast program may be disseminated simultaneously by a number of broadcast stations through their coincidental reproduction of recordings of that program or through their respective separate performances of the same program script at the same time.

§ 283. Definitions: Network and System Distinguished.

The association or grouping of several broadcast stations for the purpose of making their combined facilities and unsold broadcast time available for the simultaneous broadcast of the same program may be defined as a network or chain of broadcast stations.[3] Networks may operate upon a national, regional, or even local basis. The facilities of the network stations may be marketed to advertisers or other program sponsors through an agent representing all the stations so grouped, dependent, however, upon the rates established by each station for its own facilities. These rates may include telephone or other

[2] 48 STAT. 1091 (1934), 47 U.S.C.A. § 325 (1937). See § 286 *infra*.

[3] DILL, RADIO LAW (1938) 114. The Communications Act of 1934, 48 STAT. 1065, 47 U.S.C.A. § 153(p), defines chain broadcasting as the "simultaneous broadcasting of an identical program by two or more connected stations".

intercommunication charges or may be upon a basis whereby the advertiser defrays the cost of transmitting his program from station to station.[4] The agreed compensation for each station's facilities is payable to the respective stations which defray their own selling costs and other commission expenses.

Many broadcast stations are associated or affiliated with broadcasting systems. For a consideration, the constituent stations obtain the system's program service for their sustaining operations. Restrictions against local sponsorship of these programs are generally absolute. By agreement, the system usually acquires the right to purchase periods of the station's available broadcast time upon giving the agreed notice of its intention to utilize such facilities for the programs of its own advertisers. The rates payable by the system for such facilities should be specified or identified in the agreement. The constituent stations may also receive intercommunication and other services from the broadcasting system.

The system may be defined as an enterprise which obtains the facilities of a number of broadcast stations by agreement and makes such combined facilities available to advertisers and other program sponsors for its own direct profit. The constituent stations of a broadcasting system receive compensation for such use of their respective facilities from the system rather than directly from the advertiser.

A system is usually an independent contractor whose acts are not performed in the capacity of a representative of its constituent broadcast stations. A system is clearly different from a sales representative of broadcast stations, since the representative's acts may bind the stations as principals.

In the absence of an express agreement to the contrary,

[4] See various rate cards, BROADCASTING YEARBOOK (1938) 166 *et seq.*

a broadcasting system may make available to program sponsors the combined facilities of its constituent stations without the direct approval of the latter. The facilities of a network are ordinarily made available voluntarily by the broadcast stations or their agent in direct dealings with the program sponsor. In both cases, however, there is implicit the right of the broadcast stations to refuse to disseminate programs offered by the advertiser which the stations deem offensive to the operating standard of public interest, convenience or necessity.

The facilities of a group of broadcast stations may also be made available for simultaneous transmission of a single program through the activities of a sales agency which receives an agreed discount from the station's net card rates. No sustaining program service is furnished to the constituent stations by such a sales agency. The stations are not obligated to maintain station-to-station communication for such agencies since the cost of such a hookup usually is defrayed in each instance by the advertiser or the sales agency.

§ 284. Same: Specific Instances.

Although both the Columbia Broadcasting System and the National Broadcasting Company are the direct owners of or possess full time operation control over a number of broadcast stations, the function of these broadcasting systems is not ordinarily affected by their independent control of some of the constituent stations of their respective systems.

The Mutual Broadcasting System is a corporate entity separate and apart from the constituent stations which are stockholders therein. The program service offered by that system is a combination of the programs independently produced by some of its underwriting or constituent stations. This program service is transmitted to constituent stations which defray their own cost of station-to-station intercommunication. The hybrid character of the

Mutual system is revealed by the fact that it receives a sales representative's commission upon commercial programs which it arranges for transmission by its constituent stations.

Regional networks which make available the facilities of a limited group of broadcast stations in a given area are generally operated upon the network rather than the system basis. It is not uncommon for regional networks to be established as separate entities or to be dominated by one or more of its constituent stations.

§ 285. Co-Operative Broadcast Programs.

The simultaneous transmission of a broadcast program over the facilities of several stations in different areas may be achieved in another manner. Co-operative broadcast programs represent the form in which two or more stations may agree to broadcast a program originating in one station as a locally sponsored program. The co-operating stations obtain local sponsors for the same program in their respective areas and insert the necessary commercial announcements for their respective customers. Since such broadcasts are transmitted simultaneously by the co-operating stations, the agreement usually contains a provision with respect to the proportionate share of the program production cost which each co-operating station shall bear in addition to the cost of communicating the program from station to station.

Co-operative arrangements are designed to make available for local sponsorship, programs of a type and quality comparable to those offered by national advertisers. The co-operating stations may enter into such arrangements on their own behalf and offer such programs to their respective local sponsors at an agreed price in excess of the cost to the station. Such a program agreement is independent of the facilities contract; however, it may be a part thereof. In other instances, the local advertisers may enter into co-operative arrangements on their own

behalf without participation of the station therein. In some cases, the station may effect co-operating agreements as the agent of the local sponsor, the originating station or the program producer, as the case may be.

§ 286. Rebroadcast of Programs.

Section 325(a) of the Communications Act of 1934[5] provides:

> ". . . nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station."

Based upon this statutory requirement, broadcast stations may not receive and rebroadcast programs originally transmitted by another station without the express consent of the latter.[6] Where the originating station consents to the rebroadcast of its program by a second station, other stations may rebroadcast the program received from the second station without the consent of the latter so long as the originating station expressly consents to such further rebroadcast of its program. A condition that the

[5] 48 STAT. 1091 (1934), 47 U.S. C.A. (1937).

[6] FEDERAL COMMUNICATIONS COMMISSION, Rule 177.

Rebroadcasting means that "the station engaged therein actually reproduced the signal of another station mechanically or by some other means, such as feeding the program received directly into a microphone. From a strict standpoint, the receiving of a program of another station over an ordinary receiving set and then restating the information thus received over the microphone does not constitute a violation of § 325 of the Communications Act." *Newton,* 2 F.C.C. Rep. 281, 284 (1936).

In *Pittsburgh Athletic Company,* et al. v. *KQV Broadcasting Company,* No. 3415 Equity Term, 1938 (W.D.Pa., injunction granted, Aug. 8, 1938) the Court found as a conclusion of law that the defendant station violated the Communications Act of 1934. Conclusion of law, No. 6, *ibid.* However, the only finding of fact which tends to support this conclusion is No. 30(b), which in effect sets forth a restatement of a broadcast and not a direct reproduction of the transmitted signal within the rule enunciated in *Newton, supra.* Hence, Conclusion No. 6, *supra,* is apparently erroneous.

source of the program and the identifying call letters of the originating station be announced for credit purposes may be attached to consents to rebroadcast.

Since short-wave broadcast stations are operated upon experimental licenses only, no licensed broadcast station may rebroadcast programs originating from short-wave stations. The commercial significance of such rebroadcasts would render ineffective the regulation of short-wave stations as non-commercial, experimental operations.

§ 287. Where Broadcasts Are Not Simultaneous.

Both networks and systems, in their respective operations, are predicated upon the availability of the facilities of the constituent stations for the broadcast of programs simultaneously in the entire area embraced within the combination of stations. To achieve the constant of simultaneous broadcasts in more than a regional area, it becomes necessary for adjustments to be made to comply with the different time zones and the variance between daylight saving time and standard time in the different localities.

Another type of combination of broadcast stations may be found in the arrangements for the broadcast of specific programs by the constituent stations upon a non-simultaneous schedule. This is made possible by the use of electrical transcriptions and other recording devices. Under such an arrangement, the constituent stations agree to make their facilities available upon a spot-booking basis although at a national rate. The sales representative of such a combination of stations may make the entire group available for a total sum which would include compensation for all of the constituent stations. Such a transaction is patterned after the broadcasting system and would ordinarily require no direct approval by the individual stations. Under this form, the total sum paid for the combined facilities would be distributed to each station in accordance with a formula reached by internal agreement. Where, however, the facilities of a group of stations are obtained for the broadcast of a specific program by reason of the

activity of one or more sales representatives for such stations, the combination does not have the characteristics of a network or system. On the contrary, such a transaction being isolated, generally involves no permanent obligation upon an individual station to remain within the group. The obligation is an individual undertaking rather than a group agreement. Each station sets its own rate. The sales representative merely receives his commission for arranging the booking and is usually required to render no further services.

§ 288. Agreements Between Constituent Stations and System for Broadcast Facilities.

By contract, each constituent station may agree to make available to the system its respective facilities during specified hours in exchange for one or more of the following:

(1) Payment of agreed rates to the station for each period sold by the system.

(2) Payment of the station's rates for the entire designated period, irrespective of whether sold by the system for commercial programs.

(3) The furnishing by or through the system of a designated number of sustaining broadcast programs during specified hours.

(4) The broadcast transmission of programs to the station for co-operative local sponsorship as commercial programs.

(5) The payment of lower rates for commercial programs together with the furnishing of designated types of sustaining programs.

(6) The prestige of the station and the enhancement of its listener coverage by reason of the fact that programs of wide popular appeal are made available to it by the system.

(7) The rendering by the system to the station of technical advice and engineering counsel to achieve better broadcasting efficiency by the station.

(8) The furnishing by the system of other services designed to publicize and promote the constituent stations and assist their operations in the public interest.

(9) The establishment or maintenance by the system of one way or reverse communications connection between the constituent stations by telephone, telegraph or other means.

(10) The agreement on the part of the system to make its sustaining programs and other services available to the station exclusively as against other stations in the same area.

(11) The agreement by the system to offer its combined facilities to no advertiser or other program sponsor without including the specified station as a constituent thereof.

The primary legal significance of agreements giving to a broadcasting system the rights to the facilities of a combination of stations lies in the obligation of the constituent stations to make their respective facilities available to the system for broadcast of its advertisers' programs during stipulated periods. The station may also agree that the system shall have the right to transmit the station's sustaining programs to other constituent stations for the same purpose.

Such agreements may also contain provisions giving either the system or the constituent station the right of election to determine which periods of time within a designated interval shall be available to the system for the agreed total number of broadcast hours.

The agreement may also impose upon the constituent stations the obligation not to permit the rebroadcast by other stations of programs transmitted to it by the system. Likewise, the constituent station may be prohibited by the terms of the agreement from making off-the-air recordings of the system's programs or unauthorized rebroadcasts thereof.

§ 289. Same: Exempt or Local Time.

The agreement between the system and the constituent station should provide for such periods of broadcast time as shall remain within the exclusive orbit of the station's local or other activities.

The availability of a station's facilities for local advertisers and for the broadcast of transcriptions arranged by spot-bookings is an essential phase of the station's operations. Its agreement with the system should define with reasonable certainty to what extent the obligation to broadcast programs of the system affects the availability of the station's facilities for its local operations. Such provisions are controlled by the circumstances of the individual case. In some instances, there may be no definite designation of time available for local broadcasts, but the stations may transact such business under releases of time previously optioned to the system. The agreements may also provide for a guarantee by the system to the constituent station of a minimum or fixed total sum of income to be derived from the system's programs.

A broadcast station may agree that it shall be included in the combined facilities of the system as a "bonus" station. By such an agreement, the facilities of the station may be offered to the system's advertisers without charge. In some cases, the station agrees to be denominated a "bonus" station upon condition that such advertisers pay agreed rates for the facilities of specified stations which are associated with or financially interested in the "bonus" station.

Under the agreement with the system, the station may be required to standardize its card rate by charging a uniform price for all of its available time. The system may request such uniformity to obviate any disadvantages accruing to its national advertisers for the facilities of the station, as a result of a lower charge made by the station for local broadcasts during comparable periods.

Where a station has so agreed to maintain uniform rates and has deviated therefrom to the detriment of the national advertiser, the station may be liable in damages for the difference between its lowest rate charged for the same period and the amount the station received therefor from the system for the broadcast of a national program.

The agreement may also provide that the station shall be obligated to furnish the system with periodic detailed reports of its program operations during its reserved broadcast time.

§ 290. Same: Length or Duration of Period of Broadcast Time: Chain-Breaks.

The agreement between the system and the constituent stations is subject to the requirement of Rule 175 of the Federal Communications Commission that station identification announcements be made as frequently as possible during the hours of operation.[7] Although the period of broadcast time embraced within the agreement between the system and the constituent stations may be referred to therein in units of hours, there is necessarily reserved to the constituent stations such periods of time as are necessary for the broadcast of station-break announcements. The agreement, however, may provide that the constituent station shall announce its relation to the system or the origin of the system's program during the interval of interruption. Where such announcement is made, the

[7] Rule 175 reads, as follows:

"Each licensee of a broadcast station shall announce the call letters and location as frequently as practicable during the hours of operation, and in any event before or after each program being broadcast. In no event shall more than 30 minutes elapse between such announcements, and in so far as practicable these announcements shall be made on the hour and half hour. These requirements are waived when such announcement would interrupt a single, continuous, consecutive speech, play, symphony concert or operatic production of longer duration than 30 minutes; and in such cases the announcements of the call letters and location shall be made as soon as possible."

station-break period may be known as a chain-break period. The broadcast time available to the system and its advertisers is by operation of law diminished by the chain-break announcement interval.

The disposition of unused portions of the chain-break period should be provided for in the agreement between the system and constituent stations.[8] Such fragments of broadcast time are frequently used for spot announcements of advertising slogans, time signals and other brief commercial announcements. The respective rights of the system and the constituent station in the chain-break period should be the subject of express agreement. In the absence thereof, the interval is reserved to the station by operation of law and may be used for such purposes as the station may determine. The agreement, however, may contain provision for such veto power by the system as may be necessary to avoid unfair diminution by the station of the advertising value of the program disseminated by the system immediately preceding or following the chain-break.[9]

Provision may also be made that the constituent station's use of commercial spot announcements during the chain-break period shall be limited to sustaining programs transmitted by the system and that the use thereof in connection with the broadcast of commercial programs be prohibited.

It is always a matter of interpretation of the agreement to determine the intentions of the system and the constituent station with respect to the use of and rights in the identification period. Where a breach of the agreement is committed, the offending party will be liable for all damages flowing from the violation of the agreement.

[8] The Columbia Broadcasting System's form contract with its stations provides that, upon request, the affiliates must remove all chain-break announcements preceding or following the System's commercial programs. VARIETY, June 15, 1938, p. 30, col. 1.

[9] BROADCASTING, May 1, 1938; VARIETY, April 27, 1938, p. 34, col. 1.

The sponsor of the program broadcast by the system may of course make separate arrangements with the constituent stations for the broadcast of his own announcements during the chain-break interval. In such a case, the station may lawfully require additional compensation for the sponsor's cut-in announcements because the chain-break period is excluded from the broadcast time which the system may make available to its advertisers.

§ 291. Same: Merchandising Co-Operation by Constituent Station.

In addition to the obligation to make broadcast facilities available, the agreement may also provide that the constituent station shall render various co-operative services to program sponsors as supplements to the system's programs broadcast over its facilities. Such services may include the distribution of samples of the advertised product, the receipt, sorting and analysis of correspondence or other inquiries from listeners, merchandising and publicity arrangements for and with local dealers as well as many other activities designed to further and promote the exploitation of the commercial broadcast program. These supplemental obligations of the constituent station should be defined with reasonable certainty in the agreement.

§ 292. Same: Character of Programs.

The operation of a broadcast station in the public interest, convenience or necessity is a duty imposed upon the owner and the operator thereof under the terms of the licenses granted by the Federal Communications Commission.[10] The system's constituent stations, therefore, cannot delegate the performance of this duty to anyone, including the system, advertiser, or program producer.

In the final analysis, the broadcast station has the power

[10] See §§ 250, 258 *supra* and 564, 570, 578 *infra*.

of editorial selection to determine whether a program should be broadcast over its facilities.[11] Where programs originate at points beyond the direct control of the station, as is generally the case of broadcasts arranged by the system, the constituent station undertakes a substantial risk. Agreements, therefore, generally include the obligation upon the system to impose certain standards with respect to the character of the programs disseminated by it for the sponsors thereof. A similar obligation upon the system exists with respect to its sustaining programs.

This obligation is an essential condition of the agreement between the constituent station and the system. The exercise by the station of powers of selection of programs broadcast by means of its facilities must necessarily be delegated to the system, although the penalties for infraction and violation of the standards of operation nevertheless remain with the constituent station.[12] The system may, by the terms of the agreement, be obliged merely to devote its best efforts to scrutinize the program content so that it will not be objectionable to the operation standard as interpreted by the Federal Communications Commission.

The agreement may also stipulate limits of policy established by the constituent station and the system with respect to the programs concerned. Unless the agreement specifically contains a provision requiring the system to do more than confine the program within these limits, the system may not be held liable to the station for damages occasioned by the revocation of or refusal to renew the station's license or by other interferences with its busi-

[11] See letter from Federal Communications Commission to National Broadcasting Co., Inc., January 14, 1938, N. Y. TIMES, January 15, 1938, pp. 1, 18.

[12] For this reason, a broadcast station should be permitted to refuse without liability on its part a system or network program which is substantially not in the public interest by virtue of its content. *Cf.* Sarnoff, *The American System of Broadcasting and Its Function in the Preservation of Democracy* (an Address in New York City, April 28, 1938) esp. p. 5, which impliedly does not approve this view.

ness resulting from the offensive character of a program supervised by the system within the bare confines of its agreement with the constituent station. Where, however, the system has committed a breach of its agreement, it will be held liable for all damages to the station flowing therefrom.

The agreement may incorporate, by reference, the rules and regulations of the constituent station for inclusion as part of the system's facilities contract with its advertisers.[13] In such a case, it is a matter of interpretation of the agreement between the system and the constituent station to determine the extent of the respective obligations of the parties to supervise and control the character of the programs transmitted to the station by the system.

It is usually provided that the constituent stations shall broadcast without charge important public programs, such as Presidential messages, upon reasonable notice to the station by the system. Under these provisions, it is usually incumbent upon the constituent station to make the necessary changes in its previous commitments to accommodate such important public programs.

The station generally reserves the right to make such changes by the provisions of its facilities contracts with the advertisers to whom commitments have previously been made for the broadcast time affected.

§ 293. Same: Liability for Copyright Infringement.

Although the constituent stations may hold licenses to perform publicly certain copyrighted works, the agreement between the system and the individual station may contain an obligation on the part of the station to continue so to be licensed.

In view of the fact that a single program broadcast simultaneously over numerous stations may involve plural infringements of copyright with the consequent liability of

[13] See § 254 *supra*.

each constituent station therefor,[14] it is important to determine the agreement between the infringers with respect to indemnity for such liability. In this instance, the constituent station assumes the hazard of liability for disseminating a program which originates beyond its direct control.

The system's program content may be such as would involve the liability of the constituent station for infringement of the copyrights of works not included within the performing license held by the station. Programs may also involve liability of the constituent station for unfair competition. It is a question of the agreement between the system and the constituent station to determine whether the latter's liability for such torts is to be indemnified or the action therefor defended by the system.

The absence of the station's control over the programs which originate elsewhere and are broadcast by it does not operate to excuse it from liability for copyright infringement so committed.[15] Unless the agreement between the constituent station and the system provides that the latter shall defend the station and indemnify it from all damages, the station cannot relieve itself of that burden. However, its agreement with the system may provide for the obligation of the system to commit no copyright infringements or acts of unfair competition in the programs transmitted to the station by it. Should a breach of such an obligation take place, the station may recover from the system all damages flowing from such breach. Where, however, the agreement provides that the system shall merely use its best efforts to avoid such

[14] *Semble,* Society of European Stage Authors & Composers *v.* N. Y. Hotel Statler Co., 19 F.Supp. 1 (S.D.N.Y., 1937). See § 630 *infra.*

[15] See Irving Berlin, Inc. *v.* Daigle, 26 F.(2d) 149 (E.D.La., 1928), *revd. on other grounds,* 31 F.(2d) 832 (C.C.A. 5th, 1929); Dreamland. Ball Room, Inc. *v.* Shapiro, Bernstein & Co., 36 F.(2d) 354 (C.C.A. 7th, 1929). See also § 627 *infra.*

unlicensed performances, it is a matter of proof to determine whether the system has committed any breach of that obligation in each instance.

§ 294. Same: Liability for Defamatory Broadcasts.

It is likewise a question of the provisions of the agreements between the system and its constituent stations to determine upon whom falls the liability for defamatory utterances contained in the system's programs broadcast over the facilities of the stations. The liability of the individual station for defamation so broadcast over its facilities is now absolute.[16]

The obligation of the system to defend litigation instituted against the station and to indemnify the station against liability therefor must be defined in the agreement.

§ 295. Duration of Contract.

The term of the agreement must, of course, be for a definite period of time. The term of the contract between the station and the chain may extend beyond the termination date of the station's instrument of authorization. In such a case, since the station may apply for a renewal of its license, it cannot set up its lack of a license as a defense in an action for breach. The failure of a station to apply for the renewal is an omission on its part which would directly cause a breach of such an agreement.

The contract between the station and the system may be terminated by mutual rescission or by the occurrence of specific contingencies expressed in the agreement. It may also contain provisions allowing unilateral cancellation. In such a case, the agreement should be carefully drawn so as to give mutuality thereto. The agreement may, of course, also contain provisions for non-cancellation.

The renewal of the contract between the station and the system should be the subject of express agreement.

[16] See Chapter XXIX. *infra.*

The bankruptcy of either the station or the chain gives the other a cause of action for anticipatory breach of the executory agreement between them. Such a cause of action is a provable claim against the estate of the bankrupt.[17]

§ 296. Facilities Contracts Between the System and the Advertiser.

The arrangements by which the broadcast facilities of a group of stations are offered by the system to advertisers are substantially similar to facilities contracts entered into by broadcast stations with advertisers directly.[17a]

Obviously, where the system renders additional services to the advertiser, its more comprehensive facilities are the subject of an express agreement. The cost of station-to-station communication is likewise reflected in the terms of the system's agreements with its advertisers.

The system's obligation to maintain the statutory standards of operation imposed upon the constituent stations is made a part of its own agreement with advertisers so as to affect the programs transmitted by the system for the advertiser to the constituent stations.

To avoid liability for breach of its facilities contract, the system must provide therein that the advertiser shall have no redress for the *bona fide* refusal of a constituent station to broadcast the advertiser's program upon the ground that the transmission thereof would not be in the public interest. Similarly, the right of the constituent stations to supersede the advertiser's program by broadcasting a program of supervening public importance is usually a condition of the system's facilities contract.[18]

[17] Central Trust Co. *v.* Chicago Auditorium Assn., 240 U.S. 581, 36 Sup. Ct. 412, 60 L.Ed. 811 (1915). This case is criticized in WILLISTON ON CONTRACTS (Rev. Ed., 1936) § 1327.

[17a] See Chapter XVI. *supra.*

[18] See VARIETY, June 15, 1938, p. 30, col. 1.

The system may also provide that the advertiser shall not transmit his program to any station not included within the combined facilities offered to the advertiser by the system. Similar restrictions against the broadcast of electrical transcriptions of the advertiser's program after dissemination thereof by the system, may be imposed by the facilities contract to prevent a duplication of the system's program service by stations not affiliated with it. The advertiser may, by the terms of the facilities contract, obtain express permission to broadcast transcriptions of the programs transmitted by the system within a specified period of time thereafter and over designated stations.

The facilities contract may incorporate the system's own rules and regulations as well as those established by the constituent stations. The advertiser's broadcast of electrical transcriptions, phonograph records or other recordings over the combined facilities of the system may be expressly prohibited.

Where the constituent stations' agreements with the system terminate at various dates, the system's contract under which its combined facilities are made available to the advertiser should contain an express provision relieving the system of liability for the withdrawal of the facilities of a constituent station during the term of the contract with the advertiser. Such exemption for non-performance by the system can be asserted in good faith only in regard to the stipulated grounds. Similar provision should be made with respect to non-performance by the system of its facilities contract with the advertiser by reason of the revocation of or refusal to renew the operating license of any of its constituent stations. Provision may be made for appropriate deductions from the system's rates for facilities not furnished the advertiser by reason thereof. Alternative provisions may be included giving the advertiser the right to select other stations in the

same coverage areas in substitution for facilities not furnished.

The system is liable in damages to the advertiser for breach of the facilities contract occurring from causes not specifically exempted therein or excused by impossibility of performance.[19]

The liability of the advertiser to the system for breach of the facilities contract is likewise governed by the same principles.[20]

[19] See §§ 277 *supra* and 383 *et seq. infra.*

[20] See §§ 277 *supra* and 383 *et seq. infra.*

Chapter XVIII.

BROADCAST STATIONS AND LABOR RELATIONS.

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§ 297. Generally.

The rising tide of labor organization in the industrial life of the country has been reflected in the broadcasting industry. There has been an uneven development in the organization of workers in this field.

The principal trade union with which broadcast stations have to deal is the American Federation of Musicians. This well organized craft of skilled workers is one of the oldest trade unions and is international in that its jurisdiction extends to Canada. The hundreds of its local chapters are situated in all of the key cities and the membership of these autonomous locals embraces substantially all of the instrumentalists required for the broadcast musical programs transmitted over all stations.

Although some effort was made to organize broadcast station employees into an industrial union, the established strength and influence of the American Federation of Musicians rendered such attempts fruitless.

So far as other workers in the broadcasting industry are concerned, there have been various degrees of organization. In some cases, a duplication of claimed jurisdiction operates with resultant confusion and difficulty for the broadcast stations involved.

The technicians and engineers employed by broadcast stations are variously identified with such unions as the American Communications Association or chapters of the International Brotherhood of Electrical Workers. A potential competitive union which seeks to assert jurisdiction over these workers is the International Alliance of Stage and Theatrical Employees.

The attempts to organize program personnel have met with little uniformity. The diversification of these employees produces a variety of problems and demands. Announcers and producers have been organized into the American Guild of Radio Announcers and Producers.

The American Federation of Labor has granted jurisdiction over theatrical entertainers by international charter to the Associated Actors and Artistes of America. The radio problems of this profession are cared for by a derivative organization known as the American Federation of Radio Artists. This union has also organized and negotiated on behalf of announcers.

The National Association of Performing Artists is not a trade union but is a mutual voluntary organization operating to protect the property interests of its members in their respective recorded performances.

Efforts to organize script writers into a trade union have as yet been unsuccessful. The Authors League of America has chartered a Radio Writers' Guild which appears to function primarily as a protective organization. Authors and composers have a non-union protective organization known as the Songwriters' Protective Association. The American Society of Composers, Authors and Publishers and the Society of European Stage Authors and Composers are licensing agencies dealing with performing rights of copyright owners and are not trade unions.

It has also been reported that an unaffiliated union of sales representatives of a broadcast station has been organized under the name, Radio Salesmen's Guild of America.

There also exist several company or "inside" unions which have limited jurisdiction over the employees of a single employer. Such unions have little or no expansion possibilities and generally have no independent characteristics.[1]

[1] However, not all "inside" unions are company unions within the common meaning of the term. The National Labor Relations

§ 298. Right to Organize.

It is generally accepted that workers have a right to combine into associations to protect and advance their economic interests.[2] This common right is available to employees whose services are rendered in and for broadcast stations. Mr. Chief Justice Taft in an opinion of the United States Supreme Court stated the modern law to be:[3]

> "Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers an opportunity to deal on equality with their employer."

This statement of the law was reaffirmed by that Court in *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*[4] Chief Justice Hughes said:[5]

> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents."

Board has determined that Associated Broadcast Technicians, into which union have been organized many Columbia Broadcasting System engineers, is not a company union. BROADCASTING, April 1, 1938, p. 34, col. 1.

[2] National Labor Relations Board *v.* Jones & Laughlin Steel Corp., 301 U.S. 1, 57 Sup. Ct. 615, 81 L.Ed. 893 (1937), *rev'g* 83 F.(2d) 998 (C.C.A. 5th, 1936).

[3] American Steel Foundries *v.* Tri-City Central Trades Council, 257 U.S. 184, 209, 42 Sup. Ct. 72, 66 L.Ed. 189 (1921).

[4] 301 U.S. 1, 57 Sup. Ct. 615, 81 L.Ed. 893 (1937).

[5] *Id.*, at 33.

This right of workers to organize and bargain as a collective unit is also recognized by several state legislatures [6] and by Congress. Section I of the National Labor Relations Act [7] (Wagner Act) declares:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

§ 299. Contracts Between Broadcast Stations and Trade Unions: Generally.

The typical contract which an employer enters into with his employees' trade unions provides that employment shall be given under specified working conditions for definite compensation for a stated period of time.[8] The unions usually agree that their members will abide by the constitution, by-laws and regulations thereof and the employer is generally obligated to employ only such workers under the agreement as are in good standing as members of the union.

The contract negotiated by the American Federation of Musicians with the broadcast stations is predicated upon the agreement of the stations to employ a stated number of musicians. The determining factor of the number of such employees has by agreement been fixed in dollars of wages computed by a stipulated percentage of the employer stations' income.

[6] Mass., Laws (1937) c. 436, § 1; New York, Laws (1937) c. 443, §§ 700, 703; Pa., Laws (1937) c. 294, § 2; Utah, Laws (1937) c. 55, § 2; Wisconsin, Laws (1937) c. 51, § 111.07. See Note (1938) 51 HARV. L. REV. 722.

[7] 49 STAT. 449 (1935), 29 U.S. C.A. §§ 151–166 (1937).

[8] See Note (1938) 51 HARV. L. REV. 520.

The interrelation between musicians and other performing artists, such as vocalists who require musical accompanists, brings about problems of overlapping jurisdiction.[9] It is also difficult to demarcate the activities of various workers engaged in a station's program operations in its studio. A dispute of jurisdiction over employees who perform the manual operations necessary to broadcast selections from recorded programs, arose between the American Federation of Musicians and the unions governing studio and control room technicians. The American Federation of Labor ruled upon this dispute and declared jurisdiction over these workers to be in the American Federation of Musicians.[10]

§ 300. Rights of Labor Unions.

Labor unions possess various rights which they may exercise to accomplish certain purposes. These include the rights to strike, to picket and to boycott. The nature and extent of each of these rights differ in each jurisdiction.

It is generally agreed that it is lawful to strike for higher wages,[11] shorter hours[12] and better working conditions.[13] Beyond this, the courts differ widely.

Labor unions may use only the peaceable picket in a

[9] See BILLBOARD, May 21, 1937, p. 7, col. 3.

[10] See RADIO DAILY, April 11, 1938, p. 1, col. 2, April 12, 1938, p. 1, col. 2.

[11] Hopkins *v.* Oxley Stove Co., 83 Fed. 912 (C.C.A. 8th, 1897); Auburn Draying Co. *v.* Wardell, 227 N.Y. 1, 124 N.E. 97 (1919); Cornellier *v.* Haverhill Shoe Mfrs. Assn., 221 Mass. 554, 109 N.E. 643 (1915); OAKES, ORGANIZED LABOR AND INDUSTRIAL CONFLICTS (1927) § 263.

[12] Truax *v.* Bisbee Local, 19 Ariz. 379, 171 Pac. 121 (1918); Kemp *v.* Division No. 241, 255 Ill. 213, 99 N.E. 389 (1912); Auburn Draying Co. *v.* Wardell, 227 N.Y. 1, 124 N.E. 97 (1919).

[13] Hopkins *v.* Oxley Stove Co., 83 Fed. 912 (C.C.A. 8th, 1897); Truax *v.* Bisbee Local, 19 Ariz. 379, 171 Pac. 121 (1918); Kemp *v.* Division No. 241, 255 Ill. 213, 99 N.E. 389 (1912); Cornellier *v.* Haverhill Shoe Mfrs. Assn., 221 Mass. 554, 109 N.E. 643 (1915); Auburn Draying Co. *v.* Wardell, 227 N.Y. 1, 124 N.E. 97 (1919).

majority of the states.[14] Michigan is the leading industrial state which forbids peaceable picketing as unlawful.[15]

Labor unions may exercise a right of primary boycott for the same purposes as they may strike.[16] The so-called secondary boycott is generally illegal.[17]

[14] OAKES, *op. cit. supra* n. 9, §§ 326–347.

[15] Beck *v.* Railway Teamsters' Protective Union, 118 Mich. 497, 77 N.W. 13 (1888); Cooper, *Fiction of Peaceful Picketing* (1936) 35 MICH. L. REV. 73.

[16] Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909); Steffes *v.* Motion Picture Union, 136 Minn. 200, 161 N.W. 524 (1917); Empire Theater Co. *v.* Cloke, 53 Mont. 183, 163 Pac. 107 (1917); Root *v.* Anderson, 207 S.W. (Mo.) 255 (1918); Foster *v.* Retail Clerks' Assn., 39 Misc. 48, 78 N.Y.Supp. 860 (1902).

Primary and secondary boycott held illegal: Wilson *v.* Hey, 232 Ill. 389, 83 N.E. 928 (1908); Burnham *v.* Dowd, 217 Mass. 351, 104 N.E. 841 (1914); Beck *v.* Railway Teamsters' Union, 118 Mich. 497, 77 N.W. 13 (1888); Gray *v.* Building Trades Council, 91 Minn. 171, 97 N.W. 663 (1903); Jensen *v.* Cooks' *etc.*, Union, 39 Wash. 531, 81 Pac. 1069 (1905).

[17] *Ibid. Secondary boycott held legal:* Parkinson Co. *v.* Building Trades Council, 154 Cal. 581, 98 Pac. 1027 (1908); Bossert *v.* Dhuy, 221 N.Y. 342, 117 N.E. 582 (1917). *Cf.* Auburn Draying Co. *v.* Wardell, 227 N.Y. 1, 124 N.E. 97 (1919). See OAKES, ORGANIZED LABOR AND INDUSTRIAL DISPUTES (1927) §§ 411, 428.

In *Truax* v. *Corrigan,* 257 U.S. 312, 42 Sup. Ct. 124, 66 L.Ed. 132 (1921) Mr. Justice Brandeis traced the development of this phase of the law of labor relations very succinctly. He said, at page 357:

"In England a workingman struggling to improve his condition, even when acting singly, was confronted until 1813 with laws limiting the amount of wages which he might demand. Until 1824 he was punishable as a criminal if he combined with his fellow workmen to raise wages or shorten hours or to affect the business in any way, even if there was no resort to a strike. Until 1871 members of a union who joined in persuading employees to leave work were liable criminally, although the employees were not under contract and the persuasion was both peaceful and unattended by picketing. Until 1871 threatening a strike, whatever the cause, was also a criminal act. Not until 1875 was the right of workers to combine in order to attain their ends conceded fully. . . . Not until 1906 was the ban on peaceful picketing and the bringing of pressure upon an employer by means of a secondary strike or a boycott removed.

§ 301. All-Union or Preferential Shop as Aim of Strike and Picket.

A closed or all-union shop is a result of an agreement by the employer not to engage any workers who are not members of the union with which the employer has contracted. A preferential shop is one wherein the employer agrees to give preference to the members of the union in the conduct of the business. There is a difference of opinion as to the legality of a strike by a labor union to obtain a closed or all-union shop.

The question of the right to strike for an all-union shop does not seem to have arisen in all jurisdictions. In Massachusetts,[18] California, Minnesota, New Hampshire and Texas, such a strike is generally held to be illegal.[19] In New York, New Jersey, Oklahoma and Connecticut, the courts agree that a strike and peaceable picketing for an

In 1906, also the act of inducing workers to break their contract of employment (previously held an actionable wrong) was expressly declared legal. . . .

"In the United States the rules of the common law governing the struggle between employer and employee have likewise been subjected to modifications. These have been made mainly through judicial decisions. The legal right of workingmen to combine and to strike in order to secure for themselves higher wages, shorter hours, and better working conditions received early general recognition. But there developed great diversity of opinion as to the means by which, and also as to the persons through whom, and upon whom pressure might permissibly be exerted in order to induce the employer to yield to the demands of the workingmen. . . .

"The earliest reported American decision on peaceful picketing appears to have been rendered in 1888; the earliest on boycotting in 1886. . . . The prevailing judicial opinion in America . . . inclines towards the legality of peaceful picketing . . . in some States, notably New York, both peaceful picketing and the boycott are declared permissible."

[18] But see Simon *v.* Hamlin *et al.*, Mass. Super. Ct., Eq. No. 49014, Suffolk County, April 15, 1938, (1938) 6 I. J. A. BULL. 136.

[19] Moore *v.* Cooks' *etc.*, Union, 39 Cal. App. 538, 179 Pac. 417 (1919); Grant Constr. Co. *v.* St. Paul Bldg. Trades Council, 136 Minn. 167, 161 N.W 520 (1917); White Mt. Freezer Co. *v.* Murphy,

all-union shop are legal.[20] The Federal courts, previously in conflict, now apply the law of the state in which the strike and picketing are conducted,[21] where they acquire jurisdiction by reason of diversity of citizenship.

An all-union shop or a preferential shop is not illegal.[22] The Massachusetts courts hold a preferential shop to be the same as an all-union shop.[23] A strike by a union to secure a preferential shop in a broadcast station would be illegal in Massachusetts as a strike for an all-union shop,[24] even though an agreement achieving that end would not be illegal.[25] In that state, a later lower court decision departed from the traditional strict rule by denying an injunction against a strike for an all-union shop.[26]

Moreover, there is no restraint of trade under anti-trust laws where an association of broadcast stations agrees to operate a closed shop and the union agrees to

78 N.H. 398, 101 Atl. 357 (1917); Webb *v.* Cooks' *etc.,* Union, 205 S.W. 465 (Tex. Civ. App., 1918). See also Barnes *v.* Berry, 156 Fed. 72 (C.C.S.D. Ohio, 1907).

[20] Cohn & Roth Elec. Co. *v.* Bricklayers, *etc.,* Local Union, 92 Conn. 161, 101 Atl. 659 (1917); Jersey City Printing Co. *v.* Cassidy, 63 N.J. Eq. 759, 53 Atl. 230 (1902); Newton Co. *v.* Erickson, 70 Misc. 291, 126 N.Y.Supp. 949 (1911), *aff'd.* 144 App. Div. 939, 129 N.Y.Supp. 1111 (1911).

[21] Erie Railway Co. *v.* Tompkins, 304 U.S. 64, 58 Sup. Ct. 817, 82 L.Ed. 787 (1938).

[22] Shinsky *v.* O'Neil, 232 Mass. 99, 121 N.E. 790 (1919); Smith *v.* Bowen, 232 Mass. 106, 121 N.E. 814 (1919); Jacobs *v.* Cohen, 183 N.Y. 207, 76 N.E. 5 (1905); McCord *v.* Thompson-Starrett Co., 129 App. Div. 130, 113 N.Y.Supp. 385 (1908); Underwood *v.* Texas & P. R. Co., 178 S.W. 38 (Tex. Civ. App., 1915).

[23] Folsom Engraving Co. *v.* McNeil, 235 Mass. 269, 126 N.E. 479 (1920); OAKES, *op. cit. supra* n. 11, § 292.

[24] *Ibid.*

[25] Shinsky *v.* O'Neil, 232 Mass. 99, 121 N.E. 790 (1919); Smith *v.* Bowen, 232 Mass. 106, 121 N.E. 814 (1919); Jacobs *v.* Cohen, 183 N.Y. 207, 76 N.E. 5 (1905); McCord *v.* Thompson-Starrett Co., 129 App. Div. 130, 113 N.Y.Supp. 385 (1908); Underwood *v.* Texas & P. R. Co., 178 S.W. 38 (Tex. Civ. App., 1915).

[26] Simon *v.* Hamlin *et al.,* Mass. Super. Ct., Eq. No. 49014, Suffolk County, April 15, 1938, (1938) 6 I. J. A. BULL. 136.

prefer such association's members in supplying labor needs.[27]

§ 302. Same: Enforcement of Union By-Laws.

Broadcast station employees who join labor organizations agree to obey and carry out the union by-laws and regulations. The usual method of enforcement of these obligations is by fine or expulsion, or both. Many of these rules affect the interests of employers, and consequently the extent to which unions may regulate the activities of their members must be considered.

Some union rules are held to be illegal in themselves and are therefore totally unenforceable. In *Haverhill Strand Theater* v. *Gillen*,[28] the Massachusetts Supreme Judicial Court held that a rule of a local union of the American Federation of Musicians was illegal as a restriction on the right of the employer to have a free flow of labor. The offending rule provided that no union member should perform his services in a theater where fewer than a given number of musicians were employed. An injunction was issued restraining any enforcement of this rule.

A similar rule, however, was held to be valid in New York,[29] Minnesota [30] and Montana.[31] The legality of this rule as to broadcast stations has not been tested in the courts. The rule would probably be held valid except in Massachusetts and other so-called "strict" states.

It has been held lawful to impose a rule that union members shall not work with non-union men.[32] Likewise, the right of the union to prohibit its members from working for employers who have breached contracts with other

[27] Belfi *v.* United States, 259 Fed. 822 (C.C.A. 3d, 1919). *Semble* Goyette *v.* C. V. Watson Co., 245 Mass. 577, 140 N.E. 285 (1923).

[28] 229 Mass. 413, 118 N.E. 671 (1918).

[29] Bossert *v.* Dhuy, 221 N.Y. 342, 117 N.E. 582 (1917).

[30] Scott-Stafford Opera House *v.* Minneapolis Mus. Assn., 118 Minn. 410, 136 N.W. 1092 (1912).

[31] Empire Theater Co. *v.* Cloke, 53 Mont. 183, 163 Pac. 107 (1917).

[32] Bossert *v.* Dhuy, 221 N.Y. 342, 117 N.E. 582 (1917).

members of the union, has been maintained.[33] A rule that members shall not work for non-resident employers who fail to pay the higher rate as between the residence of the employers and the place of work has been held lawful.[34] The union, it has been held, may lawfully rule that its members who transfer from one local to another may not make any contract for a permanent engagement until the lapse of three months after the deposit of a transfer card.[35]

The basis of the lawfulness of these and similar regulations is found in the common law rule that a worker may set the terms and conditions of his employment. At common law, a man may do in combination with others whatever he may do alone. So long as the regulation is reasonable and has a relation to the work to be done by the members of the union and directly affects them, a union may adopt the rule. The incidental interference with the employer's business is not actionable. In *Bossert* v. *Dhuy*,[36] the New York Court of Appeals said:

> "Its (union's) action was voluntary and concerned labor competition in which the association and its members are vitally interested.
>
> "The voluntary adoption by an association of employes of reasonable rules relating to persons for whom and conditions under which its members shall work is not illegal at common law. . . ."

In *Cohn & Roth Electric Co.* v. *Bricklayers Union*,[37] the Connecticut Supreme Court said:

[33] Rhodes Bros. Co. *v.* A. F. of M. (Providence Local), 37 R.I. 281, 92 Atl. 641 (1915).

[34] Barker Painting Co. *v.* Brotherhood of Painters, 12 F.(2d) 945 (D.C.N.J., 1926); *Accord:* New Jersey Painting Co. *v.* Brotherhood of Painters, 96 N.J. Eq. 632, 126 Atl. 399 (1924).

[35] Yankee Network, Inc. *v.* Gibbs, 3 N.E.(2d) 228 (Mass., 1936).

[36] 221 N.Y. 342, 117 N.E. 582, 585 (1917).

[37] 92 Conn. 161, 167, 101 Atl. 659 (1917).

> "The end the defendants had in view by their by-laws was the strengthening of their unions . . . There is no indication that the real purpose of the defendants was injury to the plaintiff or the nonunion men. . . . Whatever injury was done the plaintiff was a consequence of trade competition, and an incident to a course of conduct by the defendants, begun and prosecuted for their own legitimate interests."

Mr. Justice Holmes has handed down the classic statement of the principle of competition which sustains these rules. In his famous dissent from the view of the majority of the Massachusetts Supreme Judicial Court in *Vegelahn* v. *Guntner*,[38] he said:

> ". . . in numberless instances the law warrants the intentional infliction of temporal damage because it regards it as justified . . . the policy of allowing free competition justifies the intentional inflicting of temporal damage, including the damage of interference with a man's business, by some means, when the damage is done not for its own sake, but as an instrumentality in reaching the end of victory in the battle of trade. . . . I have seen the suggestion made that the conflict between employers and employed is not competition. But I venture to assume that none of my brethren would rely on that suggestion. If the policy on which our law is founded is too narrowly expressed in the term free competition, we may substitute free struggle for life. Certainly the policy is not limited to struggles between persons of the same class competing for the same end. It applies to all conflicts of temporal interests. . . . One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way."

[38] 167 Mass. 92, 105, 44 N.E. 1077 (1896).

Therefore, such internal rules can lawfully be made and enforced by a union of broadcast station employees.

§ 303. Enforcement of Union By-Laws by Fine or Expulsion.

Where it is determined that the by-law or rule of the union is one that may lawfully be made, a further question arises as to the legality of the means of enforcement. It is uniformly agreed that means which are coercive, intimidating, fraudulent or defamatory may not be used.[39]

Whether or not the imposition of a fine or the expulsion of a member by a union is an unlawful interference with the employer's interests has been raised in the only case found which involved an employer who operated a radio broadcast station. *Yankee Network, Inc.* v. *Gibbs*[40] involved rules of Local 9 of the American Federation of Musicians in Boston. One of the rules provided:

> "A member who has his transfer card on deposit in a Local, is not entitled, without the consent of the Local to solicit, accept or play any permanent engagement . . . during a period of three months after the date of deposit, . . . but otherwise is entitled to all the privileges of the Local."[41]

In substance, another pertinent rule provided:

> Any member of Local 9 who plays exclusively in broadcast programs is required to file his contracts with the Secretary prior to his engagement.

One Kendis, who was a member of the New York City Local of the American Federation of Musicians, deposited his transfer card with Local 9. Without the consent of Local 9 and before three months elapsed, Kendis entered into a contract with plaintiff network for a permanent

[39] Yankee Network, Inc. *v.* Gibbs, 3 N.E.(2d) 228 (Mass., 1936); Bossert *v.* Dhuy, 221 N.Y. 342, 117 N.E. 582 (1917).

[40] 3 N.E.(2d) 228 (Mass., 1936).

[41] American Federation of Musicians, CONSTITUTION, BY-LAWS AND STANDING RESOLUTIONS (1936) Art. XII., § 4.

engagement to render his services in a broadcast program. After the execution of the contract, Kendis submitted it to Local 9 for approval, which was denied. Local 9 then fined him for violation of the rules and the musicians in the orchestra formed by Kendis refused to play for the plaintiff. It was found as facts that Kendis had violated the two by-laws, that against their own desires the orchestra mean ceased to play either by reason of threats or fear of action by Local 9 and also that no trade dispute existed between plaintiff and Local 9.

The Massachusetts Supreme Court [42] restrained the punishment of Kendis by Local 9. It held that the right of Local 9 to punish Kendis was not involved. It also ruled that the imposition of a fine to compel adherence to a union rule was coercive and *ergo* unlawful, and that the union had an unlawful purpose in that it attempted to interfere with the contract rights of plaintiff network, the right of plaintiff to manage its business in its own way and its right to free access to the market for musical talent. For these reasons, the Court held that the Union was engaged in an unlawful combination.

The Court found no justification in the right of Local 9 to punish Kendis and it rejected the Union's contention that the consequences to the plaintiff of the enforcement of the rules were justifiable results of its lawful action. The Court said: [43]

> "The evidence fails to show justification for the defendants' conduct in the exercise by them of any right of free competition or of any other right of equal dignity with the rights of the plaintiff."

The leading case on this question is *Bossert* v. *Dhuy*,[44] which is *contra* to *Yankee Network, Inc.* v. *Gibbs*.[45] *Bos-*

[42] Yankee Network, Inc. *v.* Gibbs, 3 N.E.(2d) 228 (Mass., 1936).

[43] *Id.*, at 230.

[44] 221 N.Y. 342, 117 N.E. 582 (1917).

[45] 3 N.E.(2d) 228 (Mass., 1936).

sert v. *Dhuy*[46] involved a union rule that its members shall not work with non-union men. The New York Court of Appeals said:[47]

> "Neither is the enforcement of such rules by the association through fines or by expulsion from the association illegal. Members are thus simply required to obey rules of the association so long as they remain members thereof. . . .
>
> "Voluntary orders by a labor organization for the benefit of its members and the enforcement thereof within the organization is not coercion. The members of the organization . . . who are not willing to obey the orders of the organization are at liberty to withdraw therefrom. The bounds beyond which an association of employees may not, as a general rule, go in controlling its members in their dealings with employers are not easily determined. They cannot at least extend beyond a point where its or their direct interests cease. There is a material difference in the power of an association so far as it affects its primary or secondary interest. Where the acts of an employee or employees in their individual or associaate capacity are reasonably and directly calculated to advance lawful objects, they should not be restrained by injunction."

The New York view was approved by the United States Supreme Court in *Paine Lumber Co.* v. *Neal*.[48]

§ 304. Enforcement of Union By-Law by Strike or Picket.

A union by-law which involves lawful subjects such as wages, hours or conditions of work may be enforced by a strike or picket of the employing broadcast station. In *Barker Painting Co.* v. *Brotherhood of Painters*,[49] the United States District Court in New Jersey refused to enjoin a strike to enforce a union rule that a non-resident contractor had to pay whichever wage was higher as between his residence and the place of the work. The

[46] 221 N.Y. 342, 117 N.E. 582 (1917).

[47] *Id.*, at 585, 587.

[48] 244 U.S. 459, 37 Sup. Ct. 718, 61 L.Ed. 1256 (1917).

[49] 12 F.(2d) 945 (D.C.N.J., 1926).

identical rule had previously been held lawful by the New Jersey Court of Errors and Appeals in *New Jersey Painting Co.* v. *Brotherhood of Painters.*[50]

In *Empire Theater Co.* v. *Cloke,*[51] a rule of the local musicians' union requiring the employment of a minimum number of its members by each employer was held enforceable by a picket patrol. The court held that the pickets could lawfully carry signs declaring the unfairness of the employer who violated the rule. Moreover, the union was permitted to advertise the unfairness of the employer in a newspaper.

Upon the authority of *Bossert* v. *Dhuy,*[52] it is permissible to strike or picket to enforce a lawful rule of a union in all jurisdictions accepting the rule of that case.

§ 305. Other Lawful Means to Enforce Union By-Laws.

In *Rhodes Brothers Co.* v. *American Federation of Musicians, Local* 198,[53] it was held that a resolution by a local union executive board forbidding union members to play for the plaintiff, who had breached a contract with the union, was not intimidation and was not restrainable.

In *Cohn and Roth Electric Co.* v. *Bricklayers, etc., Local,*[54] the Connecticut Supreme Court determined that a notice of enforcement of a by-law, prohibiting union men from working with non-union men, did not constitute intimidation of the employers of the members.

The jurisdiction of the union extends to the regulation of its members and the determination of reasonable conditions and stipulations under which the latter may work. A union may not impose a fine upon non-members and *a fortiori* cannot enforce payment of such a fine by a strike

[50] 96 N.J.Eq. 632, 126 Atl. 399 (1924).

[51] 53 Mont. 183, 163 Pac. 107 (1917).

[52] 221 N.Y. 342, 117 N.E. 582 (1917).

[53] 37 R.I. 281, 92 Atl. 641 (1915).

[54] 92 Conn. 161, 101 Atl. 659 (1917).

or picket.[55] Such action would be unlawful coercion. It is not unlawful for the secretary of a trade association of employers to notify its members that a non-member has violated the by-laws of the association and is no longer sympathetic to the aims of the organization.[56]

§ 306. Enforcement of By-Laws Resulting in Secondary Boycott.

Where the enforcement of a union by-law operates to the hardship of persons not directly transacting business with the union, it is usually argued that the union is exceeding its prerogatives by committing a so-called secondary boycott. The latter term "is an equally loose and uncertain label used by courts indiscriminately to condemn a wide variety of labor's activities."[57]

The courts have enjoined the enforcement of by-laws which affected intermediate employers of workers in a related industry. In this category are by-laws which prohibit members from working with materials made under non-union or otherwise unacceptable conditions.[58]

So-called sympathy strikes have also been the subject of the appellation of secondary boycott. These strikes are usually called by members of a union, who have no grievance with their own employers, to assist members of a companion union who are striking against the latter's employer. Where one craft strikes in support of another craft which is employed at the same time and on the same job, the majority of the courts considering the problem have upheld such limited sympathy strikes.[59] If the companion union's strike is removed from the scene of employment of the sympathetic union or if no other direct connec-

[55] Burke *v.* Fay, 128 Mo. App. 690, 107 S.W. 408 (1908); People *v.* Barondess, 133 N.Y. 649, 31 N.E. 240 (1890).

[56] Bohn Mfg. Co. *v.* Hollis, 54 Minn. 223, 55 N.E. 1119 (1893).

[57] Hellerstein, *Secondary Boycotts in Labor Disputes* (1938) 47 YALE L. J. 341.

[58] Hellerstein, *op. cit. supra* n. 57, 344 and nn., where the cases are collected.

[59] Hellerstein, *op. cit. supra* n. 57, 346.

tion of interest can be established, the courts will enjoin such action as secondary. Based upon this distinction, it would appear that all of the employees of a broadcast station may strike in aid of the contention of the members of one craft union against their common employer.

§ 307. Same: Picketing of Suppliers or Customers of Unfair Employers.

The New York Court of Appeals held that members of a union could lawfully picket the establishment of their employer's customers and advertise or carry banners stating the conditions under which their employer's goods were manufactured.[60] Such picketing, of course, must be free from violence or intimidation of customers. In the same case, a *dictum* was expressed that the pickets had no lawful right to appeal to the public not to patronize their employer's customer. Such picketing, though peaceful, would be regarded as a secondary act because it was directed against a person not a party to an industrial dispute with the union.

Under this New York view, union employees of a broadcast station may not lawfully extend their trade disputes by picketing the commercial advertiser or sources of program personnel or material, with appeals to the public asking that its patronage of the advertisers and other third parties be withdrawn.[61] Such employees may picket, however, to request public assistance in "tuning out" programs transmitted by the broadcast station employer.

[60] Goldfinger *v.* Feintuch, 276 N.Y. 281, 11 N.E.(2d) 910 (1937). For the history of this litigation, see Hellerstein, *op. cit. supra* n. 57, *et seq.* *Cf.* Canepa *v.* Doe *et al.*, 277 N.Y. 52, 12 N.E.(2d) 790 (1938), (1938) 6 I. J. A. BULL. 130.

[61] Such picketing of the commercial advertiser creates a "labor dispute" within the meaning of anti-injunction statutes. *Davega-City Radio, Inc.* v. *Randau* et al., 1 N.Y.Supp.(2d) 514 (1937). *Contra: Mlle. Reif, Inc.* v. *Randau* et al., 1 N.Y.Supp.(2d) 515 (1937). Picketing of the place of business of a newspaper advertiser by the striking newspaper workers has been held unlawful. *Mlle. Reif, Inc.* v. *Randau, supra.*

Where the employees of a commercial advertiser are engaged in an industrial dispute with their employer, and the latter sponsors a commercial broadcast program, such employees may not picket or advertise to the public any solicitation that the employer's broadcast program be "tuned out" when transmitted by broadcast stations. Picketing or other advertising which directs public attention to the existence of a trade dispute with the broadcast program advertiser without requesting affirmative action against the station, is lawful.

§ 308. National Labor Relations Act and the Broadcasting Industry.

The National Labor Relations Act [62] (Wagner Act) was enacted in 1935. It embodies a plan whereby the parties to a labor dispute which involves some phase of interstate commerce may at least be brought to the stage of negotiations.

Section 2(6) of the National Labor Relations Act [63] defines the "commerce" which it regulates in its labor relations as follows:

> "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any territory of the United States and any State or other Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

Section 2(7) of the Act [64] defines the term "affecting commerce" as follows:

> ". . . in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

[62] Act of July 5, 1935, 49 STAT. 449, § 1 *et seq.*, 29 U.S.C.A. § 151 *et seq.* (1937). See Magruder, *Development of Collective Bargaining* (1937) 50 HARV. L. REV. 1071.

[63] *Id.*, at § 152(6).

[64] *Id.*, at § 152(7).

By Sections 9(c)[65] and 10(a),[66] the National Labor Relations Board is given certain powers concerning labor relations affecting commerce.

It is clear, therefore, that by this Act, Congress has sought to regulate labor relations in interstate commerce and has specifically included the communications industries. It has already been established that radio broadcasting is interstate commerce.[67] It cannot be doubted that the labor relations of the radio broadcasting industry are subject to the provisions of the National Labor Relations Act.[68]

It is also clear from the opinions in the cases in which this Act was held constitutional by the United States Supreme Court, that if it is shown that the labor dispute between the employees and the owner of a broadcast station does not impair the operation of an instrumentality of interstate commerce, or does not occur in the current of interstate commerce, or does not materially affect the flow of raw materials or processed goods into commerce, or does not lessen employment or wages as to affect the market for goods in interstate commerce, then there is no Federal jurisdiction.[69] In any of such cases, the provisions of the Act would not apply. It is obvious that any dispute between a broadcast station and its employees which affects the dissemination of broadcast programs, would impair the operation of an instrumentality of interstate commerce and would therefore give jurisdiction to invoke the Act.

[65] *Id.*, at § 159(c).

[66] *Id.*, at § 160(a).

[67] See § 5 *supra*.

[68] 49 STAT. 449, § 1 *et seq.* (1935), 29 U.S.C.A. § 151 *et seq.* (1937).

[69] Associated Press *v.* National Labor Rel. Board, 301 U.S. 103, 57 Sup. Ct. 650, 81 L.Ed. 953 (1937); National Labor Rel. Board *v.* Jones & Laughlin Steel Corp., 301 U.S. 1, 57 Sup. Ct. 615, 81 L.Ed. 893 (1937); *Id. v.* Fruehauf Trailer Co., 301 U.S. 49, 57 Sup. Ct. 642, 81 L.Ed. 918 (1937); *Id. v.* Friedman-Harry Marks Clothing Co., 301 U.S. 59, 57 Sup. Ct. 645, 81 L.Ed. 921 (1937).

§ 309. Employees' Rights Protected by National Labor Relations Act.

Section 7 of the National Labor Relations Act[70] declares:

> "Employees shall have the right to self-organization, to form, join, or assist, labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

It is expressly provided in Section 13 that this Act shall not be construed in any way "as to interfere with or impede in any way the right to strike."[71]

§ 310. Unfair Labor Practices Affecting Interstate Commerce May Be Prevented by National Labor Relations Board.

The National Labor Relations Act empowers the Board created by that statute to prevent any person from engaging in any unfair labor practice which affects interstate commerce.[72] An administrative procedure is provided under the Act whereby the Board may determine, after notice and hearing, the issue as to whether the labor practice in question is unfair under the Act.[73] The Board may proceed against a broadcast station owner who is found to be guilty of unfair labor practices towards his employees.

§ 311. Same: Unfair Labor Practice to Interfere with Employees in Exercise of Rights Guaranteed by National Labor Relations Act.

A broadcast station owner is deemed to engage in an unfair labor practice where he interferes with, restrains or coerces employees in their exercise of rights guar-

[70] 49 STAT. 449 (1935), 29 U.S. C.A. § 157 (1937).

[71] *Id.*, at § 163.

[72] *Id.*, at § 10(a), *id.*, at § 160(a).

[73] *Id.*, at § 10, *id.*, at § 160.

anteed by Section 7 of the Act.[74] The United States Supreme Court has upheld as valid the provisions of the Act which declare the discharge of employees for joining and assisting unions to be an unfair labor practice.[75]

§ 312. Same: Unfair Labor Practice for Employer to Dominate, Support or Interfere with Labor Organization.

The National Labor Relations Act declares it to be an unfair labor practice for an employer to dominate or, by financial or other aid, to support the formation or administration of a labor union. It is also unfair for an employer to interfere with the formation or administration of a labor union.[76]

§ 313. Same: Unfair Labor Practice for Employer to Encourage or Discourage Membership in Labor Unions.

The broadcast station owner or operator may not discriminate as to hiring, tenure of employment or any term or condition of the employment so as to influence the employee's labor union affiliation. The broadcast station owner or operator may not discriminate in such a manner as to encourage or discourage membership in any labor organization. However, the broadcast station may lawfully require membership in the labor union designated as the collective bargaining unit of his employees and agree to insist that membership in such association be a condition of employment.[77]

§ 314. Same: Unfair Labor Practice to Discriminate Against a Complainant.

Section 8(4)[78] makes it an unfair labor practice to discharge or in any way discriminate against an employee

[74] *Id.*, at § 157.

[75] Associated Press *v.* National Labor Rel. Board, 301 U.S. 103, 57 Sup. Ct. 650, 81 L.Ed. 953 (1937); National Labor Rel. Board *v.* Jones & Laughlin Steep Corp., 301 U.S. 1, 57 Sup. Ct. 615, 81 L.Ed. 893 (1937); *Id. v.* Fruehauf Trailer Co., 301 U.S. 49, 57 Sup. Ct. 642, 81 L.Ed. 918 (1937); *Id. v.* Friedman-Harry Marks Clothing Co., 301 U.S. 59, 57 Sup. Ct. 645, 81 L.Ed. 921 (1937).

[76] 49 STAT. 449 (1935) § 8(2), 29 U.S.C.A. § 158(2) (1937).

[77] *Id.*, at (3).

[78] *Id.*, at (4).

because he has complained to the Board or testified under the Act.

§ 315. Same: Unfair Labor Practice to Refuse to Bargain Collectively.

The broadcast station owner or operator must engage in collective bargaining with the representatives of his employees, subject to the provisions of Section 9(a).[79] That section of the statute declares that those representatives selected by the majority of an appropriate unit constitute the sole collective bargaining representatives for that unit as to wages, hours or other conditions of employment. The right of any other employee or group of employees to present grievances to the employer is expressly reserved.

§ 316. Election of Collective Bargaining Representatives Under National Labor Relations Act.

The National Labor Relations Board has full power to insure the full rights of employees and to enforce the Act by being vested with authority to determine the representative collective bargaining unit of the employees. The Board has full discretion to recognize either craft unions, industrial unions or organizations limited to one employer in deciding upon the appropriate unit for the election of collective bargaining representatives.[80]

If the question of the representatives of the employees for collective bargaining affects commerce within the terms of the Act, the Board may investigate and certify the names of the representatives selected. The Board must give notice and hold an appropriate hearing to determine the issue. If necessary, the Board may take a secret ballot of the employees. The Board, however, is not restricted to the secret ballot. It may use any other suitable method

[79] *Id.*, at § 159(a).

[80] *Id.*, at § 9(b), *id.*, at § 159(b).

to ascertain the true representative unit for collective bargaining.[81]

Where the Board has certified the representatives for collective bargaining, the refusal of a broadcast station employer to meet them is an unfair labor practice.

§ 317. Enforcement of Provisions of National Labor Relations Act.

The Board may issue two types of orders:

1. To cease and desist.
2. To take affirmative action.[82]

The order to cease and desist is issued upon a determination of unfair labor practice by the employer. Such an order requires the broadcast station to end and refrain from such unfair practice. The order may require affirmative acts by the unfair employer.[83]

A broadcast station found to be unfair may be required to reinstate employees with or without back pay. It may be required to meet the representatives of the employees. The Board may order any action which will effectuate the policies of the Act.[84]

The Board may petition the proper Federal court to enforce judicially the order issued by it.[85] Likewise, the employer may secure a judicial review of the final order of the Board in the proper Federal court.[86]

[81] *Id.*, at § 9, *id.*, at § 159.

[82] *Id.*, at § 10(c), *id.*, at § 160(c).

[83] *Ibid.*

[84] *Ibid.*

[85] *Id.*, at § 10(e), *id.*, at § 160(e).

[86] *Id.*, at § 10(d), *id.*, at 160(d).

Chapter XIX.

LIABILITY OF BROADCAST STATIONS FOR INJURIES TO EMPLOYEES.

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§ 318. Workmen's Compensation Statutes.

The remedy available to broadcast station employees for personal injuries received in the course of their employment must be discussed in considering the relation between the owner or operator of a broadcast station and his employees. Formerly, an employee who was injured in the course of his employment was left to his remedy at common law. This proved inadequate to meet modern conditions of industrial employment and in the past thirty years has been the subject of considerable reform if not totally abolished. As a substitute for actions at law, the various state legislatures have enacted workmen's compensation statutes which impose liability upon the employer on a theory of insurance. By 1935, the Federal

government[1] and all of the States, except Arkansas and Mississippi,[2] had enacted laws changing the common law on this phase of the master and servant relation. However, the Federal Employers Liability Act[3] and the Federal Maritime Compensation Act[4] are confined to workers in interstate railroad and all maritime pursuits. There is no general workmen's compensation act within the jurisdiction of the Federal government.

§ 319. Same: Application to Broadcasting as Interstate Commerce.

Since radio broadcasting is interstate commerce[5] and since there is no specific Federal legislation covering workers in this industry, does the broadcast station employee have a remedy only at common law for his personal injuries? While the power of Congress over interstate commerce is plenary and exclusive,[6] state legislation for the compensation of injured employees may validly be applied to broadcast station employees[7] except where workers in interstate commerce are expressly excluded. A state may legislate on local phases of interstate commerce where Congress has not acted on the subject and the state regulation does not burden interstate commerce.[8]

In *Fischer* v. *Stephens College*,[9] the Missouri statute did not expressly exclude workers in interstate commerce.[10] It was held that an employee of a broadcast station, injured in the course of his employment, could recover under the Missouri Compensation Act. The employee in this case

[1] 35 STAT. 65 (1908), 45 U.S. C.A. § 51 *et seq.* (1937); 44 STAT. 1424 (1927), 33 U.S.C.A. § 901 *et seq.* (1937).

[2] JONES, DIGEST OF WORKMEN'S COMPENSATION LAWS OF THE STATES (1935).

[3] 35 STAT. 65 (1908), 45 U.S. C.A. § 51 *et seq.* (1937).

[4] 44 STAT. 1424 (1927), 33 U.S. C.A. § 901 *et seq.* (1937).

[5] See § 5 *supra.*

[6] See §§ 5, 7, 8, 9 *supra.*

[7] *Cf.* § 183 *supra.*

[8] *Cf. Ibid.*

[9] 47 S.W.(2d) 1101 (Kan. City C. A., Mo., 1932).

[10] JONES, *op. cit. supra* n. 2.

was an advertising solicitor and program director. The court did not discuss the interstate nature of the broadcasting business.

Fischer v. *Stephens College* [11] would seem to be contrary in its holding to *Van Dusen* v. *Department of Labor and Industries of Washington* [12] except that in the latter case, the activity of the injured worker in interstate commerce is more clear. Because Van Dusen, who was electrocuted while working on the transmission apparatus of a broadcast station, was engaged in interstate commerce, the Washington Supreme Court held that the compensation legislation of the State could not be applied. The Washington statute does not expressly exclude workers in interstate commerce but does include all workers within the legislative jurisdiction.[13]

It is submitted that *Van Dusen* v. *Department of Labor and Industries* [14] is wrongly decided because the application of the Washington Compensation Act to all broadcast station employees would not burden interstate commerce. The case would thus be brought within the legislative jurisdiction of the State of Washington. Moreover, Congress has not evidenced any intent to exclude the states in this field.

The other rulings of the Washington Supreme Court in the *Van Dusen* case involve the so-called "one step removed" test of employment in interstate commerce. The ruling that Van Dusen was engaged in interstate commerce is manifestly correct but the test used may be criticized on the ground that it is intricate and uncertain. The intricacy of the rule lies in the fact that it requires a determination of whether at the time the employee was injured, he was working on a job so closely connected with interstate commerce as to be a part thereof. Under that test,

[11] 47 S.W.(2d) 1101 (Kan. City C. A., Mo., 1932).

[12] 158 Wash. 414, 290 Pac. 803 (1930).

[13] JONES, *op. cit. supra* n. 2.

[14] 158 Wash. 414, 290 Pac. 803 (1930).

if the worker's activity is one step removed from interstate commerce, the injury is deemed to have occurred in intrastate commerce. The ruling is uncertain in that employees of broadcast stations may pass rapidly and on several occasions during the same day from interstate commerce to intrastate commerce and *vice versa.*

Under the statutes of Arizona,[15] Delaware,[16] Indiana,[17] Maryland,[18] Maine,[19] Michigan,[20] New York[21] and Utah,[22] all employment in interstate commerce is excluded from the operation of the respective Workmen's Compensation Acts, thus exempting broadcast stations in these eight states from any compulsory liability under such statutes. The remaining thirty-eight states and the District of Columbia make no specific exception of persons engaged in interstate commerce although, of course, carriers by railroad[23] and maritime employers[24] are under the exclusive jurisdiction of the Federal government.[25]

§ 320. Same: Where Character of Employment Is Defined.

In several states, the workmen's compensation laws apply primarily or unqualifiedly only to "hazardous" or "extra-hazardous" employments.[26] This limitation ob-

[15] REV. CODE (1928) § 1445.

[16] Laws (1917) § 3193, 142.

[17] ANNO. STAT. (Burns, 1926) § 9464.

[18] ANNO. CODE (Bagby, 1924), Art. 101, § 33, except that an employer may voluntarily bind himself under the Maryland Act, if no act of Congress prohibits the inclusion.

[19] REV. STAT. (1930) c. 58, § 2 (II).

[20] COMP. LAWS (1929) § 8481 except that an employer may elect to bring himself and his employees under the Act.

[21] N. Y. Laws 1914, c. 41, § 113, CONS. LAWS. (Cahill, 1930) c. 66, § 113.

[22] REV. STAT. (1933) § 42–1–89.

[23] 35 STAT. 65 (1908), 45 U.S. C.A. § 51 *et seq.* (1937).

[24] 44 STAT. 1424 (1927), 33 U.S. C.A. § 901 *et seq.* (1937).

[25] Jensen *v.* Southern Pacific, 244 U.S. 205, 37 Sup. Ct. 524, 61 L.Ed. 1086 (1917).

[26] For a general definition of "hazardous", see the New York statute. N. Y. Laws 1922, c. 615, § 2, subd. 1, § 3, groups 1–12, CONS. LAWS (Cahill, 1930), c. 66. See Bowne *v.* S. W. Bowne Co., 221 N.Y. 28, 116 N.E. 364 (1917).

tains in Illinois, Louisiana, Maryland, Montana, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Washington and Wyoming.[27] In Illinois,[28] where the law is compulsory in its application to "hazardous" employments, elective provisions apply to nearly all "non-hazardous" employments. In New York, compulsory provisions of the law apply not only to a comprehensive list of occupations specified as "hazardous employments" but also to all other private employments, with specific exceptions, in which four or more "workmen or operatives" are employed.[29]

It should be noted that the employee's actual work or occupation at the time of the injury, and not the business of the employer, is the test of liability under workmen's compensation laws.[30]

Employment of "fewer" or "not more than" the number of persons employed or regularly employed is excepted in a number of jurisdictions from the application of the law or of some crucial provision of the law, or from the penalties for non-acceptance where the law is elective. The numerical limitations exist as follows:

> Alabama (16), Alaska (5), Arizona (3), Colorado (4), Connecticut (5), Delaware (5), Florida (3 or, in some employments, 15), Ohio (3 "workmen or operatives"), Oklahoma (2), Puerto Rico (4), Rhode Island (5), South Carolina (15), Tennessee (5), Texas (3), Utah (3), Vermont (10), Virginia (11) and Wisconsin (3).

Under the New York laws[31] and the statutes of ten other states which extend only to persons in "hazardous"

[27] JONES, *op. cit. supra* n. 2.

[28] ILL. REV. STAT. (Cahill, 1933) c. 48, ¶ 201, § 1., ¶ 202, § 3.

[29] N. Y. Laws 1922, c. 615, § 3, group 18, CONS. LAWS (Cahill, 1930) c. 66.

[30] Lyon *v.* Windsor, 173 App. Div. 377, 159 N.Y.Supp. 162 (1916).

[31] N. Y. Laws, 1922, c. 615, § 2, § 3, CONS. LAWS (Cahill, 1930) c. 66.

employment,[32] those employees not performing hazardous work, such as clerks, professionals of all types and persons not engaged in manual labor or work at a machine, would be excluded from the benefit of the workmen's compensation laws.

Actors, musicians and singers would be exempt as not coming within the specified classifications.[33] It would seem that mechanics and engineers in the control rooms and at the transmission plant of a broadcast station would come under the statute as "operatives" or persons tending machines.[34]

§ 321. Same: Employee and Independent Contractor Distinguished.

The large majority of the states[35] merely require that a certain number of persons be employed in order to bring the employer and employee within the purview of the workmen's compensation legislation. Under such provisions, all persons employed by a broadcast station, with the exception of the independent contractor, would be subject to the compensation statute, assuming, of course, that the station employs the minimum number required by the statute.

The definition of "employee" is not inimical to and does not disturb the distinctions established at common law between a servant or employee and an independent contractor. The common law rules which demarcated the relation of master and servant from that of employer and independent contractor are operative in the consideration of claims under workmen's compensation laws. From the

[32] Illinois, Louisiana, Maryland, Montana, New Hampshire, New Mexico, Oklahoma, Oregon, Washington and Wyoming. JONES, *op. cit. supra* n. 2.

[33] Clark *v.* Voorhees, 194 App. Div. 13, 184 N.Y.Supp. 888, *order revd. on another ground,* 231 N.Y. 14, 131 N.E. 553, (1920).

[34] See Westboy *v.* Curtis & Sanger, 198 App. Div. 25, 28, 189 N.Y.Supp. 539 (1921).

[35] JONES, *op. cit. supra* n. 2.

definitions and language of these statutes, it is clear that they deal with employers and employees, and that an independent contractor is not within their scope.[36]

The tests generally used in ascertaining whether or not a person is an independent contractor include the right and extent of control over the scope, manner and method of operation, the results of the work, the right to hire and discharge persons working for the one whose status is in question, the duty of the employer to supply tools and a place to work, and the payment of a regular salary.[37]

While the courts have agreed upon the general rule, the results reached in the application thereof to particular cases are often contradictory. The surrounding facts are so variable in this class of cases that it is difficult, if not impossible, to find any two which are identical.

A mechanic who repairs engines, who presents a bill for the gross amount without itemizing it and who is paid at a certain rate per hour depending on the particular kind of services rendered, is an employee and not an independent contractor because the employer furnishes the tools and the place to work.[38] A bill for the gross amount is not a contract to do a job for a lump sum. However, a mechanic who is hired to do a specific job and who is not

[36] Cameron *v.* Pillsbury, 173 Cal. 83, 159 Pac. 149 (1916); Decatur Ry. & Light Co. *v.* Ind. Board, 276 Ill. 472, 114 N.E. 915 (1916); Columbia School Supply Co. *v.* Lewis, 65 Ind. App. 339, 116 N.E. 1 (1917); *In re* McAllister, 229 Mass. 193, 118 N.E. 326 (1918); Tuttle *v.* Embury-Martin Lumber Co., 192 Mich. 385, 158 N.W. 875 (1916); Kerron *v.* Coolsaet Bros., 158 Minn. 522, 198 N.W. 134 (1924); Broun *v.* Patterson Central Market Assn., 139 Atl. 432 (N.J.L., 1927); Matter of Litts *v.* Risley Lumber Co., 224 N.Y. 321, 120 N.E. 730 (1918); Smith *v.* State Workmen's Ins. Fund, 262 Pa. 286, 105 Atl. 90 (1918); Western Indemnity Co. *v.* Praeter, 213 S.W. 355 (Tex. C. A., 1919); Komula *v.* General Acc. F. & L. Assur. Corp., 165 Wis. 520, 162 N.W. 919 (1917).

[37] Cinofsky *v.* Industrial Co., 290 Ill. 521, 125 N.E. 286 (1919); Norton *v.* Day Coal Co., 192 Iowa 160, 180 N.W. 905 (1920); Beach *v.* Velzy, 238 N.Y. 100, 143 N.E. 805 (1924).

[38] Peck *v.* Tossell, 193 App. Div. 604, 184 N.Y.Supp. 426 (1920).

under the control of the person engaging him, is an independent contractor.[39]

It is evident that no categorical statement can be made of the applicability of the workmen's compensation laws to all classes of broadcast station employees. Musicians, announcers, actors, singers and all of the other so-called "staff men" engaged in the broadcast of sustaining programs for the station, would come within these statutes when they are not engaged as independent contractors. However, many of these persons are not "staff men" but independent contractors. As such, they are not protected under the workmen's compensation legislation.

§ 322. Same: Program Sponsor as Principal Employer.

Where these workers are employees, the question arises as to who is the employer, as between the program sponsor and the broadcast station. The advertiser or program sponsor usually occupies the position of a principal employer.

Precedents may be found both for and against the proposition that the employee of an independent program producer is to be considered as an employee of the program sponsor. If the producer of the program is actually an independent contractor, the better view is that his employee is not the employee of the program sponsor since the producer is the principal employer.

In determining whether the musicians and artists in a "name" band are the employees of the leader or owner thereof as against the program sponsor and producer, the tests under which the "name" orchestra is regarded as an independent contractor would likewise make the leader liable for workmen's compensation.

§ 323. Same: Methods of Insuring Payment.

The methods adopted to pay the awards made under workmen's compensation laws are several. In thirty-eight

[39] Mahoney *v.* Daycock, 213 App. Div. 501, 210 N.Y.Supp. 558 (1925).

states and the District of Columbia,[40] insurance security or proof of security is required. In seven states,[41] insurance is compulsory, and in one state, Alabama,[42] no insurance security or proof of responsibility is required at all.

In seven states,[43] the insurance is in the form of a state fund to which the employers contribute. In eleven states,[44] private insurance companies are permitted to compete with the state funds. In the remaining twenty-eight states and the District of Columbia, there are no state funds.[45]

§ 324. Casual Employment: Extension of Statutes to Excepted Employments.

Contrary to the general rule, "casual" employments, variously defined, are not excepted from the application of the statute in ten states and two territories.[46]

Employees whose remuneration exceeds a specified rate are excepted from the application of the law in four states and two territories.[47]

Purely clerical employment is excluded from the protection of the acts in Iowa[48] and New York.[49] It would seem that in those states granting compensation to workmen, operatives or persons in "hazardous" employments, clerical and sales staffs of broadcast stations would also be excluded.

[40] JONES, *op. cit. supra* n. 2.

[41] Massachusetts, Nevada, North Dakota, Oregon, Texas, Washington and Wyoming. See JONES, *op. cit. supra* n. 2.

[42] CODE (1928) § 7584.

[43] Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia and Wyoming. See JONES, *op. cit. supra* n. 2.

[44] Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, New York, Oklahoma, Pennsylvania and Utah. See JONES, *op. cit. supra* n. 2.

[45] JONES, *op. cit. supra* n. 2.

[46] Alaska, Kentucky, Louisiana, Maine, Michigan, Montana, New Hampshire, New York, Oklahoma, Oregon, Philippine Islands and Washington. See JONES, *op. cit. supra* n. 2.

[47] Hawaii, Missouri, North Dakota (if "executives"), Philippine Islands, Rhode Island and Vermont. See JONES, *op. cit. supra* n. 2.

[48] CODE (1927) § 1421(b).

[49] N. Y. Laws, 1914, c. 41, § 113, CONS. LAWS (Cahill, 1930) c. 66.

There are no provisions for bringing excepted employments within the scope of the statutes effective in seven states and two territories.[50] The employer may elect to bring all excepted employments under the law in six states.[51] Some excepted employments, but not all, may be brought under the law by joint election or agreement in Connecticut, Illinois, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Mexico, Rhode Island and Vermont.[52] All excepted employments may be brought under the law by joint election in sixteen states.[53]

The Workmen's Compensation Acts of New Jersey, Pennsylvania, Texas, Washington and Wyoming cover injuries incurred in the course of employment.[54] Literally, the Ohio law so provides but it has been otherwise construed.[55] The Wisconsin legislation covers injuries sustained in performing services growing out of and incidental to the employment. The Arizona statute covers injuries arising "out of or in the course of" the employment.[56] All other compensation laws, in effect, cover only injuries arising out of *and* in the course of the employment.[57]

§ 325. Application of the Statutes to Broadcast Station Employees.

Although, in the absence of any Federal legislation, the compensation laws of the states would be permitted to cover persons employed in the broadcasting industry, eight states, by their specific exclusion of employees in interstate commerce, have denied persons employed by broadcast stations the protection of their respective compensation statutes.

The protection accorded such employees engaged in the

[50] Alaska, Delaware, Hawaii, Iowa, New Hampshire, Oklahoma, Philippine Islands, West Virginia, Wyoming and District of Columbia. JONES, *op. cit. supra* n. 2.

[51] JONES, *op. cit. supra* n. 2.

[52] *Ibid.*

[53] *Ibid.*

[54] *Ibid.*

[55] Industrial Comm. *v.* Arnold, 20 Abs. 410 (Ohio, 1935).

[56] JONES, *op. cit. supra* n. 2.

[57] *Ibid.*

broadcasting industry in the other thirty-eight states is necessarily limited by the general exclusion of independent contractors. Likewise, the limitation of the scope of the statutes of eleven states [58] to "hazardous" employments of "workmen or operatives", may exclude broadcast station employees who do not come within such descriptive provisions. In the remaining states,[59] clerical staffs, mechanics and regularly employed engineers of a broadcast station as well as its sales representatives, would be protected under the respective compensation statutes if the required minimum number of workers is employed.

§ 326. Recovery at Common Law.

Employees of broadcast stations who are precluded by the provisions of compensation statutes from obtaining compensation for personal injuries sustained in the course of their employment, may exercise such legal remedies as are available to them at common law. Similarly, in Arkansas and Mississippi, where compensation legislation has not been enacted, broadcast station employees may recover damages for their personal injuries by common law actions for negligence.

[58] See JONES, *op. cit. supra,* n. 2.
[59] *Ibid.*

Chapter XX.

SOCIAL SECURITY TAXES.

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§ 327. Generally.

It is necessary to consider the taxes imposed by the so-called social security laws insofar as they are applicable to radio broadcast stations. The United States Supreme Court has sustained the validity of this legislation.[1] The taxes levied under the Social Security Act are divided into three classes:

1. Taxes levied on the employer and employee for the old age compensation phases of the Act
2. Taxes levied on the employer for the unemployment phases of the Act
3. Taxes levied by states for their local Unemployment Compensation Laws.

The broadcast station employer is liable to pay all three taxes. He cannot escape liability for the state tax on the

[1] Chas. C. Steward Mach. Co. *v.* Davis, 301 U.S. 548, 57 Sup. Ct. 883, 81 L.Ed. 1278 (1937); Helvering *v.* Davis, 301 U.S. 619, 57 Sup. Ct. 904, 81 L.Ed. 1307 (1937).

ground that he is engaged in interstate commerce. Section 906 of the Social Security Act expressly provides: [2]

> "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce."

§ 328. Unemployment Compensation Taxes.

The Social Security Act requires all broadcast station employers who employ eight or more persons for twenty days, each day being in a different calendar week during one year,[3] to pay an excise tax to the Federal Government.[4] This unemployment compensation tax is levied on the employer's total payroll at a rate of 1% during 1936, 2% during 1937 and 3% after December 31, 1937.[5] This excise tax is payable by the employer for all employees.[6] The latter are not required to participate in the payment of the unemployment compensation tax.

§ 329. Same: Employments Exempted from the Effect of the Act.

Radio broadcast station operators need not pay the excise payroll tax on the following employments:

1. Where the employer is an individual who employs his father, mother, wife or his children under the age of twenty-five years.[7]
2. Where the broadcast station is owned and operated by the Federal,[8] state or local government or an instrumentality thereof.[9]

[2] 49 STAT. 642 (1935), 42 U.S. C.A., § 1106 (1937).

[3] 49 STAT. 642, § 907(a) (1935), 42 U.S.C.A. § 1107(a) (1937).

[4] *Id.*, at § 901, *id.*, at § 1101.

[5] *Ibid.*

[6] *Ibid.*

[7] 49 STAT. 642, § 907(c), (4) (1935), 42 U.S.C.A. § 1107(c), (4) (1937).

[8] *Id.*, at § 907(c), (5), *id.*, at § 1107(c), (5).

[9] *Id.*, at § 907(c), (6), *id.*, at § 1107(c), (6).

3. Where the employing broadcast station is owned by a corporation or other entity organized and operated exclusively for religious, charitable, scientific, literary or educational purposes. The employees must perform the service for such employer within the scope of the purposes of its charter. Furthermore, in order for this exemption to apply, no part of the net earnings of such an exempted employer may enure to the benefit of any private stockholder or individual.[10]

§ 330. Same: Exemption Where Employer Contributes to State Fund.

The employer is entitled under the Social Security Act to an exemption from the Federal impost equal to 90% thereof where that amount is paid into a state unemployment compensation fund.[11] It is a condition precedent to such exemption that the state unemployment compensation plan be approved by the Federal Social Security Board.[12] To secure this approval, certain statutory conditions must be met:[13]

1. Unemployment compensation must be paid through the public employment offices in the state, or such other agencies as the Board may approve.
2. Two years must elapse from the date of the first contribution before payments may be made.
3. All moneys paid into the state unemployment fund must be promptly paid over to the Secretary of the Treasury to the credit of the unemployment trust fund.
4. All moneys withdrawn from the trust fund may be used only for compensation and not for administrative expenses.

[10] *Id.*, at § 907(c), (8), *id.*, at § 1107(c), (8). See United States Treasury Dept., Bur. Internal Rev., *Regulations* 91, Art. 12.

[11] 49 STAT. 639, § 902 (1935), 42 U.S.C.A. § 1102 (1937).

[12] *Ibid.*

[13] *Id.*, at § 903, *id.*, at § 1103.

5. A person cannot be denied compensation solely on the ground that he refused work if his refusal was due to a strike, lockout, labor dispute or to the fact that conditions of work offered were less favorable than those in similar work in the locality. Likewise, if the offer of employment was conditional upon his joining a company union or resigning from or agreeing not to join a particular labor organization, he must not be deprived of compensation.
6. Any rights, privileges and immunities conferred under the statute may not be taken away by a subsequent amendment or repeal of the legislation.

Additional credit will be allowed to the taxpayer where the state contribution rates have been reduced under certain merit clauses which vary in each state.[14]

Where the employer pays less in taxes than is payable under the state laws, his additional credit is reduced proportionately.[15] In any event, the total credit allowed is 90%.[16]

§ 331. Old Age Pension Provisions of Social Security Act.

All broadcast companies employing any person in any capacity are subject to the excise taxes levied under the old age pension provisions of the Social Security Act.[17] The employees of broadcast stations and networks are subject to the income tax provisions of this Act.[18] The statutory definition of employment is as follows:[19]

> "The term 'employment' means any services of whatever nature, performed within the United States by an employee for his employer, except
>
> 1. Casual labor not in the course of the employer's trade or business;

[14] *Id.*, at § 909(a), *id.*, at § 1109(a).

[15] *Id.*, at § 909(b), *id.*, at § 1109(b).

[16] *Id.*, at § 902, *id.*, at § 1102.

[17] 49 STAT. 637, § 804 (1935), 42 U.S.C.A. § 1004 (1937).

[18] *Id.*, at § 801, *id.*, at § 1001.

[19] *Id.*, at § 811(b), *id.*, at § 1011(b).

2. Service performed by an individual who has attained the age of sixty-five;
3. Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
4. Service performed in the employ of the United States Government or of an instrumentality of the United States;
5. Service performed in the employ of a State, a political subdivision thereof, or an instrumentality or one or more States or political subdivision;
6. Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual."

The old age pension tax which the employer must pay is graduated: 1% to be paid during 1937, 1938 and 1939; 1½% during 1940, 1941 and 1942; 2% during 1943, 1944 and 1945; 2½% during 1946, 1947 and 1948; 3% thereafter.[20] The employee also is obliged to pay out of his wages, an income tax equal to the percentages paid by the employer.[21] It is to be deducted from the payroll by the employer,[22] who thereupon is required to pay over both the income and excise taxes to the Internal Revenue Bureau. Responsibility for payment of old age pension taxes by both employer and employee is fixed upon the employer by the statute. However, by the terms of the Act, these taxes are limited to an employee's earnings of less than $3,000. Wages in excess of that sum are not considered in computing the taxes.[23] It is to be noted

[20] *Id.*, at § 804, *id.*, at § 1004.
[21] *Id.*, at § 801, *id.*, at § 1001.
[22] *Id.*, at § 802(a), *id.*, at § 1002(a).
[23] 49 STAT. 639, § 811(a) (1935), 42 U.S.C.A. § 1011(a) (1937).

that wages include bonuses, commissions and tips but not Christmas gifts.[24]

No matter what other taxes are or have been paid to the states, no allowances or credit therefor will be given the employer or employee. The Social Security taxes are paid directly to the Federal government[25] and are paid out by the Secretary of the Treasury in accordance with certification by the Social Security Board.[26]

§ 332. Social Security Taxes Levied on Employment Only.

The taxes levied under the Social Security Act are based upon employment. The employer is liable only for those employed by him. Those who serve the employer are liable only where they are employees.[27] Therefore, no tax may be levied as to that class of servants denominated as independent contractors.

At common law, the distinction between employee and independent contractor has been drawn as follows:[28]

> "The independent contractor is one who agrees to do a specific piece of work for another for a lump sum or its equivalent, who has control of himself and his helpers as to when, within a reasonable time he shall begin and finish the work, as to methods of accomplishing it and who is not subject to discharge because he does the work as to method and detail in one way rather than another. In the relation of employer and employee, the employer has control and direction not only of the work as to the result, but as to the details and methods of doing the work."

In any case, whether a person is an employee is a question of fact to be determined under all the circumstances

[24] United States Treasury Dept., Bur. Internal Rev., *Regulations* 86, Art. 22(a).

[25] 49 STAT. 637, § 807(d) (1935), 42 U.S.C.A. § 1007(d) (1937).

[26] *Id.*, at § 302, *id.*, at § 502.

[27] 49 STAT. 636 (1935), 42 U.S. C.A. § 1001 (1937).

[28] Beach *v.* Velzy, 238 N.Y. 100, 103, 143 N.E. 805 (1924); Hexamer *v.* Webb, 101 N.Y. 377, 4 N.E. 755 (1886); Dutcher *v.* Victoria Paper Mills Co., 219 App. Div. 541, 220 N.Y.Supp. 625 (1927).

of the relation. There is no doubt, however, that technicians, engineers, musicians, staff announcers, staff actors and other radio performers are employees. The real question is as to who is the employer. This is also a question of fact in each case.[29]

In the case of musicians comprising a "no-name" band employed by the broadcast station through a union contractor, the broadcast station is the employer when they perform on sustaining programs. When such staff musicians also render their services on commercial broadcasts, the station and the program sponsor may be considered joint employers. In both instances, the union contractor is not independent and the musicians are subject to the direct control and authority of the broadcast station.

Where the musicians employed comprise an orchestra which has such independent popularity as to warrant its designation as a "name" band, the conductor thereof is generally considered the employer of such musicians. Similarly, vocalists and other artists who render their services regularly as members of a "name" musical organization are employees of the leader. Although the entire unit or group may render its services on behalf of a program sponsor or independent producer, the conductor retains full control over the services of the individuals constituting the "name" band. By reason of such control and the payment of compensation by the leader, the individuals are the latter's employees.

In many cases, the employers of such musical organizations are corporate entities which are clearly liable for the payment of social security taxes.

Where a "name" band functions as a *bona fide* co-operative enterprise, the individual musicians and artists are joint venturers and the conductor is not an employer. This result should be unchanged despite the fact that the

[29] See United States Treasury Dept., Bur. Internal Rev., *Regulations* 91, 4.

co-operative agreement recites that minimum union scale compensation shall be payable to each musician. Where the co-operative organization employs musicians or artists who are not parties to the co-operative agreement, the joint venturers are the employers of such added personnel.

Although "name" orchestras render their services for a program sponsor or producer under an independent contract, the orchestra leader or owner is responsible for the payment of social security taxes with respect to the constituent members thereof. The program producer or sponsor, although having control over the result but not the means of the orchestra's performance, is not liable for such taxes since the relation usually arises out of independent contract rather than employment.

Where performers for a commercial broadcast program are furnished to an advertiser by the broadcast station as the manager or booking agent of such program talent, the sponsor is the employer of all such performers who are not independent contractors and is liable for the payment of social security taxes arising out of the employment relation.

§ 333. Same: Casual Employees.

It is not necessary that the employer engage the services of an employee on a full time or regular basis before liability for social security taxes is imposed. Despite the fact that artists and others participating in broadcast programs render services intermittently or occasionally, their employers are liable for payment of the appropriate taxes. While many such performers may be considered casual employees, their services are nevertheless rendered in the course of the employer's business. The tax exemption which is ordinarily applicable to casual employees is destroyed when such casual services are rendered in the course of the employer's business.[30]

[30] *Id.*, at Art. 8.

APPENDIX TO VOLUME I

APPENDIX TO VOLUME I.

THE SHIP RADIO ACT OF 1910.

An Act To require apparatus and operators for radio communication on certain ocean steamers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of July, nineteen hundred and eleven, it shall be unlawful for any ocean-going steamer of the United States, or of any foreign country, carrying passengers and carrying fifty or more persons, including passengers and crew, to leave or attempt to leave any port of the United States unless such steamer shall be equipped with an efficient apparatus for radio-communication, in good working order, in charge of a person skilled in the use of such apparatus, which apparatus shall be capable of transmitting and receiving messages over a distance of at least one hundred miles, night or day: *Provided,* That the provisions of this act shall not apply to steamers plying only between ports less than two hundred miles apart.

SEC. 2. That for the purpose of this act apparatus for radio-communication shall not be deemed to be efficient unless the company installing it shall contract in writing to exchange, and shall, in fact, exchange, as far as may be physically practicable, to be determined by the master of the vessel, messages with shore or ship stations using other systems of radio-communication.

SEC. 3. That the master or other person being in charge of any such vessel which leaves or attempts to leave any port of the United States in violation of any of the provisions of this act shall, upon conviction, be fined in a sum not more than five thousand dollars, and any such fine shall be a lien upon such vessel, and such vessel may be libeled therefor in any district court of the United States within the jurisdiction of which such vessel shall arrive or depart, and the leaving or attempting to leave each and every port of the United States shall constitute a separate offense.

SEC. 4. That the Secretary of Commerce and Labor shall make such regulations as may be necessary to secure the proper execution of this act by collectors of customs and other officers of the Government.

Approved, June 24, 1910.

(PUBLIC—No. 262—61ST CONGRESS—S. 7021.)

36 STAT. 629.

AMENDMENT OF SHIP RADIO ACT OF 1910.

An Act To amend an Act entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers," approved June twenty-fourth, nineteen hundred and ten.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of an Act entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers," approved June twenty-fourth, nineteen hundred and ten, be amended so that it will read as follows:

"SECTION 1. That from and after October first, nineteen hundred and twelve, it shall be unlawful for any steamer of the United States or of any foreign country navigating the ocean or the Great Lakes and licensed to carry, or carrying, fifty or more persons, including passengers or crew or both, to leave or attempt to leave any port of the United States unless such steamer shall be equipped with an efficient apparatus for radio communication, in good working order, capable of transmitting and receiving messages over a distance of at least one hundred miles, day or night. An auxiliary power supply, independent of the vessel's main electric power plant, must be provided which will enable the sending set for at least four hours to send messages over a distance of at least one hundred miles, day or night, and efficient communication between the operator in the radio room and the bridge shall be maintained at all times.

"The radio equipment must be in charge of two or more persons skilled in the use of such apparatus, one or the other of whom shall be on duty at all times while the vessel is being navigated. Such equipment, operators, the regulation of their watches, and the transmission and receipt of messages, except as may be regulated by law or international agreement, shall be under the control of the master, in the case of a vessel of the United States; and every willful failure on the part of the master to enforce at sea the provisions of this paragraph as to equipment, operators, and watches shall subject him to a penalty of one hundred dollars.

"That the provisions of this section shall not apply to steamers

plying between ports, or places, less than two hundred miles apart."

SEC. 2. That this Act, so far as it relates to the Great Lakes, shall take effect on and after April first, nineteen hundred and thirteen, and so far as it relates to ocean cargo steamers shall take effect on and after July first, nineteen hundred and thirteen: *Provided,* That on cargo steamers, in lieu of the second operator provided for in this Act, there may be substituted a member of the crew or other person who shall be duly certified and entered in the ship's log as competent to receive and understand distress calls or other usual calls indicating danger, and to aid in maintaining a constant wireless watch so far as required for the safety of life.

Approved, July 23, 1912.

(PUBLIC—No. 238—62D CONGRESS—S. 3815.)

37 STAT. 199.

THE RADIO ACT OF 1912.

An Act To regulate radio communication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a person, company, or corporation within the jurisdiction of the United States shall not use or operate any apparatus for radio communication as a means of commercial intercourse among the several States, or with foreign nations, or upon any vessel of the United States engaged in interstate or foreign commerce, or for the transmission of radiograms or signals the effect of which extends beyond the jurisdiction of the State or Territory in which the same are made, or where interference would be caused thereby with the receipt of messages or signals from beyond the jurisdiction of the said State or Territory, except under and in accordance with a license, revocable for cause, in that behalf granted by the Secretary of Commerce and Labor upon application therefor; but nothing in this Act shall be construed to apply to the transmission and exchange of radiograms or signals between points situated in the same State: *Provided,* That the effect thereof shall not extend beyond the jurisdiction of the said State or interfere with the reception of radiograms or signals from beyond said jurisdiction; and a license shall not be required for the transmission or exchange of radiograms or signals by or on behalf of the Government of the United States, but every Government station on land or sea shall have special call letters designated and published in the list of radio stations of the United States by the Department of Commerce and Labor. Any person, company, or corporation that shall use or operate any apparatus for radio communication in violation of this section, or knowingly aid or abet another person, company, or corporation in so doing, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, and the apparatus or device so unlawfully used and operated may be adjudged forfeited to the United States.

SEC. 2. That every such license shall be in such form as the Secretary of Commerce and Labor shall determine and shall contain the restrictions, pursuant to this Act, on and subject to which the license is granted; that every such license shall be issued only

to citizens of the United States or Porto Rico or to a company incorporated under the laws of some State or Territory or of the United States or Porto Rico, and shall specify the ownership and location of the station in which said apparatus shall be used and other particulars for its identification and to enable its range to be estimated; shall state the purpose of the station, and, in case of a station in actual operation at the date of passage of this Act, shall contain the statement that satisfactory proof has been furnished that it was actually operating on the above-mentioned date; shall state the wave length or the wave lengths authorized for use by the station for the prevention of interference and the hours for which the station is licensed for work; and shall not be construed to authorize the use of any apparatus for radio communication in any other station than that specified. Every such license shall be subject to the regulations contained herein, and such regulations as may be established from time to time by authority of this act or subsequent acts and treaties of the United States. Every such license shall provide that the President of the United States in time of war or public peril or disaster may cause the closing of any station for radio communication and the removal therefrom of all radio apparatus, or may authorize the use or control of any such station or apparatus by any department of the Government, upon just compensation to the owners.

SEC. 3. That every such apparatus shall at all times while in use and operation as aforesaid be in charge or under the supervision of a person or persons licensed for that purpose by the Secretary of Commerce and Labor. Every person so licensed who in the operation of any radio apparatus shall fail to observe and obey regulations contained in or made pursuant to this act or subsequent acts or treaties of the United States, or any one of them, or who shall fail to enforce obedience thereto by an unlicensed person while serving under his supervision, in addition to the punishments and penalties herein prescribed, may suffer the suspension of the said license for a period to be fixed by the Secretary of Commerce and Labor not exceeding one year. It shall be unlawful to employ any unlicensed person or for any unlicensed person to serve in charge or in supervision of the use and operation of such apparatus, and any person violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than two months; or both,

in the discretion of the court, for each and every such offense: *Provided,* That in case of emergency the Secretary of Commerce and Labor may authorize a collector of customs to issue a temporary permit, in lieu of a license, to the operator on a vessel subject to the radio ship act of June twenty-fourth, nineteen hundred and ten.

SEC. 4. That for the purpose of preventing or minimizing interference with communication between stations in which such apparatus is operated, to facilitate radio communication, and to further the prompt receipt of distress signals, said private and commercial stations shall be subject to the regulations of this section. These regulations shall be enforced by the Secretary of Commerce and Labor through the collectors of customs and other officers of the Government as other regulations herein provided for.

The Secretary of Commerce and Labor may, in his discretion, waive the provisions of any or all of these regulations when no interference of the character above mentioned can ensue.

The Secretary of Commerce and Labor may grant special temporary licenses to stations actually engaged in conducting experiments for the development of the science of radio communication, or the apparatus pertaining thereto, to carry on special tests, using any amount of power or any wave lengths, at such hours and under such conditions as will insure the least interference with the sending or receipt of commercial or Government radiograms, of distress signals and radiograms, or with the work of other stations.

In these regulations the naval and military stations shall be understood to be stations on land.

REGULATIONS.

NORMAL WAVE LENGTHS.

First. Every station shall be required to designate a certain definite wave length as the normal sending and receiving wave length of the station. This wave length shall not exceed six hundred meters or it shall exceed one thousand six hundred meters. Every coastal station open to general public service shall at all times be ready to receive messages of such wave lengths as are required by the Berlin convention. Every ship station, except as hereinafter provided, and every coast station open to general public service shall be prepared to use two sending wave lengths, one of three hundred meters and one of six hundred meters, as re-

quired by the international convention in force: *Provided,* That the Secretary of Commerce and Labor may, in his discretion, change the limit of wave length reservation made by regulations first and second to accord with any international agreement to which the United States is a party.

OTHER WAVE LENGTHS.

Second. In addition to the normal sending wave length all stations, except as provided hereinafter in these regulations, may use other sending wave lengths: *Provided,* That they do not exceed six hundred meters or that they do exceed one thousand six hundred meters: *Provided further,* That the character of the waves emitted conforms to the requirements of regulations third and fourth following.

USE OF A "PURE WAVE."

Third. At all stations if the sending apparatus, to be referred to hereinafter as the "transmitter," is of such a character that the energy is radiated in two or more wave lengths, more or less sharply defined, as indicated by a sensitive wave meter, the energy in no one of the lesser waves shall exceed ten per centum of that in the greatest.

USE OF A "SHARP WAVE."

Fourth. At all stations the logarithmic decrement per complete oscillation in the wave trains emitted by the transmitter shall not exceed two-tenths, except when sending distress signals or signals and messages relating thereto.

USE OF "STANDARD DISTRESS WAVE."

Fifth. Every station on shipboard shall be prepared to send distress calls on the normal wave length designated by the international convention in force, except on vessels of small tonnage unable to have plants insuring that wave length.

SIGNAL OF DISTRESS.

Sixth. The distress call used shall be the international signal of distress . . . — — — . . .

USE OF "BROAD INTERFERING WAVE" FOR DISTRESS SIGNALS.

Seventh. When sending distress signals, the transmitter of a station on shipboard may be tuned in such a manner as to create a maximum of interference with a maximum of radiation.

DISTANCE REQUIREMENTS FOR DISTRESS SIGNALS.

Eighth. Every station on shipboard, wherever practicable, shall be prepared to send distress signals of the character specified in regulations fifth and sixth with sufficient power to enable them to be received by day over sea a distance of one hundred nautical miles by a shipboard station equipped with apparatus for both sending and receiving equal in all essential particulars to that of the station first mentioned.

"RIGHT OF WAY" FOR DISTRESS SIGNALS.

Ninth. All stations are required to give absolute priority to signals and radiograms relating to ships in distress; to cease all sending on hearing a distress signal; and, except when engaged in answering or aiding the ship in distress, to refrain from sending until all signals and radiograms relating thereto are completed.

REDUCED POWER FOR SHIPS NEAR A GOVERNMENT STATION.

Tenth. No station on shipboard, when within fifteen nautical miles of a naval or military station, shall use a transformer input exceeding one kilowatt, nor, when within five nautical miles of such a station, a transformer input exceeding one-half kilowatt, except for sending signals of distress, or signals or radiograms relating thereto.

INTERCOMMUNICATION.

Eleventh. Each shore station open to general public service between the coast and vessels at sea shall be bound to exchange radiograms with any similar shore station and with any ship station without distinction of the radio system adopted by such stations, respectively, and each station on shipboard shall be bound to exchange radiograms with any other station on shipboard without distinction of the radio systems adopted by each station, respectively.

It shall be the duty of each such shore station, during the hours it is in operation, to listen in at intervals of not less than fifteen minutes and for a period not less than two minutes, with the receiver tuned to receive messages of three hundred-meter wave lengths.

DIVISION OF TIME.

Twelfth. At important seaports and at all other places where naval or military and private commercial shore stations operate in such close proximity that interference with the work of naval

and military stations can not be avoided by the enforcement of the regulations contained in the foregoing regulations concerning wave lengths and character of signals emitted, such private or commercial shore stations as do interfere with the reception of signals by the naval and military stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time. The Secretary of Commerce and Labor may, on the recommendation of the department concerned, designate the station or stations which may be required to observe this division of time.

GOVERNMENT STATIONS TO OBSERVE DIVISION OF TIME.

Thirteenth. The naval or military stations for which the above-mentioned division of time may be established shall transmit signals or radiograms only during the first fifteen minutes of each hour, local standard time, except in case of signals or radiograms relating to vessels in distress, as hereinbefore provided.

USE OF UNNECESSARY POWER.

Fourteenth. In all circumstances, except in case of signals or radiograms relating to vessels in distress, all stations shall use the minimum amount of energy necessary to carry out any communication desired.

GENERAL RESTRICTIONS ON PRIVATE STATIONS.

Fifteenth. No private or commercial station not engaged in the transaction of bona fide commercial business by radio communication or in experimentation in connection with the development and manufacture of radio apparatus for commercial purposes shall use a transmitting wave length exceeding two hundred meters, or a transformer input exceeding one kilowatt, except by special authority of the Secretary of Commerce and Labor contained in the license of the station: *Provided,* That the owner or operator of a station of the character mentioned in this regulation shall not be liable for a violation of the requirements of the third or fourth regulations to the penalties of one hundred dollars or twenty-five dollars, respectively, provided in this section unless the person maintaining or operating such station shall have been notified in writing that the said transmitter has been found, upon tests conducted by the Government, to be so adjusted as to violate the said third and fourth regulations, and opportunity has been given to said owner or operator to adjust said transmitter in conformity with said regulations.

SPECIAL RESTRICTIONS IN THE VICINITIES OF GOVERNMENT STATIONS.

Sixteenth. No station of the character mentioned in regulation fifteenth situated within five nautical miles of a naval or military station shall use a transmitting wave length exceeding two hundred meters or a transformer input exceeding one-half kilowatt.

SHIP STATIONS TO COMMUNICATE WITH NEAREST SHORE STATIONS.

Seventeenth. In general, the shipboard stations shall transmit their radiograms to the nearest shore station. A sender on board a vessel shall, however, have the right to designate the shore station through which he desires to have his radiograms transmitted. If this can not be done, the wishes of the sender are to be complied with only if the transmission can be effected without interfering with the service of other stations.

LIMITATIONS FOR FUTURE INSTALLATIONS IN VICINITIES OF GOVERNMENT STATIONS.

Eighteenth. No station on shore not in actual operation at the date of the passage of this act shall be licensed for the transaction of commercial business by radio communication within fifteen nautical miles of the following naval or military stations, to wit: Arlington, Virginia; Key West, Florida; San Juan, Porto Rico; North Head and Tatoosh Island, Washington; San Diego, California; and those established or which may be established in Alaska and in the Canal Zone; and the head of the department having control of such Government stations shall, so far as is consistent with the transaction of governmental business, arrange for the transmission and receipt of commercial radiograms under the provisions of the Berlin convention of nineteen hundred and six and future international conventions or treaties to which the United States may be a party, at each of the stations above referred to, and shall fix the rates therefor, subject to control of such rates by Congress. At such stations and wherever and whenever shore stations open for general public business between the coast and vessels at sea under the provisions of the Berlin convention of nineteen hundred and six and future international conventions and treaties to which the United States may be a party shall not be so established as to insure a constant service day and night without interruption, and in all localities wherever or whenever such service shall not be maintained by a commercial shore station within one hundred nautical miles of a naval radio station, the Secretary

of the Navy shall, so far as is consistent with the transaction of Government business, open naval radio stations to the general public business described above, and shall fix rates for such service, subject to control of such rates by Congress. The receipts from such radiograms shall be covered into the Treasury as miscellaneous receipts.

SECRECY OF MESSAGES.

Nineteenth. No person or persons engaged in or having knowledge of the operation of any station or stations shall divulge or publish the contents of any messages transmitted or received by such station, except to the person or persons to whom the same may be directed, or their authorized agent, or to another station employed to forward such message to its destination, unless legally required so to do by the court of competent jurisdiction or other competent authority. Any person guilty of divulging or publishing any message, except as herein provided, shall, on conviction thereof, be punishable by a fine of not more than two hundred and fifty dollars or imprisonment for a period of not exceeding three months, or both fine and imprisonment, in the discretion of the court.

PENALTIES.

For violation of any of these regulations, subject to which a license under sections one and two of this act may be issued, the owner of the apparatus shall be liable to a penalty of one hundred dollars, which may be reduced or remitted by the Secretary of Commerce and Labor, and for repeated violations of any of such regulations the license may be revoked.

For violation of any of these regulations, except as provided in regulation nineteenth, subject to which a license under section three of this act may be issued, the operator shall be subject to a penalty of twenty-five dollars, which may be reduced or remitted by the Secretary of Commerce and Labor, and for repeated violations of any such regulations, the license shall be suspended or revoked.

SEC. 5. That every license granted under the provisions of this act for the operation or use of apparatus for radio communication shall prescribe that the operator thereof shall not willfully or maliciously interfere with any other radio communication. Such interference shall be deemed a misdemeanor, and upon conviction thereof the owner or operator, or both, shall be punishable by a

fine of not to exceed five hundred dollars or imprisonment for not to exceed one year, or both.

SEC. 6. That the expression "radio communication" as used in this act means any system of electrical communication by telegraphy or telephony without the aid of any wire connecting the points from and at which the radiograms, signals, or other communications are sent or received.

SEC. 7. That a person, company, or corporation within the jurisdiction of the United States shall not knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent distress signal or call or false or fraudulent signal, call, or other radiogram of any kind. The penalty for so uttering or transmitting a false or fraudulent distress signal or call shall be a fine of not more than two thousand five hundred dollars or imprisonment for not more than five years, or both, in the discretion of the court, for each and every such offense, and the penalty for so uttering or transmitting, or causing to be uttered or transmitted, any other false or fraudulent signal, call, or other radiogram shall be a fine of not more than one thousand dollars or imprisonment for not more than two years, or both, in the discretion of the court, for each and every such offense.

SEC. 8. That a person, company, or corporation shall not use or operate any apparatus for radio communication on a foreign ship in territorial waters of the United States otherwise than in accordance with the provisions of sections four and seven of this act and so much of section five as imposes a penalty for interference. Save as aforesaid, nothing in this act shall apply to apparatus for radio communication on any foreign ship.

SEC. 9. That the trial of any offense under this act shall be in the district in which 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.

SEC. 10. That this act shall not apply to the Philippine Islands.

SEC. 11. That this act shall take effect and be in force on and after four months from its passage.

Approved, August 13, 1912.

(PUBLIC No. 264—62D CONGRESS—S. 6412.)

37 STAT. 302.

REQUIREMENT OF WAIVER OF RIGHT OR CLAIM TO FREQUENCY.

Joint Resolution Limiting the time for which licenses for radio transmission may be granted, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That until otherwise provided by law, no original license for the operation of any radio broadcasting station and no renewal of a license of an existing broadcasting station, shall be granted for longer periods than ninety days and no original license for the operation of any other class of radio station and no renewal of the license for an existing station of any other class than a broadcasting station, shall be granted for longer periods than two years; and that no original radio license or the renewal of an existing license shall be granted after the date of the passage of this resolution unless the applicant therefor shall execute in writing a waiver of any right or of any claim to any right, as against the United States, to any wave length or to the use of the ether in radio transmission because of previous license to use the same or because of the use thereof.

Approved, December 8, 1926.

(PUBLIC RESOLUTION—No. 47—69TH CONGRESS S. J. Res. 125.)

THE RADIO ACT OF 1927.

An Act For the regulation of radio communications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act is intended to regulate all forms of interstate and foreign radio transmissions and communications within the United States, its Territories and possessions; to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by individuals, firms, or corporations, for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. That no person, firm, company, or corporation shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel of the United States; or (f) upon any aircraft or other mobile stations within the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

SEC. 2. For the purposes of this Act, the United States is divided into five zones, as follows: The first zone shall embrace the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, the District of Columbia, Porto Rico, and the Virgin Islands; the second zone shall embrace the States of Pennsylvania, Virginia, West Virginia, Ohio, Michigan, and Kentucky; the third zone shall embrace the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Mississippi, Arkansas, Louisiana, Texas, and Oklahoma; the fourth zone shall embrace the States of Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri; and the fifth zone shall embrace the States of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California, the Territory of Hawaii, and Alaska.

SEC. 3. That a commission is hereby created and established to be known as the Federal Radio Commission, hereinafter referred to as the commission, which shall be composed of five commissioners appointed by the President, by and with the advice and consent of the Senate, and one of whom the President shall designate as chairman: *Provided,* That chairmen thereafter elected shall be chosen by the commission itself.

Each member of the commission shall be a citizen of the United States and an actual resident citizen of a State within the zone from which appointed at the time of said appointment. Not more than one commissioner shall be appointed from any zone. No member of the commission shall be financially interested in the manufacture or sale of radio apparatus or in the transmission or operation of radiotelegraphy, radiotelephony, or radio broadcasting. Not more than three commissioners shall be members of the same political party.

The first commissioners shall be appointed for the terms of two, three, four, five, and six years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed.

The first meeting of the commission shall be held in the city of

Washington at such time and place as the chairman of the commission may fix. The commission shall convene thereafter at such times and places as a majority of the commission may determine, or upon call of the chairman thereof.

The commission may appoint a secretary, and such clerks, special counsel, experts, examiners, and other employees as it may from time to time find necessary for the proper performance of its duties and as from time to time may be appropriated for by Congress.

The commission shall have an official seal and shall annually make a full report of its operations to the Congress.

The members of the commission shall receive a compensation of $10,000 for the first year of their service, said year to date from the first meeting of said commission, and thereafter a compensation of $30 per day for each day's attendance upon sessions of the commission or while engaged upon work of the commission and while traveling to and from such sessions, and also their necessary traveling expenses.

SEC. 4. Except as otherwise provided in this Act, the commission, from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies or wave lengths to the various classes of stations, and assign frequencies or wave lengths for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act; *Provided, however,* That changes in the wave lengths, authorized power, in the character of emitted signals, or in the times of operation of any station,

shall not be made without the consent of the station licensee unless, in the judgment of the commission, such changes will promote public convenience or interest or will serve public necessity or the provisions of this Act will be more fully complied with;

(g) Have authority to establish areas or zones to be served by any station;

(h) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(i) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(j) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(k) Have authority to hold hearings, summon witnesses, administer oaths, compel the production of books, documents, and papers and to make such investigations as may be necessary in the performance of its duties. The commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) 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. All expenditures of the commission shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman.

SEC. 5. From and after one year after the first meeting of the commission created by this Act, all the powers and authority vested in the commission under the terms of this Act, except as to the revocation of licenses, shall be vested in and exercised by the Secretary of Commerce; except that thereafter the commission shall have power and jurisdiction to act upon and determine any and all matters brought before it under the terms of this section.

It shall also be the duty of the Secretary of Commerce—

(A) For and during a period of one year from the first meeting of the commission created by this Act, to immediately refer to the commission all applications for station licenses or for the renewal or modification of existing station licenses.

(B) From and after one year from the first meeting of the

commission created by this Act, to refer to the commission for its action any application for a station license or for the renewal or modification of any existing station license as to the granting of which dispute, controversy, or conflict arises or against the granting of which protest is filed within ten days after the date of filing said application by any party in interest and any application as to which such reference is requested by the applicant at the time of filing said application.

(C) To prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such persons as he finds qualified.

(D) To suspend the license of any operator for a period not exceeding two years upon proof sufficient to satisfy him that the licensee (a) has violated any provision of any Act or treaty binding on the United States which the Secretary of Commerce or the commission is authorized by this Act to administer or by any regulation made by the commission or the Secretary of Commerce under any such Act or treaty; or (b) has failed to carry out the lawful orders of the master of the vessel on which he is employed; or (c) has willfully damaged or permitted radio apparatus to be damaged; or (d) has transmitted superfluous radio communications or signals or radio communications containing profane or obscene words or language; or (e) has willfully or maliciously interfered with any other radio communications or signals.

(E) To inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this Act, the rules and regulations of the licensing authority, and the license under which it is constructed or operated.

(F) To report to the commission from time to time any violations of this Act, the rules, regulations, or orders of the commission, or of the terms or conditions of any license.

(G) To designate call letters of all stations.

(H) To cause to be published such call letters and such other announcements and data as in his judgment may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act.

The Secretary may refer to the commission at any time any

matter the determination of which is vested in him by the terms of this Act.

Any person, firm, company, or corporation, any State or political division thereof aggrieved or whose interests are adversely affected by any decision, determination, or regulation of the Secretary of Commerce may appeal therefrom to the commission by filing with the Secretary of Commerce notice of such appeal within thirty days after such decision or determination or promulgation of such regulation. All papers, documents, and other records pertaining to such application on file with the Secretary shall thereupon be transferred by him to the commission. The commission shall hear such appeal de novo under such rules and regulations as it may determine.

Decisions by the commission as to matters so appealed and as to all other matters over which it has jurisdiction shall be final, subject to the right of appeal herein given.

No station license shall be granted by the commission or the Secretary of Commerce until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or wave length or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

SEC. 6. Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 1, 4, and 5 of this Act. All such Government stations shall use such frequencies or wave lengths as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the licensing authority may prescribe. 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 pre-

scribed by the licensing authority, 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. Radio stations on board vessels of the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation or the Inland and Coastwise Waterways Service shall be subject to the provisions of this Act.

SEC. 7. 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 which 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.

SEC. 8. All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Secretary of Commerce.

Section 1 of this Act shall not apply to any person, firm, company, or corporation sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this Act.

SEC. 9. The licensing authority, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

In considering applications for licenses and renewals of licenses, when and in so far as there is a demand for the same, the licensing authority shall make such a distribution of licenses, bands of

frequency of wave lengths, periods of time for operation, and of power among the different States and communities as to give fair, efficient, and equitable radio service to each of the same.

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 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.

No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license.

SEC. 10. The licensing authority may grant station licenses only upon written application therefor addressed to it. All applications shall be filed with the Secretary of Commerce. All such applications shall set forth such facts as the licensing authority by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies or wave lengths and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The licensing authority at any time after the filing of such original application and during the term of any such license may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

The licensing authority in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses

by section 2 of an Act entitled "An Act relating to the landing and the operation of submarine cables in the United States," approved May 24, 1921.

SEC. 11. If upon examination of any application for a station license or for the renewal or modification of a station license the licensing authority 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 licensing authority upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, 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.

Such station licenses as the licensing authority may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(A) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies or wave length designated in the license beyond the term thereof nor in any other manner than authorized therein.

(B) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(C) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 6 hereof.

In cases of emergency arising during the period of one year from and after the first meeting of the commission created hereby, or on applications filed during said time for temporary changes in terms of licenses when the commission is not in session and prompt action is deemed necessary, the Secretary of Commerce shall have authority to exercise the powers and duties of the commission, except as to revocation of licenses, but all such exercise of powers shall be promptly reported to the members of the commission, and any action by the Secretary authorized under this paragraph shall continue in force and have effect only until such time as the commission shall act thereon.

SEC. 12. The station license required hereby shall not be granted to, or after the granting thereof such license shall not be trans-

ferred in any manner, either voluntarily or involuntarily, to (a) any alien or the representative of any alien; (b) to any foreign government, or the representative thereof; (c) to any company, corporation, or association organized under the laws of any foreign government; (d) to any company, corporation, or association of which any officer or director is an alien, or of which more than one-fifth of the capital stock may be voted by aliens or their representatives or by a foreign government or representative thereof, or by any company, corporation, or association organized under the laws of a foreign country.

The station license required hereby, the frequencies or wave length or lengths authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner, either voluntarily or involuntarily, disposed of to any person, firm, company, or corporation without the consent in writing of the licensing authority.

SEC. 13. The licensing authority is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, after this Act takes effect, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person, firm, company, or corporation for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such firm, company, or corporation.

SEC. 14. Any station license shall be revocable by the commission for false statements either in the application or in the statement of fact which may be required by section 10 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the licensing authority in refusing to grant a license on an original

application, or for failure to operate substantially as set forth in the license, for violation of or failure to observe any of the restrictions and conditions of this Act, or of any regulation of the licensing authority authorized by this Act or by a treaty ratified by the United States, or whenever the Interstate Commerce Commission, or any other Federal body in the exercise of authority conferred upon it by law, shall find and shall certify to the commission that any licensee bound so to do, has failed to provide reasonable facilities for the transmission of radio communications, or that any licensee has made any unjust and unreasonable charge, or has been guilty of any discrimination, either as to charge or as to service or has made or prescribed any unjust and unreasonable classification, regulation, or practice with respect to the transmission of radio communications or service: *Provided,* That no such order of revocation shall take effect until thirty days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the parties known by the commission to be interested in such license. Any person in interest aggrieved by said order may make written application to the commission at any time within said thirty 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 herein directed. Notice in writing of said hearing shall be given by the commission to all the parties known to it to be interested in such license twenty days prior to the time of said hearing. Said hearing shall be conducted under such rules and in such manner as the commission may prescribe. Upon the conclusion hereof the commission may affirm, modify, or revoke said orders of revocation.

SEC. 15. 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.

SEC. 16. Any applicant for a construction permit, for a station license, or for the renewal or modification of an existing station license whose application is refused by the licensing authority shall have the right to appeal from said decision to the Court of Appeals of the District of Columbia; and any licensee whose license is revoked by the commission shall have the right to appeal from such decision of revocation to said Court of Appeals of the District of Columbia or to the district court of the United States in which the apparatus licensed is operated, by filing with said court, within twenty days after the decision complained of is effective, notice in writing of said appeal and of the reasons therefor.

The licensing authority from whose decision an appeal is taken shall be notified of said appeal by service upon it, prior to the filing thereof, of a certified copy of said appeal and of the reasons therefor. Within twenty days after the filing of said appeal the licensing authority shall file with the court the originals or certified copies of all papers and evidence presented to it upon the original application for a permit or license or in the hearing upon said order of revocation, and also a like copy of its decision thereon and a full statement in writing of the facts and the grounds for its decision as found and given by it. Within twenty days after the filing of said statement by the licensing authority either party may give notice to the court of his desire to adduce additional evidence. Said notice shall be in the form of a verified petition stating the nature and character of said additional evidence, and the court may thereupon order such evidence to be taken in such manner and upon such terms and conditions as it may deem proper.

At the earliest convenient time the court shall hear, review, and determine the appeal upon said record and evidence, and may alter or revise the decision appealed from and enter such judgment as to it may seem just. The revision by the court shall be confined to the points set forth in the reasons of appeal.

SEC. 17. After the passage of this Act no person, firm, company, or corporation now or hereafter directly or indirectly through any subsidiary, associated, or affiliated person, firm, company, corporation, or 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 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 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, firm, company, or corporation now or hereafter engaged directly or indirectly through any subsidiary, associated, or affiliated person, company, corporation, or 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 posses-

sion 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 or 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.

SEC. 18. 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 licensing authority 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 paragraph. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

SEC. 19. 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, firm, company, or corporation, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person, firm, company, or corporation.

SEC. 20. 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 Secretary of Commerce.

SEC. 21. 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 licensing authority upon written application therefor. The licensing authority 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 licensing authority 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 and wave length or wave lengths 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 licensing authority may require. Such application shall be signed by the applicant under oath or affirmation.

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 licensing authority 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. firm, company, or corporation without the approval of the licensing authority. 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 for which a permit has been granted, and upon it being made to appear to the licensing authority 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 licensing authority since the granting of the permit would, in the judgment of the licensing authority, make the operation of such station against the public interest, the licensing authority 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.

SEC. 22. The licensing authority 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 wave lengths designated for signals of distress and radio communications relating thereto during the entire period the transmitter of such station is in operation.

SEC. 23. Every radio station on shipboard shall be equipped to transmit radio communications or signals of distress on the frequency or wave length specified by the licensing authority, 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.

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 or wave lengths 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.

SEC. 24. Every shore 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.

SEC. 25. 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 can not 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 sta-

tions concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time.

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.

SEC. 26. 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.

SEC. 27. No person receiving or assisting in receiving any radio communication shall divulge or publish the 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 telephone, telegraph, cable, or radio station employed or authorized to forward such radio communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the radio 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 message and divulge or publish the contents, substance, purport, effect, or meaning of such intercepted message to any person; and no person not being entitled thereto shall receive or assist in receiving any radio communication 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 radio 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 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 broadcasted or transmitted by amateurs or others for the use of the general public or relating to ships in distress.

SEC. 28. No person, firm, company, or corporation 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.

SEC. 29. Nothing in this Act shall be understood or construed to give the licensing authority 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 licensing authority which shall interfere with the right of free speech by means of radio communications. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

SEC. 30. 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 Interstate Commerce 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, the Philippine Islands, 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 licensing authority shall have notified the Secretary of the Navy thereof.

SEC. 31. The expression "radio communication" or "radio communications" wherever used in this Act means any intelligence, message, signal, power, pictures, or communication of any nature transferred by electrical energy from one point to another without the aid of any wire connecting the points from and at which the electrical energy is sent or received and any system by means of which such transfer of energy is effected.

SEC. 32. Any person, firm, company, or corporation failing or refusing to observe or violating any rule, regulation, restriction, or condition made or imposed by the licensing authority under the authority of this Act or of any international radio convention or treaty ratified or adhered to by the United States, in addition to any other penalties provided by law, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than $500 for each and every offense.

SEC. 33. Any person, firm, company, or corporation who shall violate any provision of this Act, or shall knowingly make any false oath or affirmation in any affidavit required or authorized by this Act, or shall knowingly swear falsely to a material matter in any hearing authorized by this Act, upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not more than $5,000 or by imprisonment for a term of not more than five years or both for each and every such offense.

SEC. 34. 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.

SEC. 35. This Act shall not apply to the Philippine Islands or to the Canal Zone. In international radio matters the Philippine Islands and the Canal Zone shall be represented by the Secretary of State.

SEC. 36. The licensing authority 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 such authority may prescribe: *Provided,* That such designation shall be approved by the head of the department in which such person is employed.

SEC. 37. The unexpended balance of the moneys appropriated in the item for "wireless communication laws," under the caption "Bureau of Navigation" in Title III of the Act entitled "An Act making appropriations for the Departments of State and Justice and for the judiciary, and for the Departments of Commerce and Labor, for the fiscal year ending June 30, 1927, and for other purposes," approved April 29, 1926, and the appropriation for the same purposes for the fiscal year ending June 30, 1928, shall be available both for expenditures incurred in the administration of this Act and for expenditures for the purposes specified in such items. There is hereby authorized to be appropriated for each fiscal year such sums as may be necessary for the administration of this Act and for the purposes specified in such item.

SEC. 38. If any provision of this Act or the application thereof to any person, firm, company, or corporation, or to any circumstances, is held invalid, the remainder of the Act and the application of such provision to other persons, firms, companies, or corporations, or to other circumstances, shall not be affected thereby.

SEC. 39. The Act entitled "An Act to regulate radio communication," approved August 13, 1912, the joint resolution to authorize the operation of Government-owned radio stations for the general public, and for other purposes, approved June 5, 1920, as amended, and the joint resolution entitled "Joint resolution limiting the time for which licenses for radio transmission may be granted, and for other purposes," approved December 8, 1926, are hereby repealed.

Such repeal, however, shall not affect any act done or any right accrued or any suit or proceeding had or commenced in any civil cause prior to said repeal, but all liabilities under said laws shall continue and may be enforced in the same manner as if com-

mitted; and all penalties, forfeitures, or liabilities incurred prior to taking effect hereof, under any law embraced in, changed, modified, or repealed by this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

Nothing in this section shall be construed as authorizing any person now using or operating any apparatus for the transmission of radio energy or radio communications or signals to continue such use except under and in accordance with this Act and with a license granted in accordance with the authority hereinbefore conferred.

SEC. 40. This Act shall take effect and be in force upon its passage and approval, except that for and during a period of sixty days after such approval no holder of a license or an extension thereof issued by the Secretary of Commerce under said Act of August 13, 1912, shall be subject to the penalties provided herein for operating a station without the license herein required.

SEC. 41. This Act may be referred to and cited as the Hadio Act of 1927.

Approved, February 23, 1927.

(PUBLIC—No. 632—69TH CONGRESS—H. R. 9971.)

44 STAT. 1162.

THE DAVIS "EQUAL QUOTA" AMENDMENT.

An Act Continuing for one year the powers and authority of the Federal Radio Commission under the Radio Act of 1927, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the powers and authority vested in the Federal Radio Commission by the Radio Act of 1927, approved February 23, 1927, shall continue to be vested in and exercised by the commission until March 16, 1929; and wherever any reference is made in such Act to the period of one year after the first meeting of the commission, such reference shall be held to mean the period of two years after the first meeting of the commission.

SEC. 2. The period during which the members of the commission shall receive compensation at the rate of $10,000 per annum is hereby extended until March 16, 1929.

SEC. 3. Prior to January 1, 1930, the licensing authority shall grant no license or renewal of license under the Radio Act of 1927 for a broadcasting station for a period to exceed three months and no license or renewal of license for any other class of station for a period to exceed one year.

SEC. 4. The term of office of each member of the commission shall expire on February 23, 1929, and thereafter commissioners shall be appointed for terms of two, three, four, five, and six years, respectively, as provided in the Radio Act of 1927.

SEC. 5. The second paragraph of section 9 of the Radio Act of 1927 is amended to read as follows:

"It is hereby declared that the people of all the zones established by section 2 of this Act are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and in so far as there are applications therefor; and shall make a fair and equitable allocation of licenses, wave lengths, time for operation, and station power to each of the States, the Dis-

trict of Columbia, the Territories and possessions of the United States within each zone, according to population. The licensing authority shall carry into effect the equality of broadcasting service hereinbefore directed, whenever necessary or proper, by granting or refusing licenses or renewals of licenses, by changing periods of time for operation, and by increasing or decreasing station power, when applications are made for licenses or renewals of licenses: *Provided*, That if and when there is a lack of applications from any zone for the proportionate share of licenses, wave lengths, time of operation, or station power to which such zone is entitled, the licensing authority may issue licenses for the balance of the proportion not applied for from any zone, to applicants from other zones for a temporary period of ninety days each, and shall specifically designate that said apportionment is only for said temporary period. Allocations shall be charged to the State, District, Territory, or possession wherein the studio of the station is located and not where the transmitter is located."

Approved, March 28, 1928.

(PUBLIC—No. 195—70TH CONGRESS—S. 2317.)

45 STAT. 373.

AMENDMENT TO SECTION 16 OF THE RADIO ACT OF 1927 (APPEALS SECTION).

An Act To amend section 16 of the Radio Act of 1927.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 16 of the Radio Act of 1927 (U. S. C., Supp. III, title 47, sec. 96) is amended by striking out the whole of said section and by inserting in lieu thereof the following:

"SEC. 16. (a) An appeal may be taken, in the manner hereinafter provided, from decisions 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 station license, or for renewal of an existing station license, or for modification of an existing station license, whose application is refused by the commission.

"(2) By any licensee whose license is revoked, modified, or suspended by the commission.

"(3) By any other person, firm, or corporation aggrieved or whose interests are adversely affected by any decision of the commission granting or refusing any such application or by any decision of the commission revoking, modifying, or suspending an existing station license.

"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.

"(b) The commission shall thereupon immediately, and in 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, firm, or corporation 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, firm, or corporation 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 involved or upon its order revoking, modifying, or suspending a license, 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, firms, or corporations to whom it has mailed or otherwise delivered a copy of said notice of appeal.

"(c) Within thirty days after the filing of said appeal any interested person, firm, or corporation 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, firm, or corporation 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.

"(d) 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 347 of title 28 of the Judicial Code by appellant, by the commission, or by any interested party intervening in the appeal.

"(e) 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: *Provided, however*, That this section shall not relate to or affect appeals which were filed in said Court of Appeals prior to the enactment of this amendment."

Approved, July 1, 1930.

(PUBLIC—No. 494—71ST CONGRESS H. R. 12599.)

46 STAT. 844.

THE COMMUNICATIONS ACT OF 1934, AS AMENDED.

(Revised by Federal Communications Commission to May 20, 1937.)

BEING AN ACT TO PROVIDE FOR THE REGULATION OF INTERSTATE AND FOREIGN COMMUNICATION BY WIRE OR RADIO, AND FOR OTHER PURPOSES

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

TITLE I—GENERAL PROVISIONS

PURPOSES OF ACT; CREATION OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication,[1] and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a Commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided and which shall execute and enforce the provisions of this Act.

APPLICATION OF ACT

SEC. 2. (a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or

[1] The provision relating to the promotion of safety of life and property was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective. May 20, 1937.

transmission in the Philippine Islands or the Canal Zone, or to wire or radio communication or transmission wholly within the Philippine Islands or the Canal Zone.

(b) Subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; except that sections 201 to 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clause (2).

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this Act.

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Philippine Islands and the Canal Zone), or the District of Columbia, to any

other State, Territory, or possession of the United States (other than the Philippine Islands and the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Philippine Islands or the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not include wire communication between points within the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(g) "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States but does not include the Philippine Islands or the Canal Zone.

(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not insofar as such person is so engaged, be deemed a common carrier.

(i) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(j) "Corporation" includes any corporation, joint-stock company, or association.

(k) "Radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(l) "Mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(m) "Land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(n) "Mobile service" means the radio-communication service carried on between mobile stations and land stations, and by mobile stations communicating among themselves.

(o) "Broadcasting" means the dissemination of radio com-

munications intended to be received by the public, directly or by the intermediary of relay stations.

(p) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(q) "Amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(r) "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

(s) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(t) "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

(u) "Connecting carrier" means a carrier described in clause (2) of section 2 (b).

(v) "State" includes the District of Columbia and the Territories and possessions.

(w)[2] (1) "Ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(2) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(3) A cargo ship means any ship not a passenger ship.

(4) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry ship-

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[2] This subheading was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective May 20, 1937.

wrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(x)[3] "Auto-alarm" on a foreign ship means an automatic alarm receiver which has been approved by the country to which the ship belongs, provided the United States and the country to which the ship belongs are both parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. "Auto-alarm" on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiver complying with law and approved by the Commission. Nothing in this Act or in any other provision of law shall be construed to require the recognition of an auto-alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, whose country of origin is not a party to a treaty, convention, or agreement with the United States in regard to such apparatus.

(y)[4] (1) For the purpose of part II of title III, a "qualified operator" or "operator" on a foreign ship means a person holding a certificate as such complying with the provisions of the General Radio Regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country to which the ship belongs.

(2) For the purpose of part II of title III, a "qualified operator" or "operator" on a ship of the United States means a person holding a radio operator's license of the proper class, as prescribed and issued by the Commission.

(z)[5] "Harbor" or "port" means any place to which ships may resort for shelter or to load or unload passengers or goods or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

(aa)[6] "Safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

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[3] See note 2.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a) The Federal Communications Commission (in this Act referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio, or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this Act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act. Such commissioners shall not engage in any other business, vocation, or employment. Not more than four commissioners shall be members of the same political party.

(c) The commissioners first appointed under this Act shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission.

(d) Each commissioner shall receive an annual salary of $10,000, payable in monthly installments.

(e) The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States.

(f) Without regard to the civil-service laws or the Classification Act of 1923, as amended, (1) the Commission may appoint and

prescribe the duties and fix the salaries of a secretary, a director for each division, a chief engineer and not more than three assistants, a chief accountant and not more than three assistants,[7] a general counsel and not more than three assistants, and temporary counsel designated by the Commission for the performance of special services, and (2) each commissioner may appoint and prescribe the duties of a secretary at an annual salary not to exceed $4,000. The general counsel and the chief engineer and the chief accountant [7] shall each receive an annual salary of not to exceed $9,000; the secretary shall receive an annual salary of not to exceed $7,500; the director of each division shall receive an annual salary of not to exceed $7,500; and no assistant shall receive an annual salary in excess of $7,500. The Commission shall have authority, subject to the provisions of the civil-service laws and the Classification Act of 1923, as amended, to appoint such other officers, engineers, accountants,[7] inspectors, attorneys, examiners, and other employees as are necessary in the execution of its functions.

(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, and for printing and binding) 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. All expenditures of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees, under their orders, in making any investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose.

(h) Four members of the Commission shall constitute a quorum thereof. The Commission shall have an official seal which shall be judicially noticed.

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.

[7] The provisions relating to accountants were added by "An Act to amend paragraph (f) of Sec. 4 of the Communications Act of 1934." Public, No. 423, 74th Congress, approved and effective Jan. 22, 1936.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

(k) The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain 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, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary: *Provided,* That the Commission shall make a special report not later than February 1, 1935, recommending such amendments to this Act as it deems desirable in the public interest: *Provided further,*[8] That each year, at the beginning of the session of the Congress, the Commission shall report to the Congress whether or not any new wire or radio communication legislation is required better to insure safety of life and property. If any such new legislation is considered necessary the Commission shall make specific recommendations thereof to the Congress.

(l) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

(m) The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United

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[8] This proviso was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective, May 20, 1937.

States and of the several States without any further proof or authentication thereof.

(n) Rates of compensation of persons appointed under this section shall be subject to the reduction applicable to officers and employees of the Federal Government generally.

(o) [9] For the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property, the Commission shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.

DIVISIONS OF THE COMMISSION

SEC. 5. (a) The Commission is hereby authorized by its order to divide the members thereof into not more than three divisions, each to consist of not less than three members. Any commissioner may be assigned to and may serve upon such division or divisions as the Commission may direct, and each division shall choose its own chairman. In case of a vacancy in any division, 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 division 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 divisions 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 division 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 division shall have all the

[9] This subsection was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective, May 20, 1937.

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 divisions in respect of any matters so assigned or referred to it 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, 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 division thereof.

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

(e) 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 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, however,* That this authority shall not extend to investigations instituted upon the Commission's own motion or, without consent of the parties thereto, to contested proceedings involving the taking of testimony at public hearings, or to investigations specifically required by this Act. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Commission. 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 division thereof and every such petition shall be passed upon by the Commission or a division thereof. Any action by a division 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 division 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.

TITLE II—COMMON CARRIERS

SERVICE AND CHARGES

SECTION 201. (a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: *Provided,* That communications by wire or radio subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further,* That nothing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any

contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest.

DISCRIMINATION AND PREFERENCES

SEC. 202. (a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of wires in chain broadcasting or incidental to radio communication of any kind.

(c) Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of $500 for each such offense and $25 for each and every day of the continuance of such offense.

SCHEDULES OF CHARGES

SEC. 203. (a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

HEARING AS TO LAWFULNESS OF NEW CHARGES; SUSPENSION

SEC. 204. Whenever there is filed with the Commission any new charge, classification, regulation, or practice, the Commission may, either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification,

regulation, or practice but not for a longer period than three months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed change of charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its decision shall be found not justified. At any hearing involved a charge increased, or sought to be increased, after the organization of the Commission, the burden of proof to show that the increased charge or proposed increased charge is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

COMMISSION AUTHORIZED TO PRESCRIBE JUST AND REASONABLE CHARGES

SEC. 205. (a) Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may

be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(b) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this section shall forfeit to the United States the sum of $1,000 for each offense. Every district violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

LIABILITY OF CARRIERS FOR DAMAGES

SEC. 206. In case any common carrier shall do, cause or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

RECOVERY OF DAMAGES

SEC. 207. Any person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

COMPLAINTS TO THE COMMISSION

SEC. 208. Any person, any body politic or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury al-

leged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

ORDERS FOR PAYMENT OF MONEY

SEC. 209. If, after hearing on a complaint, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

FRANKS AND PASSES

SEC. 210. Nothing in this Act or in any other provision of law shall be construed to prohibit common carriers from issuing or giving franks to, or exchanging franks with each other for the use of, their officers, agents, employees, and their families, or, subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with other common carriers not subject to the provisions of this Act, for the use of their officers, agents, employees, and their families. The term "employees," as used in this section, shall include furloughed, pensioned, and superannuated employees.

COPIES OF CONTRACTS TO BE FILED

SEC. 211. (a) Every carrier subject to this Act shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this Act, in relation to any traffic affected by the provisions of this Act to which it may be a party.

(b) The Commission shall have authority to require the filing of any other contracts of any carrier, and shall also have authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine.

INTERLOCKING DIRECTORATES—OFFICIALS DEALING IN SECURITIES

SEC. 212. After sixty days from the enactment of this Act it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any such carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carrier from any funds properly included in capital account.

VALUATION OF CARRIER PROPERTY

SEC. 213. (a) The Commission may from time to time, as may be necessary for the proper administration of this Act, and after opportunity for hearing, make a valuation of all or of any part of the property owned or used by any carried subject to this Act, as of such date as the Commission may fix.

(b) The Commission may at any time require any such carrier to file with the Commission an inventory of all or of any part of the property owned or used by said carrier, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such carrier shall file such inventory within such reasonable time as the Commission by order shall require.

(c) The Commission may at any time require any such carrier to file with the Commission a statement showing the original cost at the time of dedication to the public use of all or of any part of the property owned or used by said carrier. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commis-

sion; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a carrier under this paragraph shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

(d) Nothing shall be included in the original cost reported for the property of any carrier under paragraph (c) of this section on account of any easement, license, or franchise granted by the United States or by any State or political subdivision thereof, beyond the reasonable necessary expense lawfully incurred in obtaining such easement, license, or franchise from the public authority aforesaid, which expense shall be reported separately from all other costs in such detail as the Commission may require; and nothing shall be included in any valuation of the property of any carrier made by the Commission on account of any such easement, license, or franchise, beyond such reasonable necessary expense lawfully incurred as aforesaid.

(e) The Commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of carrier properties.

(f) For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, rec-

ords, and memoranda whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation or finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public. The Commission, in making any such valuation, shall be free to adopt any method of valuation which shall be lawful.

(g) Notwithstanding any provision of this Act the Interstate Commerce Commission, if requested to do so by the Commission, shall complete, at the earliest practicable date, such valuations of properties of carriers subject to this Act as are now in progress, and shall thereafter transfer to the Commission the records relating thereto.

(h) Nothing in this section shall impair or diminish the powers of any State commission.

EXTENSION OF LINES

SEC. 214. (a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, operation, or extension of (1) a line within a single State unless said line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any lines acquired under section 221 of this Act: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section.

(b) Upon receipt of an application for any such certificate the Commission shall cause notice thereof to be given to and a copy filed with the Governor of each State in which such additional or

extended line is proposed to be constructed or operated, with the right to be heard as provided with respect to the hearing of complaints; and the Commission may require such published notice as it shall determine.

(c) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, acquisition, operation, or extension covered thereby. Any construction, acquisition, operation, or extension contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for performing its service as a common carrier and to extend its line; but no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States $100 for each day during which such refusal or neglect continues.

TRANSACTIONS RELATING TO SERVICES, EQUIPMENT, AND SO FORTH

SEC. 215. (a) The Commission shall examine into transactions entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the services rendered or to be rendered by such carrier, in wire or radio communication subject to this Act,

and shall report to the Congress whether any such transactions have affected or are likely to affect adversely the ability of the carrier to render adequate service to the public, or may result in any undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service; and in order to fully examine into such transactions the Commission shall have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, of persons furnishing such equipment, supplies, research, services, finances, credit, or personnel. The Commission shall include in its report its recommendations for necessary legislation in connection with such transactions, and shall report specifically whether in its opinion legislation should be enacted (1) authorizing the Commission to declare any such transactions void or to permit such transactions to be carried out subject to such modification of their terms and conditions as the Commission shall deem desirable in the public interest; and/or (2) subjecting such transactions to the approval of the Commission where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier; and/or (3) authorizing the Commission to require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

(b) The Commission shall investigate the methods by which and the extent to which wire telephone companies are furnishing wire telegraph service and wire telegraph companies are furnishing wire telephone service, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(c) The Commission shall examine all contracts of common carriers subject to this Act which prevent the other party thereto from dealing with another common carrier subject to this Act, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

APPLICATION OF ACT TO RECEIVERS AND TRUSTEES

SEC. 216. The provisions of this Act shall apply to all receivers and operating trustees of carriers subject to this Act to the same extent that it applies to carriers.

LIABILITY OF CARRIER FOR ACTS AND OMISSIONS OF AGENTS

SEC. 217. In construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

INQUIRIES INTO MANAGEMENT

SEC. 218. The Commission may inquire into the management of the business of all carriers subject to this Act, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmission of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

ANNUAL AND OTHER REPORTS

SEC. 219. (a) The Commission is authorized to require annual reports under oath from all carriers subject to this Act, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any; the number of stockholders (and the names of the thirty largest holders of each class of stock and the amount held by each); the funded and floating debts and

the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same, as the Commission may require.

(b) Such reports shall be for such twelve months' period as the Commission shall designate and shall be filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such person shall forfeit to the United States the sum of $100 for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act; and such periodical or special reports shall be under oath whenever the Commission so requires. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

ACCOUNTS, RECORDS, AND MEMORANDA; DEPRECIATION CHARGES

SEC. 220. (a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, rec-

ords, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(b) The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

(d) In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States

the sum of $500 for each day of the continuance of each such offense.

(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such accounts, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $1,000 nor more than $5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided,* That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the Commission shall fix a time and place for a public hearing upon such application and shall thereupon give reasonable notice in writing to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable. After such public hearing, if the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

(b) Nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) For the purpose of administering this Act as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe.

(d) In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service.

TITLE III [10]—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS [10]

LICENSE FOR RADIO COMMUNICATION OR TRANSMISSION OF ENERGY

SECTION 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or district; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State

[10] This heading 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.

when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

ZONES [11]

GENERAL POWERS OF COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to

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[11] Sec. 302 was repealed by "An Act relating to the allocation of radio facilities." Public, No. 652, 74th Congress, approved and effective June 5, 1936. The text of Sec. 302 was as follows:

Sec. 302. (a) For the purposes of this title the United States is divided into five zones, as follows: The first zone shall embrace the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, and the District of Columbia; the second zone shall embrace the States of Pennsylvania, Virginia, West Virginia, Ohio, Michigan and Kentucky; the third zone shall embrace the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Mississippi, Arkansas, Louisiana, Texas, and Oklahoma; the fourth zone shall embrace the States of Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri; and the fifth zone shall embrace the States of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California.

(b) The Virgin Islands, Puerto Rico, Alaska, Guam, American Samoa, and the Territory of Hawaii are expressly excluded from the zones herein established.

its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified;

(m)[12] (1) Have authority to suspend the license of any operator

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12 This subsection 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. Section 303 (m) formerly read as follows:

(m) Have authority to suspend the license of any operator for a period not exceeding two years upon proof sufficient to satisfy the Commission that the licensee (1) has violated any provision of any Act or treaty binding on the United States, which the Commission is authorized by this Act to administer or any regulation made by the Commission under any such Act or treaty; or (2) has failed to carry out the lawful orders of the master of the vessel on which he is employed; or (3) has willfully damaged or permitted radio apparatus to be damaged; or (4) has transmitted superfluous radio communications or signals or radio communications containing profane or obscene words or language; or (5) has willfully or maliciously interfered with any other radio communications or signals.

upon proof sufficient to satisfy the Commission that the licensee—

(A) Has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) Has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) Has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) Has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) False or deceptive signals or communications, or

(2) A call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) Has willfully or maliciously interfered with any other radio communications or signals; or

(F) Has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be 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 suspension.

(n)[13] Have authority to inspect all radio installations associated with stations required to be licensed by any Act or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.

(r)[14] Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

WAIVER BY LICENSEE

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

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[13] See note 12, page 441 *supra*. Section 303 (n) formerly read as follows:

(n) Have authority to inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this Act, the rules and regulations of the Commission, and the license under which it is constructed or operated.

[14] This subsection was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective May 20, 1937.

GOVERNMENT-OWNED STATIONS

SEC. 305. (a) Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Act. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

(b) Radio stations on board vessels of the United States Shipping Board Bureau or the United States Shipping Board Merchant Fleet Corporation or the Inland and Coastwise Waterways Service shall be subject to the provisions of this title.

(c) All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea shall have special call letters designated by the Commission.

FOREIGN SHIPS

SEC. 306. Section 301 of this Act shall not apply to any person sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this Act.

ALLOCATION OF FACILITIES; TERM OF LICENSES

SEC. 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

(b)[15] In considering applications for licenses, and modifications

[15] Sec. 307 (b) was amended to read as above, by "An Act relating to the allocation of radio facilities." Public, No. 652, 74th Congress, approved and effective June 5, 1936. The section formerly read as follows:

(b) It is hereby declared that the people of all the zones established by this title are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the Commission shall as nearly as possible make and maintain an equal allocation of broad-

and renewals thereof, when and insofar as there is demand for the same the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(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 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.

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casting licenses, of bands of frequency, of periods of time for operation, and of station power, to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, frequencies, time for operation, and station power to each of the States and the District of Columbia, within each zone, according to population. The Commission shall carry into effect the equality of broadcasting service hereinbefore directed, whenever necessary or proper, by granting or refusing licenses or renewals of licenses, by changing periods of time for operation, and by increasing or decreasing station power, when applications are made for licenses or renewals of licenses: Provided, That if and when there is a lack of applications from any zone for the proportionate share of licenses, frequencies, time of operation, or station power to which such zone is entitled, the Commission may issue licenses for the balance of the proportion not applied for from any zone, to applicants from other zones for a temporary period of ninety days each, and shall specifically designate that said apportionment is only for said temporary period. Allocations shall be charged to the State or District wherein the studio of the station is located and not where the transmitter is located: Provided further, That the Commission may also grant applications for additional licenses for stations not exceeding one hundred watts of power if the Commission finds that such stations will serve the public convenience, interest, or necessity, and that their operation will not interfere with the fair and efficient radio service of stations licensed under the provisions of this section.

(e) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license.

APPLICATIONS FOR LICENSES; CONDITIONS IN LICENSE FOR FOREIGN COMMUNICATIONS

SEC. 308. (a) The Commission may grant licenses, renewal of licenses, and modification of licenses only upon written application therefor received by it: *Provided, however,* That in cases of emergency found by the Commission, licenses, renewals of licenses, and modifications of licenses, for stations on vessels or aircraft of the United States, may be issued under such conditions as the Commission may impose, without such formal application. Such licenses, however, shall in no case be for a longer term than three months: *Provided further,* That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

(c) The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by

section 2 of an Act entitled "An Act relating to the landing and the operation of submarine cables in the United States", approved May 24, 1921.

HEARINGS ON APPLICATIONS FOR LICENSES; FORM OF LICENSES; CONDITIONS ATTACHED TO LICENSES

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 of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, 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.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required hereby shall not be granted to or held by—

(1) Any alien or the representative of any alien;

(2) Any foreign government or the representative thereof;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives

or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

(b) The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

REFUSAL OF LICENSES AND PERMITS IN CERTAIN CASES

SEC. 311. 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 section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such

person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

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 reasonable opportunity to show cause why such an order of modification should not issue.

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 by law in respect of other decrees and judgments of said court.

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 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 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 or 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. 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.

LOTTERIES AND OTHER SIMILAR SCHEMES

SEC. 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.

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.

OPERATION OF TRANSMITTING APPARATUS

SEC. 318.[16] 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

[16] 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. 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.

licensed operators are required for safety purposes, (3) stations engaged in broadcasting 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.

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 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.

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)[17] 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

[17] 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. 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.

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 vessels in distress, so far as possible, by complying with its instructions.

INTERCOMMUNICATION IN MOBILE SERVICE

SEC. 322.[18] 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 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.

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.

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[18] See note 17, page 454 *supra.* 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 system 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.

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 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. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

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, the Philippine Islands 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.

SPECIAL PROVISION AS TO PHILIPPINE ISLANDS AND CANAL ZONE

SEC. 328. This title shall not apply to the Philippine Islands or to the Canal Zone. In international radio matters the Philippine Islands and the Canal Zone shall be represented by the Secretary of State.

ADMINISTRATION OF RADIO LAWS IN TERRITORIES AND POSSESSIONS

SEC. 329.[19] 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[20]—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

SHIP RADIO INSTALLATIONS AND OPERATIONS

SEC. 351.[21] (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

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[19] See note 17, page 454 *supra.* 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.

[20] This part (secs. 351–362) was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective, May 20, 1937.

[21] Section 16 of Public, No. 97 (see note 20) reads as follows:

Sec. 16. This Act shall take effect upon approval, provided that the Commission may defer the application of all or any part of sections 351 to 355, inclusive, for a period not to exceed six months after approval, in regard to any ship or classes of ships of the United States which are not subject to the provisions of the safety convention, if it is found impracticable to obtain the necessary equipment or make the required installations.

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 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 hereinafter provided, which apparatus is approved by the Commission;

(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.[22] (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 Railroad Company;

(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;

(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, or on any bays, sounds,

[22] See note 21, page 458 *supra*.

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.

OPERATORS, WATCHES, AUTO-ALARM

SEC. 353.[23] (a) Each cargo ship required by this part to be fitted with a radio installation and which is not fitted with an auto-alarm, and each passenger ship required by this part to be fitted with a radio installation, shall, for safety purposes, carry at least two qualified operators.

(b) A cargo ship, required by this part to be fitted with a radio 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 radio installation shall, while being navigated outside a harbor or port, keeps a continuous watch by means of qualified operators: *Provided, however,* 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

[23] See note 21, page 458 *supra.*

purposes, have authority to prescribe the particular hours of watch on a ship of the United States required by this part to be fitted with a radio 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.

TECHNICAL REQUIREMENTS

SEC. 354.[24] 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.

(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 Bureau of Marine Inspection and Navigation, Department of Commerce.

(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

[24] See note 21, page 458 *supra.*

into operation rapidly and of working for at least six continuous hours. For the 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.

LIFEBOATS

SEC. 355.[25] 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 life.

APPROVAL OF INSTALLATIONS

SEC. 356.[26] (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 or 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.

[25] See note 21, page 458 *supra*.
[26] See note 20, page 458 *supra*.

(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. 357.[27] (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

[27] See note 20, page 458 *supra*.

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. 358.[28] 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. 359.[29] (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) 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 Department of Commerce, or whatever other agency is authorized by law so to do, 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 cancelation of such certificate. Upon receipt of such request the Department of Commerce, 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.

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[28] See note 20, page 458 *supra*.
[29] *Ibid*.

SEC. 360.[30] (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, that 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. 361.[31] 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. 362.[32] 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.

[30] See note 20, page 458 *supra.*
[31] *Ibid.*
[32] *Ibid.*

(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.

TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

JURISDICTION TO ENFORCE ACT AND ORDERS OF COMMISSION

SECTION 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 ENFORCE OR SET ASIDE THE COMMISSION'S ORDERS—APPEAL IN CERTAIN CASES

SEC. 402. (a) The provisions of the Act of October 22, 1913 (38 Stat. 219), relating to the enforcing or setting aside of the orders of the Interstate Commerce Commission, are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (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 [33]) and such suits are hereby authorized to be brought as provided in that Act.

(b) An appeal may be taken, in the manner hereinafter provided, from decisions 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)[34] 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. The Commission shall thereupon immediately, and in any event not later than five days from the date of such service upon it, mail or otherwise deliver

[33] The words "or suspending a radio operator's license" were added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective May 20, 1937.

[34] This subsection was added by Public, No. 97. See note 20, page 458 *supra*.

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 [35] 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

[35] The words "or order" were added by Public, No. 97. See note 20, page 458 *supra*.

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.

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 requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

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: *Provided, 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.

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 part of the costs of the suit.

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) 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 subpenas, 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.

(b) For the purposes of this Act the Commission shall have the power to require by subpena 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.

(c) 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 subpena 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.

(d) 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 subpena 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 cuort may be punished by such court as a contempt thereof.

(e) 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 proceedings 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 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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 subpena of the Commission, whether such subpena 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.

(j) 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 subpena 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) 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, and any such board shall be vested with the same powers and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold a hearing as hereinbefore authorized. 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 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 for 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 em-

ployees, 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—FORFEITURES

GENERAL PENALTY

SECTION 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 and 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 herein, by a fine of not more than $10,000 or by imprisonment for a term of not more than two years, or both.

VIOLATIONS OF RULES, REGULATIONS, AND SO FORTH

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.

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, 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 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.[36] (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 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 such forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

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[36] This section was amended to read as above by Public, No. 97, 75th Congress, approved and effective May 20, 1937. Section 504 formerly 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 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.

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.

TITLE VI—MISCELLANEOUS PROVISIONS

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

SECTION 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)[37] 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 not later than December 31, 1939.

TRANSFER OF EMPLOYEES, RECORDS, PROPERTY, AND APPROPRIATIONS

SEC. 603 (a) All officers and employees of the Federal Radio Commission (except the members thereof, whose offices 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

[37] This subsection was added by "An Act to amend the Communications Act of 1934, etc." Public, No. 97, 75th Congress, approved and effective, May 20, 1937.

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 provisions 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 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 subpena 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. (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 an 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 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.

(d) 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.

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.

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.

48 STAT. 1066.

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RULES OF PRACTICE AND PROCEDURE OF FEDERAL COMMUNICATIONS COMMISSION WITH AMENDMENTS TO NOVEMBER 15, 1937.

Administration, Divisions, Meetings, Etc.

Office hours.

100.1. The principal office of the Commission shall be located at Washington, D. C., and all communications to the Commission shall be addressed to Washington, D. C., unless otherwise specifically directed. The hours of the Commission, until changed by law or executive order, are from 8:30 a. m. to 4 p. m., Monday to Friday, inclusive, and on Saturday from 8:30 a. m. to 12:30 p. m., except on legal holidays.

Divisions.

100.2. Deleted.

Meetings.

100.3. All meetings of the Commission, unless otherwise determined by a majority of the members thereof, shall be held at the principal office of the Commission.

Official record.

100.4. The minutes of a meeting of the Commission shall be the official record of any action taken therein, and shall be kept by, and in the office of, the Secretary.

Authentication.

100.5. All orders, permits, licenses, or other instruments of authorization made, issued, or granted by the Commission shall, unless otherwise specifically provided by order of the Commission, be signed by the Secretary in the name of the Commission and authenticated by the seal of the Commission.

Inspection of records.—(Revised Feb. 19, 1936.)

100.6. Subject to the provisions of section 4 (j), 412, and 606 of the Act, the files of the Commission shall be open to inspection as follows:

(*a*) Tariff schedules required to be filed under section 203 of the Act and annual and monthly reports required to be filed under section 219 of the Act.

(*b*) All applications and amendments thereto filed under title II or title III of the Act; all documents filed with applications made when specific mention is made in the application referring to such document; authorizations issued upon such applications; all pleadings, depositions, transcripts of testimony, exhibits, examiners' reports, exceptions, and orders of the Commission.

(*c*) Other files in the discretion of the Commission upon written request describing in detail the documents to be inspected and the reasons therefor.

Certified copies.

100.7. Copies of any documents subject to inspection under the provisions of rule 100.6 will be prepared and certified by the Secretary, under seal, on written request, specifying the exact documents, the number of copies desired, and the date on which the same will be required: *Provided, however,* That such request must be made so as to permit a reasonable time for the preparation of such copies: *And provided further,* That any cost incurred in the preparation of such copies shall be prepaid by the person making application therefor.

Official reporter—Transcript.

100.8. The Commission will designate from time to time an official reporter for the taking down and transcribing of its proceedings. No transcript of the testimony taken, or argument had, at any hearing will be furnished by the Commission. Such transcript, if desired, must be obtained from the official reporter upon payment of the charges therefor.

Person.

100.9. Wherever in these rules the term "person" is used, it shall include an individual, partnership, association, joint-stock company, trust, or corporation.

Authority for representation.

100.10. Any person, in a representative capacity, transacting business with the Commission, may be required to show his authority to act in such capacity.

Computation of time.

100.11. Wherever days are mentioned in these rules as limitations of time they shall be construed to include Sundays and legal

holidays in the District of Columbia. When the time fixed for taking any procedural step elapses on Sunday or a legal holiday, such time shall extend to and include the next succeeding day that is not a Sunday or a legal holiday. In the computation of time, the first day shall be excluded and the last day included.

Additional time to parties in certain cases.

100.12. Where, under these rules, unless otherwise expressly provided, any limitation is made as to the time within which any document is required to be filed, or any other procedural step is required to be taken in connection with any hearing, parties who are residents of the following States:* Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California shall have an additional period of 5 days and parties who reside beyond the confines of the continental United States shall have an additional period of 20 days within which to file such document or take such other procedural step.

Personal Appearances; Practitioners.

Appearance by party.

101.1. Any party to a proceeding may appear and be heard in person or by attorney. A partnership may appear and be represented by any member thereof.

Persons who may be admitted to practice.—(Revised Feb. 10, 1936.)

101.2. Attorneys at law admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State or Territory, upon application may be admitted to practice before the Commission. An attorney at law from any place other than the District of Columbia may, in the discretion of the official presiding at any hearing, be admitted for a particular case to participate in the hearing or argument of any cause in which he may be employed.

Applications for admission.

101.3. Applications for admission to practice shall be on a form prescribed and provided by the Commission. (See page 657, *infra.*)

* Formerly constituting Fifth Zone.

Oath.

101.4. No person shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will demean himself as a practitioner before the Commission, uprightly and according to law; and that he will support the Constitution and laws of the United States and will conform to the rules and regulations of the Commission.

Suspension, disbarment, revocation.

101.5. The Commission may, in its discretion, suspend, disbar, or revoke the right of any person who has been admitted to practice before the Commission, if it finds that such person has violated his oath taken upon admission; or has, in obtaining admission, concealed any material facts with reference to his legal qualifications, professional standing, character, or integrity: *Provided, however,* That before any member of the bar of this Commission shall be suspended, disbarred, or his right to practice before the Commission revoked, charges shall be preferred by the Commission against such practitioner and he shall be afforded an opportunity to be heard thereon.

Register of practitioners.

101.6. Commencing February 1, 1936, a register will be maintained by the Commission in which will be entered the names of all persons entitled to practice before the Commission. Only individuals will be admitted or recognized.

Former Commission counsel barred for two years.

101.7. No persons serving as an attorney at law in the Federal Communications Commission on or after July 1, 1935, shall be permitted to practice, appear, or act as an attorney in any case, claim, contest, or other proceeding before the Commission or before any Division or agency thereof until 2 years shall have elapsed after the separation of the said person from the said service. The term "attorney at law" includes attorney-examiner. Nothing herein shall be construed to prevent any former officer or employee of the Federal Communications Commission from appearing as a witness in any hearing, investigation, or other proceeding before it.

Parties.

Parties to proceedings.

102.1. Parties to proceedings will be designated applicants, complainants, defendants, petitioners, interveners, protestants, and

respondents. The term "party" shall include any person, body politic, municipal organization, or State commission.

Applicant.

102.2. The term "applicant" means a party applying for a certificate of public convenience and necessity, a certificate of advantage and public interest, a permit, license, or such other instrument of authorization as the Commission is empowered to grant, and for which an application is required.

Complainant.

102.3. The term "complainant" means a party who complains to the Commission of anything done or omitted to be done by any common carrier subject to the Act in violation of the provisions thereof.

Defendant.

102.4. The term "defendant" means a common carrier subject to the Act against whom a complaint has been filed of anything done or omitted to be done in violation of the provisions of the act.

Petitioner.

102.5. The term "petitioner" means a party, seeking relief within the jurisdiction of the Commission.

Intervener.

102.6. The term "intervener" means a party who upon petition has been permitted to become a party to any proceeding before the Commission.

Protestant.

102.7. The term "protestant" means:

(a) A party opposing the schedules under suspension in investigation and suspension proceedings; or

(b) A party who files a protest to a tentative valuation in valuation proceedings; or

(c) A party who is aggrieved or whose interests are adversely affected by any decision of the Commission granting without a hearing any application for an instrument of authorization under section 309 (a) of the Act.

Respondent.

102.8. The term "respondent" means:

(a) A party against whom a petition has been filed or against whom the Commission has, on its own motion, instituted an inquiry, investigation, or other proceeding; or

(b) Any licensee or pending applicant for any instrument of authorization who would be aggrieved, or whose interests would be adversely affected by the granting of any application designated for hearing, or a licensee against whom the Commission has instituted revocation proceedings.

Receiver.

102.9. The receiver or trustee of any common carrier subject to the Act shall be made a party to any proceeding in which such carrier is a party.

Substitution of parties.

102.10. In the event of death or mistaken identity of a party to a proceeding, except proceedings under title III of the act, the Commission may order the substitution of the proper parties upon petition and for good cause shown.

Applications.

Applications under title II; prescribed forms.

103.1. Each application for an instrument of authorization shall be made in writing, under oath of the applicant, and on forms furnished by or in the manner prescribed by the Commission: *Provided, however,* That in emergency cases the Commission may waive the requirements of formal application.

Amendments as a matter of course.

103.2. Amendments to any application may be made as a matter of course, if filed with the Commission, and served upon all parties of record not less than 30 days prior to the date set for hearing on such application.

Amendments discretionary with Commission.

103.3. Amendments to any application filed within 30 days of a hearing may be allowed in the discretion of the Commission, upon petition, and upon such terms as the Commission shall impose.

Amendments ordered.

103.4. The Commission may, upon its own motion, or upon motion of any party to the proceeding, order the applicant to amend his application so as to make the same more definite and certain.

Amendments; form of.

103.5. Any amendment to an application shall be subscribed and verified in the same manner as was the original application.

Applications under title III (radio); prescribed forms.

103.6. Each application for an instrument of authorization shall be made in writing, under oath of the applicant, on a form prescribed and furnished by the Commission: *Provided, however,* That in emergency cases the Commission may waive the requirements of formal application, with respect to applications for licenses, renewals, or modification thereof for stations on vessels or aircraft of the United States pursuant to section 308 (a) of the Act. Separate application shall be filed for each instrument of authorization requested: *Provided, however,* That in cases where a single licensee holds a number of licenses identical in their terms with the exception of locality, a single application may be filed for renewal or modification of such licenses, where such single application sets forth in detail and in unmistakable terms, an accurate description of the individual licenses sought to be renewed or modified. The required forms may be obtained from the Commission or from any of its field offices. (For a list of such offices and related geographical districts, see pages 659–660, *infra.*)

Place of filing; number of copies.

103.7. Each application for construction permit or station license, with respect to the number of copies and place of filing, shall be submitted as follows:

Class of station	*Number of application forms required and method of filing*
a. All classes of Alaskan stations, except broadcast and amateur.	3 copies via inspector in charge, radio district No. 14, Seattle, Wash.
b. Aircraft	1 copy direct to Washington, D. C.
c. Geophysical	Do.
d. Portable (all classes, except amateur and broadcast pick-up).	2 copies direct to Washington, D. C.
e. Ship	1 copy direct to Washington, D. C.
f. All other classes, except amateur.	2 copies direct to Washington, D. C.
g. Amateur	1 copy to be sent as follows: (*a*) to proper district office if it requires personal appearance for operator examination under direct supervision from that office; (*b*) direct to Washington, D. C., in all other cases, including examinations for class C privileges.

Amendments; withdrawals when permitted.

103.8. Where other parties will not be aggrieved or adversely affected thereby, an applicant may amend or withdraw his application without prejudice, at any time up to the conclusion of a hearing thereon.

Where such amendment changes the frequency, power, hours of operation, equipment, location of station (or points of communication or approximate location in cases of stations other than broadcast), or such amendment or withdrawal aggrieves or adversely affects other parties, no amendment to, or withdrawal of, any application will be permitted without prejudice, unless such amendment is filed, or such withdrawal is requested, not later than 30 days before said hearing.

Specification of frequency, etc.

103.9. Each application shall be specific with regard to frequency or frequencies, power, hours of operation, and all other terms of the instrument of authorization requested. An application for broadcast facilities in the band of 550 kilocycles to 1600 kilocycles shall be limited to one specific frequency. An application for a radio station construction permit or license requesting alternative facilities will not be accepted.

Applications for construction permit or modification thereof.

103.10. Applications for construction permit or modification thereof, involving removal of existing transmitting apparatus and/or installation of new transmitting apparatus, shall be filed at least 60 days prior to the contemplated removal and/or installation.

Extension of construction permit; when filed.

103.11. Any application for extension of time within which to commence and/or complete construction of a station, shall be filed at least 30 days prior to the expiration date of such permit. No application for extension of a permit already forfeited will be granted, except upon a satisfactory showing to the Commission of sufficient reasons for the delay in filing such application.

Application for license after construction; how and when filed.

103.12. In all cases where a construction permit is required by section 319 of the Act for the construction of a station, the application for station license (or for station license or modification

thereof, if for station other than broadcast) shall be filed by permittee or its lawful assignee, after consent of Commission to the assignment, prior to service or program tests.

License where construction permit is not required; when filed.

103.13. Each application for new license, where a construction permit is not a prerequisite thereto, shall be filed at least 60 days prior to the contemplated operation of the station: *Provided, however,* That in emergency and for good cause shown, the Commission may waive the requirements of this rule.

Modification of license; when filed.

103.14. An application for modification of license may be filed for change in frequency, change in operating power where no construction is necessary, change in hours of operation, change in location of main studio (if a broadcast station), change in points of communication, and/or change in nature of authorized service (in case of stations other than broadcast) and to cover construction permit issued to authorize the addition to, modification, or replacement of equipment in an existing licensed station. Except when filed to cover construction permit each application for modification of license shall be filed at least 60 days prior to the contemplated modification of license: *Provided, however,* That in emergencies and for good cause shown, the Commission may waive the requirements hereof insofar as time for filing is concerned.

Renewal of license; when filed.

103.15. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license sought to be renewed.

Application called for by Commission.

103.16. Whenever the Commission regards an application for a renewal of license as essential to the proper conduct of a hearing or investigation, and specifically directs that the same be filed by a date certain, such application shall be filed within the time thus specified. If the licensee fails to file such application within the prescribed time, the hearing or investigation shall proceed as if such renewal application had been received.

Extension of station and operator licenses.

103.17. Where there is pending before the Commission any application, investigation, or proceeding which, after hearing,

might lead to or make necessary the modification of, revocation of, or the refusal to renew an existing license, or the suspension of an operator's license, the Commission may, in its discretion grant a temporary extension of such license: *Provided, however,* That no such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder, or use of the operator's license, will serve public interest, convenience and necessity beyond the express terms of such temporary extension of license: *And provided further,* That such temporary extension of license will in no wise affect or limit the action of the Commission with respect to any pending application or proceeding.

Assignment of construction permit, license or transfer of control of licensee corporation; when and how filed.

103.18. An application for consent to assignment of a construction permit or license, or for consent to transfer of control of a corporation holding a construction permit or license, shall be filed with the Commission at least 60 days prior to the contemplated effective date of assignment or transfer of control.

If the assignment of property of a station, or transfer of control of a licensee corporation is voluntary, the appropriate application shall be fully executed by both assignor and assignee and, if involuntary, by assignee only.

In support of each such application affecting a radio station there shall be submitted under oath or affirmation, in addition to the information required by the forms furnished by the Commission, in properly marked exhibits, the following information:

A. If the application is for transfer of license:

(1) A complete detailed list of all the items of property and assets of the station, including intangibles;

Real property must be listed separately showing both the buildings and land. If no real property is involved, applicant must so state;

(2) A similar list showing with reference to the items of property and assets given: (*a*) The original cost to the licensee, when and from whom purchased; (*b*) the present depreciated value and method of computing depreciation, and the replacement value and method of determining same;

This information may be given on one sheet in different columns, and the total of each column must be given. Applicant must show the latest tax assessed value, separately of buildings and land, together with the date of assessment. If the real estate has not been recently assessed or has not been assessed at full value, applicant must submit a report of independent appraisal of the realty, showing date said assessment was made, together with the name of the assessor;

(3) A profit-and-loss statement of the assignor showing receipts and disbursements in detail and also profit or loss for a period of 6 months preceding the filing of the application;

(4) A financial statement of the assignee showing in detail the items of assets and liabilities and assignee's financial ability to continue the operation of the station in the public interest, together with the date of said statement;

(5) Where the assignment is voluntary, an executed copy of the contract or lease agreement which must provide (a) that assignee shall have complete control of the station, its equipment and operation, including unlimited supervision of programs to be broadcast; (b) transfer shall be subject to the consent of the Commission; and (c) the price, whether paid or promised, and all the terms and conditions of the proposed sale or transfer;

(6) Where assignment of property of the station is involuntary, a certified copy of the court order or other legal instrument effecting the transfer, showing all the terms and conditions under which the transfer is made, including the consideration therefor;

(7) A copy of the articles of incorporation of the assignee, if a corporation, showing its power to engage in radio broadcasting, certified by the secretary of state of the State in which the assignee is incorporated;

(8) A list of names, nationalities, and addresses of incorporators, directors, and officers, and of all stockholders owning 5 per cent or more of the stock of said assignee corporation and all corporations controlling said assignee;

(9) Applicants for the Commission's consent to the transfer of a license from one licensee to another must join in a statement under oath as to whether there are contracts, agreements, or understandings (other than the one submitted under subpar. 5 above), whether written or oral, which may in anywise affect or concern the transfer contemplated, the financial arrangements between the parties, the equipment of the station or its operation or supervision. If there are no such contracts or understandings, the statement should clearly evidence this fact; if there are any such contracts, full and complete copies thereof properly executed must be submitted. Action will not be had on any such application until this information is fully supplied.

(B) If the application is for transfer of control of a licensee corporation:

(1) A complete detailed list of all the items of property and assets of the station, including intangibles;

Real property must be listed separately showing both the buildings and land. If no real property is involved, applicant must so state;

(2) A similar list showing with reference to the items of property and assets given: (*a*) The original cost to the licensee, when and from whom purchased, (*b*) the present depreciated value and method of computing depreciation, and the replacement value and method of determining same;

This information may be given on one sheet in different columns, and the total of each column must be given. Applicant must show the latest tax-assessed value, separately of buildings and land, together with the date of assessment. If the real estate has not been recently assessed or has not been assessed at full value, applicant must submit a report of independent appraisal of the realty, showing date said assessment was made, together with the name of the assessor;

(3) A financial statement of the licensee corporation, control of which is

to be transferred, showing in detail the items of assets and liabilities, together with the date of said statement;

(4) A profit-and-loss statement of said licensee corporation showing the receipts and disbursements in detail and also profit or loss for a period of 6 months preceding the filing of the application;

(5) If control of the licensee corporation is to be transferred by contract, a fully executed copy thereof showing the date and all the terms and conditions, including the exact consideration paid or promised, with a condition that the transfer be subject to the consent of the Commission;

(6) If control of said licensee corporation is to be transferred by involuntary means, a certified copy of the court order or other legal instrument effecting the transfer of control, showing all the terms and conditions thereof, including the consideration therefor;

(7) If control is to be transferred to a corporation, a copy of the articles of incorporation, properly certified by the secretary of state of the State in which the corporation is incorporated;

(8) A list of names, nationalities, and addresses of incorporators, directors, and officers, and of all stockholders owning 5 per cent or more of the stock of said assignee corporation and all corporations controlling said assignee;

(9) Applicants for the Commission's consent to the transfer of control of a licensed corporation must join in a statement under oath as to whether there are contracts, agreements, or understandings (other than the one submitted under subpar. 5 above), whether written or oral, which may in anywise affect or concern the transfer contemplated, the financial arrangements between the parties, the equipment of the station or its operation or supervision. If there are no such contracts or understandings, the statement should clearly evidence this fact; if there are any such contracts, full and complete copies thereof properly executed must be submitted. Action will not be had on any such application until this information is fully supplied.

Provided, however, That in the case of the following services, Aviation, aviation public, experimental (other than broadcast), geophysical, emergency, agriculture, marine relay, mobile press, amateur, temporary, the information required by paragraphs A or B above need not accompany the application, and shall be furnished only at the specific request of the Commission.

Provided further, That the Commission may in any case, in its discretion, require the furnishing of such other and further information in connection with applications for consent to assignment of construction permit or license or for consent to transfer of control of a corporation holding a construction permit or license as it may deem necessary.

Special authorizations: when and how filed.

103.19. Upon proper request by the licensee of a broadcast station, or by the licensee of, or applicant for, a service other than broadcasting, the Commission may grant special temporary authority for the operation of a station for a limited time, or in a manner and to an extent, or for a service other or beyond

that authorized in its existing license: *Provided, however,* That if request is for a broadcast station to utilize additional hours of operation, approval may not be granted if another broadcast station is licensed to operate in the same locality during the hours requested.

In any event, no such request will be considered unless:

(a) It is received in the Commission at least 10 days previous to the date of proposed operation.

(b) If request is for operation upon a clear channel, it shall be supported by the consent of the dominant clear-channel station.

(c) Request for any frequency shall be supported by the consent of each station licensed for operation upon the frequency, where consenting station is located at a distance less than that given in the latest published table of recommended separations.

(d) Request made by a sharing-time station shall be supported by the consent of the station with which the licensee requesting the same shares time.

Consent shall be forwarded direct to the Commission by the consenting station and shall show whether the same is for simultaneous operation or whether consenting station is giving up the time sought by applicant.

Any or all of the foregoing requirements of paragraphs (a), (b), (c), and (d) may be waived by the Commission in cases of emergency, the nature of which shall be fully explained by the licensee in the request for authorization.

Action on Applications.

Defective applications rejected.

104.1. If an applicant, by specific request of the Commission, is required to file any documents or information not included in the prescribed application forms, a failure to comply therewith shall constitute a defect in the application, and the application will not be considered by the Commission. Any application which is not filed in accordance with the Commission's regulations with respect to the form used, manner of execution and completeness of answer to questions therein required will not be considered by the Commission. Each such application shall be returned to the applicant by the secretary of the Commission, together with a brief statement of the respect in which it is defective.

Under Title II of the Act

Applications under § 214 of the Act.

104.2. Upon receipt of an application filed under section 214 of the Act, the Commission will cause notice of the filing of such application, together with copies of the same, to be given to the Governor and State commission of each State having jurisdiction over the carrier, in the States in which the additional or extended line, or any part thereof, is proposed to be constructed or operated, with the request that they advise the Commission if they desire to be heard in the matter. Such notice may also be given to any other person or party, and in any manner the Commission deems proper. If any party so notified, as provided herein, requests a hearing upon the application, the Commission will order a hearing and will give notice to all parties of the time and place thereof: *Provided, however,* That the Commission may, upon application, grant authority to furnish temporary or emergency service, or to supplement existing facilities, in whole or in part, and upon such terms as it may prescribe, without notice or hearing.

Applications under § 221 of the Act.

104.3. Upon receipt of an application filed under section 221 of the Act, the Commission will order a hearing upon the same, and will give reasonable notice in writing of the time and place thereof to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission of such States having jurisdiction over telephone companies, and to such other person or party as it may deem advisable. A copy of the application will be furnished such parties together with the notice as above provided.

Under Title III of the Act

Applications conditionally granted without hearings.

104.4. When upon application any instrument of authorization is granted by the Commission without a hearing pursuant to section 309(a) of the Act, such grant shall remain conditional for a period of not less than 30 days from the date on which public announcement thereof is made, or from its effective date, if a later date is specified, during which 30 days any person aggrieved or whose interests may be adversely affected may

obtain a hearing upon such an application by filing a protest as set forth in rule 105.21(b).

Upon the filing of such a protest, the application involved will be set for hearing in the same manner in which other applications are set for hearing, and the applicant and other interested parties notified.

Pending hearing upon any protest, the effective date of the Commission's action to which said protest is directed, shall be postponed to the date of the Commission's decision after hearing, unless the authorization involved in such grant is necessary to the maintenance or conduct of an existing service, in which event the Commission may, in its discretion, authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

If no protest is filed in accordance with the foregoing, and within the time limited, or if a protest is filed, but is withdrawn by the protestant before hearing thereon, the action of the Commission in granting the application in question shall become absolute and final without further action of the Commission.

Applications granted in part without hearing.

104.5. Where any application is granted in part, or with any privileges, terms, or conditions other than those requested, pursuant to rule 104.4 and without a hearing thereon, the action of the Commission shall be considered as granting such application unless the applicant shall, within 30 days from the date on which public announcement of such grant is made, or from its effective date, if a later date is specified, file with the Commission a written request for a hearing with respect to the part, or with respect to the privileges, terms, or conditions, not granted. The request for hearing shall be accompanied by a statement in writing of the facts which the applicant expects to prove upon such hearing. Upon the receipt of such request, and statement in proper form, the application will be set for hearing in the same manner as other applications are set for hearing, and the applicant and other parties in interest notified thereof. Within a period of 10 days from the receipt of such notice of hearing, the applicant shall deliver or mail a copy of the statement of facts to be proved by it to all other parties notified of the hearing, and shall file with the Commission an affidavit stating that this

requirement has been met. Pending such hearing the effective date of the action of the Commission with respect to such application shall be postponed to the date of said decision after hearing.

All other applications designated for hearing.

104.6. In cases where the application is proper upon its face but the Commission is unable to determine, without a hearing on the merits, that the granting of such application, either in whole or in part, would serve public interest, convenience, or necessity, and that the granting of such application, either in whole or in part, would not aggrieve or adversely affect the interest of any licensee, or any person having a pending application, the Commission will designate the same for hearing and the following procedure will govern:

(a) The secretary shall forthwith mail a written notice to the applicant setting forth the action of the Commission (together with such statement of the Commission's reasons therefor as shall be appropriate to the nature of the application), the time and place for hearing, and a list of the other parties notified thereof.

(b) In order to avail himself of the opportunity to be heard, the applicant shall, within 15 days of the mailing of the notice by the secretary, file with the Commission a written appearance and statement of his desire to be heard, in accordance with rule 105.25.

Within 25 days of the mailing of the notice of hearing as aforesaid, any respondent who desires to participate in the hearing, shall file with the Commission his answer to any such appearance in accordance with rule 105.26.

(c) In case no appearance or statement in writing of the facts to be proved upon such hearing is filed by the applicant within the time so specified, the hearing will be canceled, the applicant deemed in default, his application denied, and the secretary shall so notify the applicant and other parties to the hearing

(d) In case the appearance and statement in writing of the facts to be proved is duly and seasonably filed, the application will be entered upon the hearing docket.

(e) If at the date set for hearing, the applicant does not appear and offer evidence in support of his said application, a default will be entered, and the Commission will deny the application.

(f) After a hearing has been held in accordance with the fore-

going, the Commission may grant the application, deny it, or grant it in part, or deny it in part.

Repetitions of applications.

104.7. Where an applicant has more than one application pending for essentially the same instrument of authorization, with respect to the character of station, type of service, and the territory sought to be served, the Commission shall determine which of such applications shall be first considered by it.

Where an applicant has an application pending and undecided, no other inconsistent or conflicting application filed by or upon behalf of the same party will be accepted for consideration.

Where an applicant has been afforded an opportunity to be heard with respect to a particular application, and the Commission has, after hearing or default, denied the application, or dismissed it with prejudice, it will not consider or designate for hearing another application by the same applicant, or for his successor or assignee, until after the lapse of periods of time as follows:

(a) Where the second application is for exactly or substantially the same instrument of authorization with respect to class of station, the privileges, terms, and conditions requested, and the territory sought to be served, a period of 12 months must elapse from and after the date of the denial of the first application.

(b) Where the second application is for the same kind of instrument of authorization, but differs materially from the first application as to class of station, the privileges, terms, and conditions requested, or the territory sought to be served, a period of 6 months must elapse from and after the date of the denial of the first application.

The foregoing provisions shall have no application where, since the denial of the first application, there has been a material change in the facilities available for designation to the particular service sought to be established in the territory sought to be served.

Applications pending appeal from decisions of the Commission.

104.8. Where an appeal has been taken from the action of the Commission in denying a particular application, another application for the same kind of instrument of authorization, with respect to the type of service and territory sought to be served, filed by the same applicant, his successor or assignee, will not be considered or designated for hearing until the final disposition of

such appeal: *Provided, however,* That where, pursuant to rule 104.5, an application is granted in part and denied in part, and the applicant desires to utilize the partial grant and to contest the partial denial, any such applicant shall be permitted, during the pendency of such appeal, and without prejudice thereto, to file such application or applications as shall be necessary or requisite to the utilization, extension, or renewal, but not for a modification of the instrument in the particulars theretofore denied, and the Commission will consider and dispose of these applications.

Pleadings and Action Thereon.

Complaints.

105.1. Complaints may be either informal or formal.

Informal complaints; substance.

105.2. No form of informal complaint is prescribed, but it must be in writing, subscribed and verified by the complainant. The complaint shall state the name and address of the complainant, the name of the carrier against whom complaint is made, and shall state as definitely as possible the basis or reason for the complaint.

Action on informal complaints.

105.3. Upon receipt of an informal complaint properly drawn and executed, the Commission will, if its nature warrants, take the question up by correspondence with the carrier complained of in an endeavor to bring about satisfaction. Such correspondence with the carrier shall call upon it either to satisfy the complainant or advise the Commission of its refusal or inability to do so within the prescribed time. If the carrier satisfies the complainant it shall immediately notify the Commission by filing with it a receipt of satisfaction executed by the complainant; whereupon the complaint will be dismissed. If the carrier refuses or is unable to satisfy the complainant within the time prescribed, it shall so notify the Commission, which decision the Commission will forthwith give notice of to the complainant.

Six months' rule for resubmission.

105.4. When an informal complaint has not been satisfied pursuant to the foregoing rule, the complainant may either file a

formal complaint or resubmit his informal complaint within 6 months from the date of the Commission's notice: *Provided, however,* That such resubmitted informal complaint must contain new material matter upon the same cause of action. The procedure prescribed herein for the handling of informal complaints will be followed in case of resubmitted informal complaints. If such resubmitted informal complaint or a formal complaint is filed with the Commission within the 6 months' period, such resubmission or filing will be deemed to relate back to the date of the filing of the original informal complaint.

Formal complaints; requirements.

105.5. Formal complaints shall contain the names of all parties complainant and defendant in full, without abbreviations, the address of each complainant, and the name and address of his attorney, if represented by attorney, and shall be subscribed and verified by the complainant.

(See page 658, *infra,* for form of formal complaint.)

Statement of issues; joinder of causes of complaint.

105.6. Formal complaints shall be so drawn as to advise the Commission and the defendant fully wherein the provisions of the Act, an order or a rule or regulation of the Commission, have been violated, the facts claimed to constitute such violation, and the relief sought. Two or more grounds of complaint involving the same principle, subject, or state of facts may be included in one complaint, but should be separately stated and numbered.

Notice of complaints.

105.7. Upon receipt of any formal complaint against any common carrier subject to the Act, the Commission will forward a copy of the same to such carrier together with a notice of the filing thereof, which notice shall contain an order of the Commission calling upon the carrier to satisfy the complaint or answer the same in writing within the time specified in said notice, which in no event shall be less than 30 days.

Charges; references.

105.8. The several charges, classifications, regulations, or practices complained of shall be set out by specific references to schedules of charges and classifications, and also the particular regulations or practices whenever that is possible.

Separate statement of each provision violated.

105.9. When a violation of more than one provision of a section of the Act is alleged, such violation shall be separately stated with respect to each provision of the Act claimed to constitute a violation thereof.

Complaints: allegation of.

105.10. In case recovery of damage is sought, the complaint should contain appropriate allegations showing such data as will serve to identify, with reasonable certainty, the communications or transmissions, or other services, in respect of which recovery is sought, and shall state (1) that the complainant makes claim for reparation; (2) the name and address of each individual claimant asking reparation; (3) the name and address of defendants against which claim is made; (4) the communications, transmissions, or other services rendered, the charge applied thereto, the date when charges were paid, by whom paid, and by whom borne; (5) the period of time within which, or the specific dates when such communications, transmissions, or other services were rendered; (6) points of origin and reception of such communications or transmissions and, if known, the routes over which such communications or transmissions were made or transmitted, and if the damages sought to be recovered are for services other than communications or transmissions, then the allegations of the complaint shall state the nature and extent of such services, the date or dates when rendered, when paid for, and by whom borne; (7) nature and amount of injury sustained by each claimant; (8) if reparation is sought on behalf of others than the complainant, in what capacity or by what authority complaint is made in their behalf; and (9) that claimant has not filed suit in any court on the basis of the same claim.

Proof of damages when transmission or rates numerous; reparation.

105.11. If a general rate adjustment is challenged in the complaint, or many communications and transmissions or points of origin and reception are involved, the Commission will find and determine in its report the issues as to violation of the Act, injury thereby to complainant, and right to reparation. The Commission will afford the parties opportunity to agree or make proof respecting the communications, transmissions, or other services, and

amount of reparation due under its findings, before entering its order awarding reparation. In such cases, authenticated schedule of charges, receipts, statements, and other exhibits bearing on details of such communications, transmissions or other services, for which reparation is claimed, and the amount claimed (separately stated with respect to each communication, transmission, or other service rendered), need not be produced at the hearing unless called for or needed to develop other pertinent facts.

Discrimination to be specified.

105.12. In case unjust or unreasonable discrimination is alleged, the charge, practice, classification, regulation, facility, or service complained of must be clearly specified.

Preference or prejudice.

105.13. In case undue or unreasonable preference, advantage, or prejudice is alleged, the particular person, company, firm, corporation, locality, or description of traffic affected thereby, and the particular preference or prejudice or disadvantage, relied upon as constituting a violation, shall be clearly specified.

Reparation to be specifically prayed for.

105.14. Reparation will not be awarded upon a complaint unless specifically prayed for, except under unusual circumstances and for good cause shown. Reparation may be awarded, however, upon a supplemental complaint based upon the finding of the Commission in the original proceeding.

Sufficiency to toll statute; damages pendente lite.

105.15. The Commission will consider as in substantial avoidance of the statute of limitations, a complaint in which the complainant alleges that the matters complained of, if continued in the future, will constitute violations of the Act in the particulars and to the extent indicated, and prays reparation accordingly as to charges which shall be paid and borne by complainant on all communications, transmissions, or other services affected thereby occurring during the pendency of the proceeding.

Supplemental complaints.

105.16. Supplemental complaints may be tendered for filing by the parties complainant, against the parties defendant, setting forth any causes of action under the act alleged to have accrued

in favor of the complainants and against the defendants since the filing of the original complaint.

Supplemental complaint to be filed within statutory period.

105.17. If recovery of damages is sought by supplemental complaint, it must be filed with the Commission within the statutory periods stated in section 415 of the Act.

Cross complaints; filing and service; hearing and disposition.

105.18. Cross complaints alleging violations of the act by other carriers, parties to the proceeding, or seeking relief against them under the Act, may be tendered for filing by defendants with their answers and, upon leave granted, will be filed and served by the Commission in the manner provided for serving complaints.

Petitions.

105.19. Petitions for intervention or for other relief under the jurisdiction of the Commission must be subscribed and verified by the petitioner and shall set forth clearly and concisely the facts supporting the relief sought.

Intervention; when allowed.

105.20. Any party may, at any time, more than 10 days prior to the date of any hearing, file with the Commission a petition to intervene. If the petition discloses a substantial interest in the subject matter of the hearing, the Commission may grant the same and permit the petitioner to be heard at such hearing.

Protests.

105.21. (a) Protests in opposition to tariff schedules under suspension, or in opposition to a tentative valuation, under the provisions of title II of the Act, shall be subscribed and verified by the protestant and shall contain a concise statement of the essential elements of the protest with particularity to the matters concerning which protest is made. Each object of protest shall be set up as a separate item in a separately numbered paragraph and the protest shall also include a statement of the protestant's interest in the matter in controversy.

(b) Protests to any application granted by the Commission without a hearing under section 309 (a) of title III of the Act (see rule 104.4) shall be subscribed and verified by the protestant and shall contain:

1. A statement of protestant's interest in the matter;

2. A terse yet complete statement of facts which protestant expects to prove upon the hearing, and,

3. Proof of service upon the applicant.

Answers to complaints and petitions.

105.22. Any party upon whom a copy of a complaint, petition, or cross complaint is filed, shall answer and file the same within 30 days after service of the complaint. Such answer shall be subscribed and verified by the party answering, and shall be so drawn as to advise the parties and the Commission fully and completely of the nature of the defense, and shall admit or deny specifically and in detail all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve answer within the time, and in the manner prescribed, will be deemed in default, and the Commission will issue an appropriate order. (Counterclaims and set-offs against users of service supplied by carriers are not within the jurisdiction of the Commission.)

Answers to notice of violations under title III.

105.23. Any licensee receiving official notice of a violation of the terms of the Communications Act of 1934, any legislative Act, Executive order, treaty to which the United States is a party or the rules and regulations of the Federal Communications Commission, which are binding upon licensee or the terms and conditions of a license, shall, within 3 days from such receipt, send a written reply direct to the Federal Communications Commission at Washington, D. C., and a copy thereof to the office of the Commission originating the official notice, when the originating office is other than the office of the Commission in Washington, D. C. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of the transmitting apparatus, the answer shall state fully what steps, if any, are taken to prevent future violations, and if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery.

If the installation of such apparatus requires a construction

permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission, such identification as will permit of ready reference.

If the notice of violation relates to some lack of attention or improper operation of the transmitter, the name and license number of the operator in charge shall be given.

Answers to petitions or amended complaints.

105.24. Answers to petitions for intervention, or to amended complaints filed and served upon leave granted, need not be separately made unless the defendant so elects, and defendant's answer to the complaint will be deemed its answer to the petition in intervention.

Appearance of applicant as pleading under rule 104.6(b).

105.25. The appearance to be filed pursuant to rule 104.6 shall be subscribed and verified by the applicant, and shall consist of a statement of his desire to be heard, and a terse yet complete statement in writing of the facts which he expects to prove at such hearing. The appearance shall be accompanied by proof of service upon all parties notified of the hearing. Such appearance shall be considered a pleading (but not as evidence of the facts therein stated).

Answers to appearances.

105.26. The answer to applicant's appearance to be filed pursuant to rule 104.6 (b) shall conform to the requirements set forth in rule 105.25 with respect to appearance of applicant. No respondent shall be heard in any proceeding under title III unless and until he shall have filed an answer to the applicant's appearance in accordance with this rule.

Orders instituting action under title II.

105.27. Whenever the Commission shall institute a proceeding within its jurisdiction under title II of the act against any common carrier, it shall commence such action by serving upon the carrier an order to show cause. Said order shall contain a statement of the particulars and matters upon which the Commission is inquiring, and the reasons for such action, and shall call upon the carrier to be and appear before the Commission at a place and time therein stated, and then and there answer and give evidence

upon the matters specified in said order. The Commission may, however, require in said order, that the carrier file with the Commission its verified answer to the order to show cause, on or before a day certain, prior to the hearing date therein fixed, in no event less than 30 days after service of the order: *Provided, however,* That the Commission may include in an order to show cause any further provisions which it may deem necessary and which are within its jurisdiction under the act. Nothing in this rule shall be construed to limit the authority of the Commission to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedure which it may deem necessary or proper.

Answer to order to show cause under title II.

105.28. Any carrier, upon whom an order to show cause has been served under rule 105.27 shall respond to the same by filing its answer within the time specified in said order. Such answer shall be subscribed and verified by the carrier, and shall be drawn so as specifically to admit or deny the charges or allegations which may be made in said order, and so as to advise the Commission fully and completely upon the matters and things inquired of.

Revocation proceedings under § 312(a) of the Act.

105.29. Whenever the Commission shall institute a revocation proceeding against the holder of any radio station construction permit or license under section 312 (a), it shall initiate said proceeding by serving upon said licensee an order of revocation effective not less than 15 days after written notice thereof is given the licensee. The order of revocation shall contain a statement of the grounds and reasons for such proposed revocation and a notice of the licensee's right to be heard by filing with the Commission a written request for hearing within 15 days after receipt of said order. Upon the filing of such written request for hearing by said licensee the order of revocation shall stand suspended and the Commission will set a time and place for hearing and shall give the licensee and other interested parties notice thereof. If no request for hearing on any order of revocation is made by the licensee against whom such an order is directed within the time hereinabove set forth, the order of revocation shall become final and effective, without further action of the Commission.

When any order of revocation has become final, the person whose license has been revoked shall forthwith deliver the station license in question to the inspector in charge of the district in which the licensee resides.

Modification orders under § 312(b) of the Act.

105.30. Whenever the Commission shall determine that public interest, convenience, and necessity would be served, or any treaty ratified by the United States will be more fully complied with, by the modification of any radio station construction permit or license either for a limited time, or for the duration of the term thereof, it shall issue an order for such licensee to show cause why such construction permit or license should not be modified.

Such order to show cause shall contain a statement of the grounds and reasons for such proposed modification, and shall specify wherein the said construction permit or license is required to be modified. It shall require the licensee against whom it is directed, to be and appear at a place and time therein named, in no event to be less than 30 days from the date of receipt of the order to show cause why the proposed modification should not be made and the order of modification issued.

If the licensee against whom the order to show cause is directed does not appear at the time and place provided in said order, a final order of modification shall issue forthwith.

Suspension of operator license.

105.31. Proceedings for the suspension of an operator license shall in all cases be initiated by the entry of an order of suspension, a copy of which shall be served upon or mailed to the holder of the license involved, to become effective on a day certain, in no event less than 40 days after date of serving or mailing such order. The order shall set forth the name of the operator, class and grade of license, the effective date of the order, the period of suspension and a statement of the reasons for suspension, and shall contain a notice to the holder of such license of his right to be heard and contest the order, by filing with the Commission within 35 days from the receipt of said order, a written request for hearing with a statement executed by him under oath, denying or explaining specifically and in detail the charges set forth in the order of suspension. Upon receipt of such request and statement, the

effective date of the suspension of such license will be extended; and the Commission, upon consideration of the licensee's statement, as herein provided, will either revoke its order of suspension, or fix a time and place for hearing and notify the licensee thereof.

If no request for hearing on any order of suspension is made by the licensee against whom such order is directed within 35 days of receipt of such order of suspension, the same shall become final and effective.

Where any order of suspension has become final, the person whose license has been suspended shall forthwith send the operator's license in question to the office of the Commission in Washington, D. C.

Amendments as matter of course.

105.32. Amendments to any pleading may be made as a matter of course, if filed with the Commission, and served upon all parties of record not less than 30 days prior to the date set for hearing on such proceeding.

Amendments discretionary with commission.

105.33. Amendments to any pleading filed within 30 days of a hearing may be allowed in the discretion of the Commission, upon petition, and upon such terms as the Commission shall impose.

Verification and subscription of applications and amendments.—(Revised Feb. 19, 1936.)

105.34. A. Each application or amendment thereto shall be personally subscribed and verified: (1) By the party filing said application or amendment, or by one of the parties, if there be more than one; (2) by an officer of the party filing the application or amendment if the party be a corporation; *Provided, however,* That subscription and verification may be made by the attorney for the party (1) in case of physical disability of the party, or (2) his absence from the continental United States.

B. Each pleading initiating or supplementing a proceeding before the Commission shall be subscribed by the party or his attorney: *Provided, however,* That each pleading of fact verified by the affidavit of the attorney shall be made only when the facts are within the personal knowledge of the attorney, which said affidavit shall include a statement by affiant that said facts are within his personal knowledge.

Number of copies; service and proof of service.

105.35. Applications under title II of the act, formal complaints, supplemental complaints, cross complaints, and amended complaints, will be served by the Commission and copies of each shall be furnished in sufficient number so as to provide the Commission with 15 copies for its use, and a copy for each party to the proceeding.

Service by the Commission upon common carriers shall be by leaving a copy of any document requiring service with the designated agent of such carrier at his office or usual place of residence in the District of Columbia, and if no such agent is designated, then service may be made by posting such notice, process, order, decision, or pleading in the office of the Secretary of the Commission.

Service by the Commission upon all other parties shall be by mailing a copy of any document required to be served to the last known address of said party.

(Revised Feb. 19, 1936.)

All pleadings or documents (other than applications under title II, formal complaints, supplemental complaints, cross complaints, and amended complaints), filed in any proceeding shall be served by the party filing the same, proof of which service shall be by signature of the party served or by affidavit showing service by registered mail (postage prepaid) of a true copy thereof, to the last known address of said party, and such proof shall be submitted to the Commission, together with the original and eight copies of such pleading or document.

Size, acceptable copies, and legibility of typewritten papers.

105.36. All papers filed in any proceeding (except briefs and exhibits), shall, unless otherwise specifically provided, be on paper 8½ by 13 inches, with left-hand margin not less than 1½ inches wide. The impression shall be on one side of the paper only and shall be double-spaced, except that long quotations should be single-spaced and indented. Such papers shall be mimeographed, planographed, or typewritten. All copies must be clearly legible.

Size of printed papers.

105.37. If printed they shall be in 10- or 12-point type, on good unglazed paper, 5⅞ inches wide by 9 inches long, with inside

margin not less than 1 inch wide, and with double-leaded text and single-leaded citations.

Briefs, printed or typewritten.

105.38. All briefs shall be printed, except that briefs of not more than 40 pages, including cover pages, indexes, and appendixes, may be typewritten, mimeographed, or multigraphed.

Hearings.

Hearings.

106.1. Hearings before the Commission may be informal or formal.

Informal hearings.

106.2. The Commission may upon petition by any person or upon its own motion hold such informal hearings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation or amendment of its rules and regulations. For such purposes it may summon witnesses and require the production of testimony as in formal hearings but the procedure to be followed shall be informal and such as in the opinion of the Commission will best serve the purposes of such hearing.

Formal hearings.

106.3. The Commission may in its discretion, or will, if required by the act, hold a formal hearing upon any matter within its jurisdiction. Reasonable notice thereof shall be given to interested parties, which in no event shall be less than 30 days after service of notice.

Related matters set for hearing the same date.

106.4. In fixing dates for hearings the Commission will, so far as practicable, endeavor to fix the same date for hearings on all related matters which involve the same applicant, or arise out of the same complaint or cause; and for hearings on all applications which by reason of the privileges, terms, or conditions requested present conflicting claims of the same nature, excepting, however, applications filed after any such application has been designated for hearing.

Continuances and extensions.

106.5. For good cause shown, continuances in respect to any proceeding or hearing pending before the Commission or extension of time for filing documents or other instruments, except where the time for filing the same is limited by statute, may be granted, or denied by the Commission in its discretion for reasons such as are usually considered sufficient for analogous continuances and extensions in the courts of the United States: *Provided, however,* That requests for continuances or extension of time shall be made in writing in the form of a verified petition which shall set forth reasons therefor and the additional time required. Such petition shall indicate therein diligence on the part of the petitioner, and shall be made at a time and in such manner as to avoid unnecessary hardship or expense to the parties to the proceeding, and shall in all other respects, comply with these rules and regulations.

Temporary postponement.

106.6. The Commission, a Commissioner, or an examiner, when designated to preside at a hearing, may, upon its or his own motion or the motion of any party and for good cause shown, after opening any hearing pursuant to notice, temporarily postpone the hour or date or change the place thereof, when in its or his judgment the ends of justice will be better served.

Order of procedure.

106.7. At hearings on complaints, petitions, applications or for other instruments of authorization which the Commission is empowered to make, the complainant, petitioner, or applicant as the case may be, shall open and close. At hearings on investigation and suspension proceedings under title II of the act, the respondent whose tariffs are under suspension shall open and close. At hearings on all other investigations, revocations, modifications, suspension of operator licenses under title III of the Act, or other proceedings instituted by the Commission, the Commission shall open and close. At hearings on protests, the protestant shall open and close. In hearings upon a consolidated record, the Commission or presiding officer shall designate the order of presentation. Interveners shall follow the party in whose behalf intervention is made, and in all cases where the intervention is not in support of either original party, the Commission or presiding officer shall designate at what stage such interveners shall be heard.

Evidence governing hearings.

106.8. Except as otherwise provided herein, the rules of evidence governing civil proceedings in the courts of the United States shall govern formal hearings before the Commission: *Provided, however,* That the Commission reserves the right to relax such rules in any case where in its judgment the ends of justice will be better served by so doing.

Official reports, etc.; how admissible.

106.9. Copies of official reports, orders or decisions of any governmental department or agency, in so far as material and relevant, shall be admissible in evidence without further authentication than a certificate from the proper custodian of any such record, order or decision, to the effect that the same is what it purports to be, and that the copy in question is a true copy thereof.

Matter offered containing other matter not material.

106.10. Where material and relevant matter offered in evidence is embraced in a document containing other matter not material or relevant, and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to opposing counsel, and to the Commission, the original document, together with true copies of such material and relevant matter taken therefrom, as it is desired to introduce. Upon presentation of such matter in proper form, it may be received in evidence, and become a part of the record: *Provided, however,* That opposing counsel shall be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant.

Exhibits offered to be in duplicate.

106.11. No document, exhibit, or part thereof shall be received as, or admitted in, evidence unless offered in duplicate.

Unsworn documents, oral declarations not received.

106.12. Except as herein expressly provided, unsworn documents and oral declarations will not be received in evidence.

Cumulative evidence avoided.

106.13. The introduction of merely cumulative evidence shall be avoided, and the Commission reserves the right to limit the number of witnesses that may be heard in behalf of a party on any issue.

Tariffs as evidence.

106.14. In case any matter contained in a tariff schedule on file with the Commission is offered in evidence, such tariff schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified, and may be received in evidence by reference subject to check with the original tariff schedules so on file.

Records of other proceeding.

106.15. In case any portion of the record before the Commission in any proceeding, other than the one in hearing, is offered in evidence, a true copy in duplicate of such portion shall be presented for the record in the form of an exhibit.

Requiring additional evidence during hearing.

106.16. At any stage of a hearing, the presiding Commissioner or examiner may call for further evidence upon any issue, and may require such evidence to be presented by any party to the proceeding.

Requiring additional evidence after hearing.

106.17. Before the close of a hearing, the presiding Commissioner or examiner may, at the request of a party or upon his own motion, require that a party furnish additional documentary evidence, supplementary to the existing record, within a stated period of time. The record of such proceeding will be held open until the expiration of such fixed time, and such additional documentary evidence will be made a part thereof.

Subpenas; who may issue.

106.8. Subpenas requiring the attendance and testimony of witnesses, and subpenas requiring the production of any books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation or hearing may be signed and issued as follows:

(1) Hearings before the Commission en banc: By any commissioner.

(2) Hearings before an examiner:

(a) By any Commissioner.

(b) When an examiner has been designated to hear a case, he may sign and issue subpenas in that case.

(c) By the chief examiner or the assistant chief examiner.

No subpena shall be signed or issued in any event without recommendation thereon in advance by the law department: *Provided, however,* That if a hearing is held in the field and no representative of the law department is in attendance, examination and recommendation by the law department in advance shall not be required.

Subpenas; when issued.

106.19. Unless directed by the Commission upon its own motion, subpenas will be issued only upon request in writing. Applications for subpenas to compel witnesses to produce documentary evidence must be verified, and must specify with particularity, the books, papers, or documents desired, and the facts expected to be proved by the same.

Fees of witnesses.

106.20. Witnesses who are summoned and respond thereto are entitled to the same fees as are paid for like service in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.

Return of subpena; manner of service.

106.21. Service may be made by a United States marshal or his deputy, or any person of legal age who is a citizen of the United States, and who is competent to be a witness. If service of subpena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereof, stating the date, time, and manner of service; and return such affidavit on, or with, the original subpena in accordance with the form thereon. In case of failure to make service the reasons for the failure shall be stated on the original subpena. In making service the original subpena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpena, bearing or accompanied by the required return, affidavit, or statement, shall be returned forthwith to the secretary of the Commission, or, if so directed on the subpena, to the presiding commissioner or examiner before whom the person named in the subpena is required to appear.

Request for taking depositions.

106.22. The Commission will either on its own initiative, or on written request of a party to a proceeding, issue an order to take

a deposition. If on written request, said request shall set forth the name and address of the witness, the matters and facts concerning which it is expected the witness will testify, and the cause or reason why such deposition should be taken. Such written request shall be subscribed and sworn to by the party or his attorney, and shall be filed with the Commission 15 days before the proposed date for taking the deposition. If said order is allowed the secretary shall mail a copy thereof to all parties to the proceeding at least 10 days prior to the date fixed for the taking of testimony.

Order for taking depositions.

106.23. The order issued by the Commission requiring the taking of a deposition, shall state the name and address of the witness, the matters and facts concerning which it is expected the witness will testify; the place where, the time when, and the designated officer before whom the witness is to testify.

Procedure: taking depositions.

106.24. A witness whose testimony is taken by deposition, shall be sworn or shall affirm, before any question is put to him. Each question propounded shall be recorded, and the answer shall be taken down in the words of the witness.

The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual manner by the officer.

Objections to the form of question and answer shall be made before the officer taking the deposition, and if not so made, shall be deemed waived: *Provided, however,* That if no representative of the Commission is present at the taking of the deposition of any witness, such deposition shall be received in evidence at the hearing when offered, subject to such legal objection by the Commission as may be proper.

Deposition to be offered as evidence.

106.25. No deposition shall constitute a part of the record in any proceeding until received in evidence at a hearing before the Commission, a Commissioner, or Examiner, unless otherwise ordered by the Commission.

Number of copies and time for filing depositions.

106.26. The original deposition and one copy thereof, and the

original and one copy of all exhibits, shall be forwarded by said officer under his seal, to the Secretary of the Commission.

All depositions shall be filed with the Commission not later than 5 days before the date of the hearing in which they are to be offered as evidence, and rule 100.12 shall not apply or in anywise serve to extend this time.

Report of hearing.

106.27. In the event testimony is taken before a Commissioner or an Examiner, the testimony duly transcribed shall be reported back to the Commission, together with a written report containing recommendations as to the decision to be made thereon, and the facts and grounds upon which such recommendation is based.

Exceptions.

106.28. A copy of such report shall be mailed by the Secretary to each party participating in the hearing, and such party shall have the right to file exceptions thereto at any time within a period of 15 days from the mailing of such report.

Exceptions to such report shall point out with particularity the alleged error in said report and shall contain specific reference to the page of the transcript of hearing, exhibit, or report to which exception is taken.

Fifteen copies of such exceptions, accompanied by an affidavit stating that a copy thereof has been mailed to, or served upon, each party participating in the hearing, shall be filed with the Commission.

Oral argument and briefs—when allowed.

106.29. In the event that a case is heard before a Commissioner or an Examiner, the Commission shall hear oral argument upon petition of any party, and may permit the filing of briefs. Such party shall request oral argument at the time of the filing of exceptions, or, if no exceptions are filed, within the time allowed for the filing of exceptions. In the event that testimony is taken before the Commission, it may be followed by oral argument by the parties, or by the filing of briefs, or both, in the discretion of the Commission, and the case shall thereafter be decided on the basis of the testimony heard and proceedings had.

Any party desiring to make oral argument in opposition to exceptions filed by another, shall make his request for such oral argument in writing, but not later than 5 days after receipt of

such exceptions. Such request shall show by affidavit that a copy thereof has been served upon, or mailed to, every other party who participated in the hearing.

Unless otherwise ordered by the Commission, not less than 10 days' notice to all parties who participated in the hearing shall be given in any case where a time for oral argument is set.

Briefs: time for filing.

106.30. Whenever the filing of any brief in connection with a hearing is allowed, 15 copies thereof shall be filed with the Commission.

A party filing an opening brief shall file the same within 20 days from the date on which hearing and testimony is concluded. Only a party who files an opening brief, may file a reply to the brief of an opposing party. Such reply shall be filed within 10 days from the expiration time for filing said opening brief.

For good cause, a Commissioner or an Examiner before whom any hearing is being held, may, prior to the conclusion of such hearing, on his own motion or that of any party, add to or reduce the time hereinabove provided for the filing of briefs.

At or prior to the date fixed for the filing of any brief, the party filing the same shall serve upon or mail to every other party to the proceeding at least one copy thereof, and no brief will be accepted or considered by the Commission unless accompanied by an affidavit showing this requirement has been met.

Rehearing.

106.31. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may within a reasonable time file a petition in writing for a rehearing of the same: *Provided, however,* That a petition for rehearing in case of a decision, order or requirement made under title III shall be filed within 20 days after the effective date thereof.

A petition for rehearing shall show:

(a) That new or additional material evidence has been discovered which petition after due diligence could not have known at the time of the original hearing, or

(b) That the Commission in its decision, order, or requirement overlooked or did not consider some material question of law or matter of fact which, if considered, would have changed its decision, order, or requirement.

Amendments to Rules of Practice.

107.1. These rules may be suspended, revoked, modified, amended, or supplemented, in whole or in part, at any time, by the Commission.

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Application may be amended prior to conclusion of a hearing thereon, if other parties will not be adversely affected	103.8
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Amendment to application involving, must be filed not later than 30 days prior to hearing	103.8
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	RULE
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Designated as "parties to proceedings"	102.1
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Answer to, must—	
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Avoid collateral issues	105.22
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Filed with Commission 60 days prior to date transfer takes effect	103.18
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	RULE
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	RULE
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Answer to, must—	
Admit or deny all allegations	105.22
Advise Commission of nature of defense	105.22
Avoid collateral issues	105.22
Be subscribed and verified by party answering	105.22
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Party upon whom, is served must answer within 30 days or be deemed in default	105.22
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Parties who reside beyond United States have additional period of 20 days for filing	100.12
Documents partially introduced into evidence	106.10
Documents required by Commission in addition to those required by the application:	
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Emergencies:	
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Requirements of rule 103.14 may be waived in	103.14
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Commission may waive requirements of formal applications in	103.1

	RULE
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Commission may waive requirements of formal applications in, with respect to, application for licenses, renewals or modifications thereof for stations on board United States vessels or aircraft pursuant to section 308 (a) of the act	103.6
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Commission may authorize, without notice or hearing	104.2
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Deposition not to constitute part of record until received in evidence at a hearing	106.25
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Documents partially introduced	106.10
Production of, subpena may issue to obtain	106.18
Records of other proceedings may be introduced in	106.15
Rules of, governing hearings	106.8
Tariff schedule need not be introduced in, but should be reasonably identified	106.14
Unsworn documents or oral declarations not to be received in	106.12
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Cases heard before, Commission may hear oral argument upon petition of any party	106.29
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Examiner, attorney:	
Included in term "attorney at law" as used in rule 101.7	101.7
Examiners:	
May sign and issue subpenas in connection with hearing held by	106.18
Examiners' reports:	
Hearing dockets open to inspection as to	100.6
Exceptions:	
Hearing dockets open to inspection as to	100.6
Party to proceeding may file, to report of hearing	106.28
To report of hearing—	
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Fifteen copies filed with Commission	106.28
Must meet certain requirements	106.28
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	RULE
Exhibits:	
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Expiration date of permit:	
Application for extension of time within which to commence or complete construction of a station filed at least 30 days prior to	103.11
Extension of a forfeited permit:	
Application for, not to be granted except on a showing of valid reasons for the delay	103.11
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Temporary, may be granted by Commission in certain cases	103.17
Extension of time for filing documents or other instruments:	
Commission may grant, in its discretion, unless time fixed by statute	106.5
Extension of time within which to commence and/or complete construction of a station:	
Application for, filed at least 30 days prior to expiration date of permit	103.11
Facilities, Broadcast. *See* Broadcast.	
Facilities:	
Supplementing of existing, may be authorized by the Commission without notice or hearing	104.2
Facility:	
Complained of in formal complaint alleging unjust or unreasonable discrimination, must be clearly specified	105.12
Facts supporting relief sought:	
Must be clearly stated in petition for intervention or other relief	105.19
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Failure to make service:	
Reasons for, stated on the return	106.21
Fees:	
Witnesses who are summoned and respond to subpoenas are entitled to	106.20
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Files of the Commission:	
Open to inspection—	
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Subject to sections 4 (j), 412, and 606 of the Act	100.6
First day:	
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	RULE
Forfeited permit:	
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Formal application for instrument of authorization:	
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General rate adjustment challenged in, Commission to determine its report—	
Injury to complainant	105.11
Issues as to violation of the Act	105.11
Right to reparation	105.11
Notice of, sent to carrier	105.7
Contains a Commission order for carrier to satisfy or answer complaint within time specified	105.7
Numerous communications and transmissions or points of origin and reception involved in, Commission to determine in its report—	
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Issues as to violation of the Act	105.11
Right to reparation	105.11
Reparation must be specifically prayed for before Commission will award	105.14
Recovery of damages sought in—	
Complaint should contain appropriate allegations identifying the communications, etc., in respect of which recovery is sought	105.10
Complaint to state certain enumerated facts	105.10
Undue or unreasonable preference, advantage, or prejudice alleged in, complaint must specify—	
Description of traffic affected thereby	105.13
Particular preference or prejudice relied on as a violation	105.13
Person, company, firm, corporation, locality, affected thereby	105.13
Unjust or unreasonable discrimination alleged in, the charge, practice, classification, regulation, facility, or service complained of must be clearly specified	105.12
Upon receipt of, against common carrier, Commission notifies carrier and forwards a copy of the complaint	105.7
Violation of more than one provision alleged in, separately stated with respect to each provision	105.1
Formal complaints	105.1
Charges, classifications, regulations, or practices complained of in, set out by specific references to schedules of charges and classifications	105.8
Commission to serve	105.35

	RULE
Formal complaints—*continued*	
Contain—	
Address of each complainant	105.5
Name and address of complainant's attorney, if represented	105.5
Name of all parties complainant and defendant in full	105.5
Copy for each party to the proceeding furnished Commission	105.35
Drawn so as to advise Commission and defendant—	
Facts claimed to constitute the viloation	105.6
Relief sought	105.6
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Fifteen copies furnished Commission for its own use	105.35
Form of (*see* Appendix No. 3)	105.5
Grounds of complaint may be combined in one complaint, but should be separately stated and numbered	105.6
Proof of damages	105.11
Reparation	105.11
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Two or more grounds of, involving same principle, subject, or state of facts may be included in one complaint	105.6
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Former Commission counsel:	
Barred from practice before the Commission for 2 years after separation therefrom	101.7
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Prescribed	105.36–105.38
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Prescribed	106.21
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Rule 101.7 does not prevent appearance of, as a witness	101.7
Forms for applications under title III:	
May be obtained from Commission or from field offices	103.6
Frequencies:	
Application must specify desired	103.9
Frequency:	
Amendment to application involving changes in, must be filed not later than 30 days prior to hearing	103.8
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Application must specify desired	103.9
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RULE

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Notified upon receipt of application filed under section 221 of time and place for hearing 104.3
Hearing. *See also* Hearings.
Hearing:
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Application denied or dismissed with prejudice after, Commission will not consider a similar application until after lapse of certain length of time 104.7
Application designated for. *See also* Application.
Application filed under section 221 set for, upon receipt thereof 104.3
Application for renewal of license, proceeds as if, had been filed in case of failure to do so 193.16
Application may be amended prior to the conclusion of a hearing thereon, if parties will not be adversely affected thereby 103.8
Application may be withdrawn without prejudice at any time prior to the conclusion of a, thereon 103.8
Application partially granted, applicant must file written request for hearing on, within 30 days 104.5
Application set for—
Commission may grant, deny, in whole or in part 104.6
Procedure designated 104.6
Respondent desiring to participate in the hearing to file answer to appearance of applicant 104.6
Upon failure of applicant to appear and offer evidence, a default will be entered 104.6
Upon proper papers, etc., being filed, application entered upon hearing docket 104.6
Application will not be designated for, when a similar application is pending consideration on appeal 104.8
At any stage of, additional evidence may be called for upon any issue 106.16
Before close of, person holding may require additional documentary evidence 106.17
Commission notified if, desired on applications under section 214 of the Act 104.2
Deposition not to constitute part of the record of a proceeding received in evidence at a 106.25
Filing of documents in connection with a—
Parties in States formerly constituting the fifth zone have additional period of 5 days for 100.12
Parties who reside beyond United States have additional period of 20 days for 100.12
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	RULE
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Licensee entitled to, on order for suspension of operator license..	105.31
Upon receipt of request for hearing, effective date of suspension extended until termination of the hearing.....	105.31
Licensee failing to request, on order for suspension of operator's license, order becomes final.....	105.31
Licensee served with proposed order of revocation entitled to...	105.29
Member of the bar of the Commission entitled to, prior to disbarment, suspension or revocation of right to practice.....	101.5
Order of revocation suspended until termination of, when licensee files request to be heard.....	105.29
Party to proceeding may file exceptions to report of.....	106.27
Pending before the Commission, continuances may be granted in discretion of the Commission	106.5
Petition to intervene may be filed at any time more than 10 days prior to	105.20
Petitioner allowed to take part in, if petition disclosed substantial interest in subject matter of the hearing.....	105.20
Rehearings may be allowed on petition.....	106.31
Report of—	
Copy mailed to each party participating in the hearing.....	106.28
Exceptions to, may be filed within 15 days from mailing the report	106.28
Report of, submitted to Commission together with written report containing recommendations	106.27
Taking of procedural steps in connection with—	
Parties in States formerly constituting the fifth zone have additional period of 5 days for.....	100.12
Parties who reside beyond United States have additional period of 20 days for.....	100.12
Transcript of argument had, or testimony taken at any—	
Commission not to furnish.....	100.8
Furnished by official reporter.....	100.8
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Open to inspection only as to—	
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Examiners' reports	100.6
Exceptions	100.6
Exhibits	100.6
Orders of the Commission	100.6
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Hearing on application partially granted:	
Request for—	
Accompanied by statement of facts which applicant expects to prove upon such hearing.....	104.5

RULE

Hearing on application partially granted—*continued*
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Upon receipt of, and proper statement, application will be set for hearing and proper parties notified..... 104.5
Hearings. *See also* Hearing.
Hearings 106.1–106.31
Admissibility of reports, orders, or decisions of governmental agency 106.9
Applications presenting conflicting claims for same privileges, terms, or conditions set at the same time..... 106.4
Authentication of reports, orders, or decisions of governmental agency 106.9
Cumulative evidence should be avoided..... 106.13
Dates fixed for, so as to handle all related matters at one time.. 106.4
Documents partially introduced at..... 106.9
Evidence, rules of, governing..... 106.8
Exhibits offered in duplicate..... 106.11
Formal 106.1–106.3
Commission may hold, upon any matter within its jurisdiction 106.3
Reasonable notice of, given to interested parties (not less than 30 days) 106.3
Informal 106.1–106.2
Commission may hold, on petition or on its own motion—
In connection with investigations..... 106.2
To obtain information helpful in determination of its policies, carrying out its duties, or preparation of its rules and regulations 106.2
Material and relevant matter offered in evidence at, embraced in document containing irrelevant material, document not received, but original circulated to certain parties..... 106.10
Order of procedure at..... 106.7
Postponement of 106.6
Records of other proceedings offered in evidence, true copy presented in form of an exhibit..... 106.15
Unsworn documents and oral declarations not received in evidence at 106.12
Hours of operation:
Amendment to application involving changes in, must be filed not later than 30 days prior to hearing..... 103.8
Application for modification of license may be filed for changes in 103.14
Application must specify..... 103.9
Hours of the Commission..... 100.1

Inconsistent applications:
Commission will not consider, if an application is pending and undecided 104.7

	RULE
Individual:	
Included in definition of "person"	100.9
Informal complaint:	
Contents of, prescribed	105.2
Correspondence employed by Commission in an attempt to settle	105.3
Complainant notified if this method fails to obtain satisfaction	105.3
Failure of carrier to satisfy, Commission notified if carrier refuses or is unable to satisfy	105.3
Failure of carrier to satisfy, under rule 105.3, complainant may—	
File formal complaint	105.4
Resubmit informal complaint within six months from date of Commission's notice	105.4
Form of, not prescribed	105.2
Must be—	
In writing	105.2
Subscribed by complainant	105.2
Verified by complainant	105.2
Resubmitted—	
Must contain new material matter upon same cause of action	105.4
Procedure to be followed same as on the original complaint	105.4
Resubmitted within 6 months' period, relates back to date of filing original complaint	105.4
Satisfaction of, by carrier, receipt of, filed with the Commission by carrier	105.3
Upon receipt of, properly drawn, Commission will endeavor by correspondence to bring about satisfaction	105.3
Complainant notified upon failure	105.3
Informal complaints	105.1
Informal hearings. *See* Hearings.	
Information required by Commission in addition to facts required by the application:	
Failure to file, constitutes a defect in the application	104.1
Inspection:	
Documents subject to, under rule 100.6, copies of, prepared and certified by Secretary upon written request furnishing details	100.7
Files of the Commission, open to—	
According to certain rules and regulations	100.6
Subject to sections, 4(j), 412, and 606 of the act	100.6
Open to, annual and monthly reports required by section 219	100.6
Hearing dockets, certain parts of	100.6
Miscellaneous files, in discretion of the Commission upon written request giving details specified	100.6
Tariff schedules required by section 203	100.6
Inspector:	
Offices of:	
Forms for applications may be obtained from	103.6

	RULE
Installation of new transmitting apparatus:	
Application for construction permit or modification involving, filed at least 60 days prior to contemplated changes	103.10
Instrument of authorization:	
Application for, granted without a hearing under section 309 (a)—	
Becomes final if no protest filed within period allowed	104.4
Remains conditional for not less than 30 days from effective date	104.4
During such time persons aggrieved may file protest under rule 105.21 (b)	104.4
Application for, made—	
In writing	103.1–103.6
On forms furnished by or in manner prescribed by the Commission	103.1–103.6
Under oath of the applicant	103.1–103.6
Separate application filed for each	103.6
Exception, where licensee holds a number of licenses identical in their terms	103.6
Instrument of authorization for which application is required:	
Party applying for, termed "applicant"	102.2
Instruments of authorization:	
Hearing dockets open to inspection as to	100.6
Instruments of authorization made, issued, or granted by the Commission:	
Authenticated by Commission seal	100.5
Signed by Secretary for the Commission	100.5
Interest, public. *See* Public interest.	
Intervene, petition to. *See* Petition.	
Intervener:	
Term, means a party who, upon petition has been permitted to become a party to any proceeding before the Commission	102.6
Interveners:	
Designated as "parties to proceedings"	102.1
Intervention, petition for. *See* Petitions.	
Investigation:	
Application for renewal of license involved in an, investigation proceeds as if application had been filed in case of failure to file	103.16
Investigation and suspension proceedings:	
Party opposing schedules under suspension in, termed "protestant"	102.7
Involuntary assignment:	
Application executed by assignee only	103.18
Joint-stock company:	
Included in definition of "person"	100.9
Jurisdiction of the Commission:	
Party seeking relief within the, termed "petitioner"	102.5

	RULE
Last day:	
Included in computation of time	100.7
Law:	
Hours of the Commission may be changed by	100.1
Laws of the United States:	
Person admitted to practice before the Commission must swear to support	101.4
Legal holiday:	
Time for taking procedural step elapsing on, extended to next day not Sunday or legal holiday	100.11
Legal holidays:	
Hours of the Commission	100.1
Legal holidays in District of Columbia	100.11
Included in term "days" when used as limitation of time	100.11
Legal qualifications:	
Concealment of any material facts with respect to, grounds for revocation, etc., of right to practice before the Commission	101.5
License. *See also* Station license.	
Application for consent to assignment of—	
Certain information must be set forth in support of	103.18
Filed with Commission 60 days prior to date transfer takes effect	103.18
Application for modification of, filed 60 days prior to contemplated modification	103.14
Exceptions in emergencies	103.14
Application for modification of, may be filed for—	
Change in frequency	103.14
Change in hours of operation	103.14
Change in location of main studio (if a broadcast station)	103.14
Change in nature of authorized service (if station other than broadcast)	103.14
Change in operating power where no construction is necessary	103.14
Change in points of communication	103.14
Covering construction permit issued to authorize addition to, modification, or replacement of equipment	103.14
Application for new, where construction permit is not prerequisite, filed 60 days prior to contemplated operation of the station	103.13
Exceptions in emergencies	103.13
Application for renewal of—	
Commission may order, to be filed	103.16
Upon failure to file, hearing proceeds as if it had been filed	103.15
Filed 60 days prior to expiration date of license	103.15
Corporation holding, application for consent to transfer of control of—	
Certain information must be set forth in support of	103.18
Filed 60 days prior to effective date of transfer	103.18

License—*continued* RULE
Modification of—order to show cause why, should not take place must contain—
Requirement for license to appear and show cause why order should not be issued 105.30
Specification as to wherein modification is to take place.. 105.30
Statement of reasons for proposed modification 105.30
Party applying for, termed "applicant" 102.2
Temporary extension of, may be granted by Commission in certain cases 103.17
License, operator. *See* Operator.
Licensee:
Aggrieved by the granting of any application designated for hearing, termed "respondent" 102.8
Failing to appear in response to order of modification, final order issued against 105.30
Notice of violations of Act, treaty, or rules to which licensee is subject, upon receipt of, written reply within 3 days must be filed in designated places 105.23
Revocation proceedings instituted by the Commission against, termed "respondent" 102.8
Licenses:
Hearing dockets open to inspection as to 100.6
Modification of, Commission may order—
To more fully comply with requirements of a United States treaty 105.30
To serve public interest, convenience, and necessity 105.30
Licenses made, issued, or granted by Commission:
Authenticated by Commission seal 100.5
Signed by Secretary for the Commission 100.5
Location of main studio:
Application for modification of license may be filed for changes in 103.14
Location of station:
Amendment to application involving changes in, must be filed not later than 30 days prior to hearing 103.8

Material facts:
Concealment of, with respect to legal qualifications or professional standing grounds for disbarment from practice 101.5
Meetings of Commission:
Held at principal office 100.3
Minutes of, to be official record of action taken therein 100.4
Place may be changed by a majority thereof 100.3
Member of a partnership:
May represent the firm 101.1
Member of Bar of this Commission:
Revocation of right to practice, charges must be preferred by the Commission, and opportunity given for hearing 101.5

	RULE
Member of the bar of this Commission:	
Disbarment of, charges must be preferred by the Commission and opportunity given for hearing	101.5
Suspension of, charges must be preferred by the Commission and opportunity given for hearing	101.5
Members of the bar of this Commission:	
Register of, maintained by the Commission after February 1, 1936	101.6
Minutes of Commission meetings:	
Kept by Secretary of the Commission in his office	100.4
Official record of action taken therein	100.4
Mistaken identity of a party to a proceeding (except under title III):	
Commission may order substitution of proper parties	102.10
Modification of construction permit:	
Application for, filed at least 60 days prior to contemplated removal and/or installation if it involves—	
Installation of new transmitting apparatus	103.10
Removal of existing transmitting apparatus	103.10
Commission may order—	
To more fully comply with requirements of a United States treaty	105.30
To serve public interest, convenience, and necessity	105.30
Order to show cause why, should not take place must contain—	
Requirement for licensee to appear and show cause why order should not be issued	105.30
Specification as to wherein modification is to take place	105.30
Statement of reasons for proposed modification	105.30
Modification of license:	
Application for, filed 60 days prior to contemplated modification	103.14
Exceptions in emergencies	103.14
Application for, may be filed for—	
Change in frequency	103.14
Change in hours of operation	103.14
Change in location of main studio (if a broadcast station)	103.14
Change in nature of authorized service (if station other than broadcast)	103.14
Change in operating power where no construction is necessary	103.14
Change in points of communication	103.14
Application for, may be filed for—	
Covering construction permit issued to authorize addition to, modification, or replacement of equipment	103.14
Commission may order—	
To more fully comply with requirements of a United States treaty	105.30
To serve public interest, convenience, and necessity	105.30
Order to show cause why, should not take place must contain—	
Requirement for licensee to appear and show cause why order should not be issued	105.30
Specification as to wherein modification is to take place	105.30
Statement of reasons for proposed modification	105.30

	RULE
Monthly reports required to be filed under section 219 of the act:	
Open to inspection	100.6
Subject to sections 4 (j), 412, and 606 of the act	100.6
Motion of party to a proceeding:	
Commission may order applicant to amend application upon	103.4
Motions:	
Hearing dockets open to inspection as to	100.6
Municipal organization:	
Included in definition of "party"	102.1
Nature of authorized service (if station other than broadcast):	
Application for modification of license may be filed for changes in	103.14
New license, where construction permit is not a prerequisite:	
Application for, filed 60 days prior to contemplated operation of the station	103.13
Exceptions in emergencies	103.13
Notice:	
Applications filed under section 221 set for hearing:	
Governors of States affected by application notified of time and place	104.3
State commissions having jurisdiction over telephone comies notified of time and place	104.3
Given interested parties of formal hearing	106.3
Given parties when application granted without a hearing is set for hearing	104.4
Receipt of applications under section 214 of the Act, sent Governors of States involved and certain others	104.2
Sent to carrier upon receipt of formal complaint against it	105.7
Contains commission order for carrier to satisfy or answer complaint within time specified	105.7
Ten days, given when case is set for oral argument	106.29
Notice of violations of any Act, treaty, or rules to which licensee is subject:	
Answer to, must be complete in itself and shall not incorporate other material by reference	105.23
Notice of violation of any Act, treaty, or rules to which licensee is subject:	
Relating to physical or electrical characteristics of transmitting apparatus, answer must state steps taken to prevent future violations	105.23
Upon receipt of, licensee must file written reply within 3 days at certain designated places	105.23
Notices:	
Hearing dockets open to inspection as to	100.6
Number of briefs to be filed:	
Fifteen, when allowed to be filed	106.30
Number of copies of depositions to be filed	106.26
Number of copies to be filed:	
Application for construction permit or station license	103.7

RULE

Oath:
- Application for instrument of authorization made under, of applicant. 103.1–103.6
- Person admitted to practice must have subscribed to an. 101.4
- Taken upon admission to practice before the Commission, right may be revoked, disbarred, or suspended for violation of the oath. 101.5

Office:
- Principal, of the Commission located at Washington, D. C. 100.1

Office of inspector:
- Forms for applications may be obtained from. 103.6

Office of the Secretary:
- Minutes of Commission meetings to be kept in. 100.4

Officer of the Commission:
- May appear as witness without regard to rule 101.7. . . . . 101.7

Official record:
- Minutes of Commission to be, of action taken therein. 100.4

Official reporter:
- Designated by the Commission to taken down and transcribe its proceedings. 100.8

Official reports of governmental agencies:
- Accepted in hearings upon certification of custodian of the record 106.9

Operating power. *See also* Power.

Operating power (where construction is not necessary):
- Application for modification of license may be filed for changes in 103.14

Operation, hours of. *See* Hours.

Operation of station license beyond the terms thereof:
- Commission may authorize, upon proper request showing need therefor. 103.19

Operator license:
- Delivered to Commission in Washington upon finality of order of suspension. 105.31
- Order of suspension served on licensee:
  - Licensee must file within 35 days:
    - Request for hearing. 105.31
    - Statement denying or explaining the charges set forth in the order. 105.31
- Suspension of—
  - Order of—
    - Becomes effective on certain day. 105.31
    - Copy of, served upon holder of the license. 105.31
    - Must set forth—
      - Class and grade of license. 105.31
      - Effective day of the order. 105.31

	RULE
Operator license—*continued*	
Suspension of—	
Order of—	
Must set forth—	
Name of operator	105.31
Notice of right to be heard, by filing within 35 days written request for hearing	105.31
Period of suspension	105.31
Reasons for suspension	105.31
Proceedings for, initiated by entry of an order of suspension	105.31
Operator's license:	
Temporary extension of, may be granted by Commissioner in certain cases	103.17
Oral argument:	
Commission shall hear, upon petition of party	106.29
Party shall request, at time of filing exceptions	106.29
Ten days' notice given when cases are set for	106.29
When allowed	106.29
Oral declarations:	
Not accepted as evidence at hearings	106.12
Order, Executive. *See* Executive order.	
Order of modification:	
Final, if licensee fails to appear in response to	105.30
Order of procedure at hearings	106.7
Order of revocation:	
Final, unless licensee makes no request for hearing thereon	105.29
Licensee must deliver station license to inspector of district where licensee resides upon finality of	105.29
Suspended upon request of licensee for hearing thereon	105.9
Order of suspension:	
Upon finality of, license sent to office of Commission in Washington	105.31
Order of suspension of operator license:	
Final, if licensee fails to make appearance	105.31
Order of the Commission:	
After, petition for rehearing may be filed	106.31
Notice to carrier of receipt of formal complaint against it contains, for carrier to satisfy or answer complaint within time specified	105.7
Order to show cause served on carrier under rule 105.27:	
Answer to, must be—	
Drawn so as to specifically admit or deny allegations and so as to advise Commission fully as to matters being inquired of	105.28
Filed within time specified	105.28
Subscribed and verified by carrier	105.28
Contains—	
A call to appear (not within 30 days) and give evidence	105.27

	RULE
Order to show cause served on carrier under rule 105.27—*continued*	
Reasons for such action	105.27
Statement of particulars upon which Commission is inquiring	105.27
May contain—	
Provisions necessary and with jurisdiction of Commission	105.27
Requirement that carrier file answer prior to hearing date	105.27
Order to show cause why proposed modification of license or construction permit should not issue must contain—	
Requirement for licensee to appear and show cause why order should not be issued	105.30
Specification as to wherein modification is to take place	105.30
Statement of reasons for proposed modification	105.30
Order to take deposition:	
Commission may issue	
Requirements specified	106.22
Orders made, issued, or granted by the Commission:	106.22–106.23
Authenticated by seal of the Commission	100.5
Signed by Secretary of the Commission	100.5
Orders of governmental agencies:	
Accepted in hearings upon certification of custodian of the record	106.9
Orders of the Commission:	
Hearing dockets to inspection as to	100.6
Organization, municipal. *See* Municipal organization.	
Original application:	
Amendment to application subscribed and verified in same manner as was	103.5
Papers filed in any proceeding:	
To conform to certain requirements	105.36–105.38
Partially granted application:	
Request for hearing on—	
Accompanied by statement of facts which applicant expects to prove upon such hearing	104.5
Must be made within 30 days from effective date of Commission's decision	104.5
Upon receipt of, and proper statement, application will be set for hearing and proper parties notified	104.5
Upon being set for hearing—	
Applicant sends within 10 days statement of facts to be proved to all parties notified of the hearing	104.5
Affidavit to this effect filed with the Commission	104.5
Effective date postponed to date of decision of the Commission	104.5
Partially granted applications:	
Become final unless applicant files written request within 30 days for hearing on the part not granted	104.5
Distinguished from purview of rule 104.8	104.8

	RULE
Parties in States formerly constituting the fifth zone:	
Have additional period of 5 days in which to file documents or take procedural steps in connection with a hearing	100.12
Parties of record:	
Served with notice of amendment to application within 30 days prior to hearing	103.2
Parties to be furnished copies of briefs	106.30
Parties to proceedings:	
Designated as applicants, complainants, defendants, interveners, petitioners, protestants and respondents	102.1
Partnership:	
Appearances for, may be made by any member thereof	101.1
Included in definition of "person"	100.9
Party:	
Includes any person, body politic, municipal organization or State commission	102.1
Party complaining to Commission of failure of common carrier to abide by the act, termed "complainant"	102.3
Party opposing schedules under suspension in investigation and suspension proceedings, termed "protestant"	102.7
Party permitted to become a party to any proceeding before the Commission, termed "intervener"	102.6
Party seeking relief within the jurisdiction of the Commission, termed "petitioner"	102.5
Party to a proceeding:	
May appear and be heard in person or by attorney	101.1
Party to a proceeding (except under title III):	
Death or mistaken identity of a, Commission may order substitution of proper parties	102.10
Party who files a protest to a tentative valuation in valuation proceedings, termed "protestant"	102.7
Party who is aggrieved or whose interests are adversely affected by any decision of the Commission granting without a hearing any application under section 309 (a) of the Act, termed "protestant"	102.7
Pendente lite:	
Damages	105.15
Permit:	
Party applying for, termed "applicant"	102.
Permit, construction. *See* Construction.	
Permit, forfeited. *See* Forfeited permit.	
Permits made, issued, or granted by Commission:	
Authenticated by Commission seal	100.5
Signed by Secretary for Commission	100.5
Person:	
Included in definition of "party"	102.1
Includes, individual, partnership, association, joint stock company, trust or corporation	100.9
Party to a proceeding may be heard in, or by attorney	101.1

	RULE
Person—*continued*	
Transacting business with the Commission in a representative capacity may be required to show authority	100.10
Persons:	
Serving as attorney at law in the Commission on or after July 1, 1935, not allowed to practice before the Commission for 2 years after separation therefrom	101.7
Persons entitled to practice before the Commission:	
Register of, maintained by the Commission after January 1, 1936	101.6
Petition:	
Amendments to application filed within 30 days of a hearing may be allowed by the Commission upon	103.3
Answer to, must—	
Admit or deny all allegations	105.22
Advise Commission of nature of defense	105.22
Answer to, must—	
Avoid collateral issues	105.22
Be subscribed and verified by party answering	105.22
Separately state affirmative defenses	105.22
Initiating or supplementing a proceeding before the Commission, subscribed and verified	105.34
Party upon whom, is served must answer within 30 days or be deemed in default	105.22
Party who by, has been permitted to become a party to any proceeding before the Commission, termed "intervener"	102.6
Petition for intervention:	
Deemed to have been answered by defendant's answer to the complaint	105.24
Petition for rehearing:	
Allowed within certain time	106.31
Filed—	
In writing	106.31
Within reasonable time, if not under title III	106.31
Within 20 days if proceeding is under title III	106.31
Shall show certain information	106.31
Petition to intervene:	
Disclosing substantial interest in subject matter of the hearing, petitioner may be allowed to be heard	105.20
May be filed at any time more than 10 days prior to hearing	105.20
Petitioner:	
Allowed to be heard if petition to intervene discloses substantial interest in subject matter of the hearing	105.20
Subscribes and verifies petition for intervention or other relief	105.19
Term, means a party seeking relief within the jurisdiction of the Commission	102.5
Petitioners:	
Designated as "parties to proceedings"	102.1

	RULE
Petitions:	
Hearing dockets open to inspection as to	100.6
Petitions for intervention:	
Answers to, or to amended complaints need not be separately made unless defendant so elects	105.24
Petitions for intervention or other relief—	
Must set forth facts supporting the relief sought	105.19
Subscribed by petitioner	105.19
Verified by petitioner	105.19
Petitions for relief under jurisdiction of Commission—	
Must set forth facts supporting the relief sought	105.19
Subscribed by petitioner	105.19
Verified by petitioner	105.19
Place of filing:	
Applications for construction permit and station license	103.7
Pleadings	105.1–105.36
Amendments to, filed within 30 days of a hearing, allowed in discretion of Commission	105.33
Amendments to, may be made as a matter of course if filed with Commission and parties of record notified not less than 30 days prior to hearing	105.32
Hearing dockets open to inspection as to	100.6
Initiating or supplementing a proceeding before the Commission, subscribed and verified	105.34
Miscellaneous, served by party filing same	105.35
Proof of service to be signature of party served, or registered mail	105.35
Points of communication:	
Application for modification of license may be filed for changes in	103.14
Portable stations (except amateur and broadcast pick-up):	
Applications for construction permit or station license, two copies sent direct to Washington	103.7
Postponement of hearings	106.6
Power. *See also* Operating power.	
Amendment to application involving changes in, must be filed not later than 30 days prior to hearing	103.8
Application must specify	103.9
Practice:	
Complained of in formal complaint alleging unjust or unreasonable discrimination	105.12
Must be clearly specified	105.12
Practice before the Commission:	
Applications for admission to, submitted on a form prescribed by the Commission	101.3
Disbarment from—	
Commission may order, if person has—	
Concealed any material facts as to his legal qualifications or professional standing	101.5

	RULE
Practice before the Commission—*continued*	
Violated oath taken upon admission	101.5
Prior to, charges must be preferred by the Commission and opportunity given for hearing	101.5
No persons to be admitted to, without taking a prescribed oath	101.4
Persons who may be admitted to, attorneys at law admitted to practice before any court of the United States, District of Columbia, or highest court of State or Territory	101.2
Revocation of right to—	
Commission may order, if person has—	
Concealed any material facts as to his legal qualifications or professional standing	101.5
Violated oath taken upon admission	101.5
Prior to, charges must be preferred by the Commission and opportunity given for hearing	101.5
Suspension of right to—	
Commission may order, if person has—	
Concealed any material facts as to his legal qualifications or professional standing	101.5
Violated oath taken upon admission	101.5
Prior to, charges must be preferred by the Commission and opportunity given for hearing	101.5
Practice, rules of. *See* Rules.	
Practices:	
Complained of in formal complaints, set forth by specific references to schedules of charges and classifications	105.8
Practitioner before the Commission:	
Person admitted to practice must swear that he will demean himself as a, uprightly and according to law	101.4
Prejudice:	
Application may be withdrawn without, at any time prior to the conclusion of a hearing thereon	103.8
Preparation of copies of documents open to inspection:	
Cost of, prepaid by person making application	100.7
Secretary to prepare and certify, under seal	100.7
Principle office of the Commission located at Washington, D. C.	100.1
Principle office of the Commission:	
Meetings of the Commission to be held at	100.3
Printed papers:	
Requirements of Commission with respect to	105.37
Privileges:	
Application granted containing, other than those asked for, final, unless applicant files request for hearing on the application within 30 days	104.5
Procedural step:	
Time fixed for taking, elapsing on Sunday or legal holiday, extended to next day not Sunday or legal holiday	100.11

	RULE
Procedural steps:	
Required to be taken in connection with a hearing—	
Parties in States formerly constituting fifth zone have additional period of 5 days for	100.12
Parties who reside beyond United States have additional period of 20 days for	100.12
Procedure for taking depositions:	
Prescribed	106.24
Procedure, order of. *See* Order.	
Procedure when application has been set for hearing	104.6
Proceeding:	
Party to any, may appear and be heard in person or by attorney	101.1
Party to, motion of, Commission may order applicant to amend application upon	103.4
Proceeding before the Commission:	
Party who upon petition has been allowed to become a party to any, termed "intervener"	102.6
Proceeding (except under title III):	
Death or mistaken identity of party to, Commission may order substitution of proper parties	102.10
Proceeding in which common carrier is a party:	
Receiver or trustee of such carrier also made a party	102.9
Proceeding pending before the Commission:	
Continuances may be granted in discretion of the Commission	106.5
Proceedings:	
Papers filed in, to conform to certain requirements	105.36–105.38
Parties to, designated as applicants, complainants, defendants, interveners, petitioners, protestants, and respondents	102.1
Proceedings for suspension of operator license:	
Initiated by entry of an order of suspension	105.31
Order of suspension—	
Becomes effective on certain day	105.31
Copy of, served upon holder of the license	105.31
Must set forth—	
Class and grade of license	105.31
Effective day of the order	105.31
Name of operator	105.31
Notice of right to be heard by filing within 35 days written request for hearing	105.31
Period of suspension	105.31
Reasons for suspension	105.31
Proceedings of the Commission:	
Official reporter designated to take down and transcribe	100.8
Proceeding under title II against common carrier:	
Begun by serving order to show cause	105.27
Proceeding under title III:	
Respondent not to be heard in, unless he has complied with rule 105.26	105.26

	RULE
Production of testimony:	
May be required in connection with informal hearings	106. 2
Production of testimony or evidence:	
Subpena may issue to obtain	106. 18
Professional standing, character, or integrity:	
Concealment of material facts with respect to, grounds for revocation, etc., of right to practice before the Commission	101. 5
Protest:	
Against granting of application without a hearing, upon being filed—	
Application will be set for hearing and proper parties notified	104. 4
Effective date of authority shall be postponed to Commission's decision	104. 4
Exceptions listed	104. 4
Initiating or supplementing a proceeding before the Commission, subscribed and verified	105. 34
Persons aggrieved may enter, against application granted without a hearing	104. 4
Protestant:	
Term, means:	
Party opposing schedules under suspension in investigation and suspension proceedings	102. 7
Party who files a protest to a tentative valuation in valuation proceedings	102. 7
Party who is aggrieved or whose interests are adversely affected by any decision of the Commission granting without a hearing any application under section 309 (a) of the Act	102. 7
Protestants:	
Designated as "parties to proceedings"	102. 1
Protests:	
Application granted by Commission without a hearing under section 309 (a) of Title III, must contain—	
Proof of service upon applicant	105. 21(b)
Statement of facts which protestant expects to prove after hearing	105. 21(b)
Statement of protestant's interest in the matter	105. 21(b)
Subscribed and verified by protestant	105. 21(b)
Opposition to a tentative valuation under Title II:	
Each item of protest listed separately	105. 21(a)
Includes statement of protestant's interest in the matter	105. 21
Subscribed and verified by protestant	105. 21(a)
To contain a concise statement of essential elements of the protest	105. 21(a)
Opposition to tariff schedules under suspension:	
Each item of protest listed separately	105. 21(a)
Includes statement of protestant's interest in the matter	105. 21
Subscribed and verified by protestant	105. 21(a)

Protests—*continued* RULE
To contain a concise statement of essential elements of the protest . . . . . 105.21(a)
Protest to tentative valuation in valuation proceedings:
Party who files, termed "protestant" 102.7
Public interest, Certificate of advantage and. *See* Certificate.

Rate adjustment challenged in formal complaint:
Commission to determine in its report—
Injury to complainant 105.11
Issues as to violation of the act 105.11
Right to reparation 105.11
Reasons for inspection of certain documents:
Included in written request for permission to inspect files of the Commission 100.6
Receiver of a common carrier:
To be made party to any proceeding in which such carrier is a party 102.9
Record of a proceeding:
Deposition not to constitute a part of the, until received in evidence at a hearing, unless Commission orders otherwise 106.25
Record, official. *See* Official Record.
Record, parties of. *See* Parties.
Records of other proceedings:
May be offered in evidence by presenting true copy in form of an exhibit 105.15
Recovery of damages:
Sought in supplemental complaint, complaint must be filed within statutory periods stated in section 415 . . . . . 105.17
Recovery of damages by formal complaint:
Complaint must contain certain enumerated facts 105.10
Register of members of Commission bar:
Maintained by the Commission after February 1, 1936 . . . . . 101.6
Regulation:
Complained of in formal complaint alleging unjust or unreasonable discrimination, must be clearly specified 105.12
Regulations:
Complained of in formal complaints, set forth by specific references to schedules of charges and classifications 105.8
Regulations, rules and. *See* Rules.
Rehearing:
Petition for—
Allowed within certain time 106.31
Filed—
In writing 106.31
Within reasonable time, if not under title III 106.31
Within 20 days if proceeding is under title III 106.31
Shall show certain information 106.31

	RULE
Rejected applications:	
Returned to applicant by Secretary, with brief statement of the respect in which it is defective	104.1
Related matters involving same applicant:	
Set for hearing at same date	106.4
Relief:	
Within the jurisdiction of the Commission, party seeking, termed "petitioner"	102.5
Relief, Petitions for. *See* Petitions.	
Removal of existing transmitting apparatus:	
Application for construction permit or modification involving, filed at least 60 days prior to contemplated changes	103.10
Renewal of license:	
Application for, Commission may order, to be filed	103.16
Upon failure to file, hearing proceeds as if it had been filed	103.16
Application for, filed 60 days prior to expiration date of license sought to be renewed	103.15
Reparation:	
Commission will not award, on formal complaint unless specifically prayed for	105.14
May be awarded upon a supplemental complaint based upon finding of Commission in original proceedings	105.14
Reparation pendente lite	105.15
Report of hearing:	
Copy of, mailed to each party participating in hearing	106.28
Exceptions to, may be filed by party to proceeding	106.27
Exceptions to, may be filed within 15 days from mailing the report	106.28
Submitted to Commission, together with written report containing recommendations	106.27
Reporter, official:	
Designated by the Commission to take down and transcribe its proceedings	100.8
Reports:	
Annual and monthly, required by section 219 of the Act, open to inspection, subject to sections 4(j), 412, and 606 of the Act	100.6
Examiners', hearing dockets open to inspection as to	100.6
Representative capacity:	
Person transacting business with the Commission in a, may be required to show his authority to so act	100.10
Request for authority to operate license beyond terms thereof:	
If upon a clear channel, it must be supported by consent of dominant station	103.19
Involving a frequency, must be supported by consent of stations using the frequency in certain cases	103.19
Involving a sharing time station, must be supported by consent of other station	103.19
Must be received by Commission 10 days prior to date of proposed operation	103.19

	RULE
Request for documents open to inspection:	
Made so as to premit a reasonable time for preparation	100.7
Must specify—	
Date on which documents will be required	100.7
Exact documents	100.7
Number of copies desired	100.7
Written	100.7
Request for hearing on partially granted application:	
Accompanied by statement of facts which applicant expects to prove upon such hearing	104.5
Must be made within 30 days from effective date of Commission's decision	104.5
Upon receipt of, and proper statement, application will be set for hearing and proper parties notified	104.5
Requests for continuances or extension of time:	
Made in writing in form of verified petition setting forth reasons	106.5
Petition shall indicate diligence on the part of the petitoner	106.5
Requirement of the Commission:	
After, petition for rehearing may be filed	106.31
Respondent:	
Not to be heard in a proceeding under title III unless he has complied with rule 105.26	105.26
Term, means—	
Licensee against whom the Commission has instituted revocation proceedings	102.8
Licensee who would be aggrieved by granting of any application designated for hearing	102.8
Party against whom Commission has instituted a proceeding	102.8
Party against whom petition has been filed	102.8
Pending applicant for instrument of authorization who would be aggrieved by granting of any application designated for hearing	102.8
Respondents:	
Designated as "parties to proceedings"	102.1
Return of service	106.21
Revocation of right to practice before the Commission:	
Commission may order, if person has—	
Concealed any material facts as to his legal qualifications or professional standing	101.5
Violated oath taken upon admission	101.5
Prior to, charges must be preferred by the Commission and opportunity given for hearing	101.5
Revocation proceedings:	
Licensee against whom Commission has instituted, termed "respondent"	102.8
Revocation proceedings begun under section 312 (a):	
Initiated by serving order or revocation effective not less than 15 days after notice is given	105.29

	RULE
Revocation proceedings begun under section 312(a)—*continued*	
Order of revocation to contain—	
Notice of licensee's right to be heard	105.29
Statement of reasons for proposed revocation	105.29
Request for hearing on, upon, being filed the order shall stand suspended until termination of the hearing	105.29
Rules:	
Commission as used in these, includes a division thereof	100.2
Rules and regulations of the Commission:	
Person admitted to practice before the Commission must swear to conform to	101.1
Rules of practice:	
Amendments to	107.1
Modification of	107.1
Revocation of	107.1
Supplementing	107.1
Suspension of	107.1
Schedules, tariff. *See* Tariff schedules.	
Schedules under suspension in investigation and suspension proceedings:	
Party opposing, termed "protestant"	102.7
Seal:	
Copies of documents open to inspection certified by Secretary, under seal	100.7
Seal of the Commission:	
Used to authenticate instruments of authorization issued by the Commission	100.5
Secretary:	
Charged with preparation and certification of documents open to inspection under rule 100.6	100.7
Minutes of Commission meetings to be kept by and in office of	100.4
Notifies applicant when application has been set for hearing	104.6
Signs orders, permits, licenses, or other instruments of authorization for the Commission	100.5
Section 4 (j) of Communications Act:	
Files of Commission open to inspection subject to, and according to certain rules and regulations	100.6
Section 203 of the Communications Act:	
Tariff schedules required by, open to inspection subject to sections 4 (j), 412, and 606 of the Act	100.6
Section 214 of Communications Act:	
Applications received under—	
Anyone desiring hearing on, notifies Commission	104.2
Notice of, sent to Governors of States involved and others	104.2
Section 219 of Communications Act:	
Annual and monthly reports required by, open to inspection, subject to sections 4 (j), 412, and 606 of the Act	100.6

	RULE
Section 221 of Communications Act:	
Application filed under, copy of, sent each party notified of receipt	104.3
Upon receipt of application filed under—	
Commission to order a hearing	104.3
Governors of States affected notified of time and place of hearing	104.3
State Commission having jurisdiction over telephone companies notified of time and place of hearing	104.3
Section 309 (a) of Communications Act:	
Application for instrument of authorization granted without a hearing pursuant to—	
Becomes final if no protest filed within period allowed	104.4
Remains conditional for not less than 30 days from effective date	104.4
During such time persons aggrieved may file protest under rule 105.21 (b)	104.4
Applications granted without a hearing under—	
Protests to—	
Must contain—	
Proof of service upon applicant	105.21(b)
Statement of facts which protestant expects to prove at the hearing	105.21(b)
Statement of protestant's interest in the matter	105.21(b)
Subscribed and verified by protestant	105.21(b)
Section 312 (a) of Communications Act:	
Revocation proceedings begun under, by Commission—	
Initiated by serving order of revocation effective not less than 15 days after notice is given	105.29
Order of revocation to contain—	
Notice of licensee's right to be heard	105.29
Statement of reasons for proposed revocation	105.29
Section 319 of Communications Act:	
Construction permit required by, application for station license filed by permittee or lawful assignee	103.12
Section 412 of Communications Act:	
Files of Commission open to inspection subject to, and according to certain rules and regulations	100.6
Section 415 of Communications Act:	
Supplement 1 complaint seeking recovery of damages must be filed in statutory periods allowed by	105.17
Section 606 of Communications Act:	
Files of Commission open to inspection subject to, and according to certain rules and regulations	100.6
Service:	
Complained of in formal complaint alleging unjust or unreasonable discrimination must be clearly specified	105.12
Miscellaneous pleadings or documents—	
Performed by party filing same	105.35

	RULE
Service—*continued*	
Proof of service to be signature of party served, or use of registered mail	105.35
Upon common carriers, performed by leaving copy with designated agent of the carrier or by posting notice in office of Secretary	105.35
Upon parties other than common carriers, performed by mailing copy to last known address	105.35
Service of subpena:	
Made by United States marshal, or any person of legal age, who is a United States citizen, and competent to be a witness	106.21
Return of	106.21
Set-offs against users of service supplied by carriers:	
Not within jurisdiction of the Commission	105.22
Ship stations:	
Application for construction permit or station license, one copy filed in Washington	103.7
Similar applications:	
Applicant having, on file, Commission may select application to be first considered	104.7
Size of printed papers prescribed	105.37
State Commission:	
Included in definition of "party"	102.1
State commissions:	
Notified upon receipt of an application under section 214 of the Act	104.2
State commissions having jurisdiction over telephone companies:	
Notified upon receipt of application filed under section 221, of time and place for the hearing	104.3
State, highest court of any:	
Attorney at law admitted to practice before, may be admitted to practice before the Commission	101.2
States:	
Persons who are residents of, to have additional period of 5 days for filing documents or taking procedural steps	100.12
Arizona	100.12
California	100.12
Colorado	100.12
Idaho	100.12
Montana	100.12
Nevada	100.12
New Mexico	100.12
Oregon	100.12
Utah	100.12
Washington	100.12
Wyoming	100.12
Statements, unsworn. *See* Unsworn.	

	RULE
Station license:	
Application for—	
Filed by permittee or its lawful assignee when construction permit is required by section 319	103.12
Number of copies to be filed	103.7
Place of filing	103.7
Delivered to Inspector in charge of district where licensee resides upon finality of order of revocation	105.29
Operation of, beyond the terms thereof—	
Commission may authorize, upon proper request showing need therefor	103.19
Temporary extension of, may be granted by Commission in certain cases	103.17
Stations:	
Application for construction permit or station license, two copies filed in Washington	103.7
Stations on vessels or aircraft of the United States:	
Licenses, renewals or modifications thereof for, formal requirements of applications may be waived by the Commission with respect to	103.6
Statute of limitations:	
Complaint alleging expected future violations will be sufficient to stop	105.15
Step, procedural. *See* Procedural.	
Subpena:	
Form of serving, prescribed	106.21
Original, returned to Secretary of the Commission, unless otherwise marked	106.21
Service may be made by United States marshal or his deputy	106.21
Subpenas:	
Applications for, must—	
Be verified	106.19
Specify books, papers, or documents desired	106.19
State facts expected to be proved by evidence obtained	106.19
Issued by members of the Commission to require attendance of witnesses or production of testimony	106.18
Issued only upon written request, unless directed by the Commission	106.19
Substantial avoidance of the statute of limitations:	
Complaint alleging expected future violations sufficient for	105.15
Substitution of proper parties to a proceeding:	
Commission may order, in case of death or mistaken identity (except in proceedings under title III)	102.10
Sunday:	
Time for taking procedural step elapsing on, extended to next day not Sunday or legal holiday	100.11
Sundays:	
Included in term "days" when used as limitations of time	100.11

	RULE
Supplemental complaint:	
Recovery of damages sought in, complaint must be filed within statutory periods stated in section 415	105.17
Supplemental complaints:	
Commission to serve	105.35
Copy for each party to the proceeding furnished Commission	105.35
May be filed to cover causes of action accrued since filing of original complaint	105.16
Fifteen copies furnished Commission for its use	105.35
Supplementing of existing facilities:	
Commission may authorize, without notice or hearing	104.2
Suspension of operator license:	
Order of—	
Becomes effective on certain day	105.31
Copy of, served upon holder of the license	105.31
Must set forth—	
Class and grade of license	105.31
Effective day of the order	105.31
Name of operator	105.31
Order of—	
Must set forth—	
Notice of right to be heard, by filing within 35 days written request for hearing	105.31
Period of suspension	105.31
Reasons for suspension	105.31
Proceedings for, begun by entry of an order of suspension	105.31
Suspension of right to practice before the Commission:	
Commission may order, if person has—	
Concealed any material facts as to his legal qualifications or professional standing	101.5
Violated oath taken upon admission	101.5
Prior to, charges must be preferred by the Commission, and opportunity given for hearing	101.5
Taking of procedural steps in connection with a hearing:	
Parties in States formerly constituting the fifth zone have additional period of 5 days for	100.12
Parties who reside beyond United States have additional period of 20 days for	100.12
Tariff schedule:	
Matter in, involved in hearing, schedule need not be introduced, but should be reasonably identified	106.14
Tariff schedules required under section 203 of the Act:	
Open to inspection	100.6
Subject to sections 4 (j), 412, and 606 of the Act	100.6
Telegraph Division of the Commission:	
Designated as Division II	100.2
Established	100.2

	RULE
Telephone Division of the Commission:	
Designated as Division III	100.2
Established	100.2
Temporary authority to operate beyond the terms of station license:	
Commission may grant, upon proper request showing need therefor	103.19
Temporary extension of license:	
Commission may grant in certain cases	103.17
Temporary postponement of hearings	106.6
Temporary service:	
Commission may authorize, without notice or hearing	104.2
Tentative valuation:	
Protests in opposition to. *See* Protests.	
Tentative valuation in valuation proceedings:	
Party who files protest to, termed "protestant"	102.7
Terms:	
Application granted containing, other than those asked for, final, unless applicant files request for hearing on the application within 30 days	104.5
Terms required by the instrument requested in the application:	
Application must specify	103.9
Territory, highest court of any:	
Attorney at law admitted to practice before, may be admitted to practice before the Commission	101.2
Testimony:	
Subpena may be issued to obtain production of	106.18
Testimony taken before examiner, director, or less than a quorum of the Commission:	
Transcribed and reported back to the Commission, together with recommendations as to decision to be made thereon	106.27
Testimony, transcripts of. *See* Transcripts.	
Testimony:	
Transcript of—	
Commission not to furnish	100.8
Furnished by official reporter	100.8
Thirty days:	
Amendment to application filed within, of a hearing, allowed in the discretion of the Commission, upon petition	103.3
Amendments to applications made as a matter of course if filed within, prior to hearing	103.2
Time, computation of	100.11
Time fixed for taking procedural step:	
Elapsing on Sunday or legal holiday, extended to next day not Sunday or legal holiday	100.11
Time for filing documents:	
Extension of, Commission may grant, in its discretion, unless time is fixed by statute	106.5

	RULE
Time of filing briefs	106.30
Time limitation as to filing of documents or taking of procedural steps in connection with hearings:	
Parties in fifth zone (See sec. 302 of the Act) have additional period of 5 days	100.12
Parties who reside beyond United States have additional period of 20 days	100.12
Title II:	
Action on applications under	104.2–104.3
Applications under—	
Commission to serve	105.35
Copy for each party to the proceeding furnished Commission	105.35
Fifteen copies furnished Commission for its use	105.35
Order of procedure in hearings under	106.7
Proceeding under, against common carrier, begun by serving order to show cause	105.27
Protests in opposition to tariff schedules under suspension under—	
Each item of protest listed separately	105.21(a)
Includes statement of protestant's interest in the matter	105.21
Subscribed and verified by protestant	105.21(a)
To contain a concise statement of essential elements of the protest	105.21(a)
Protests in opposition to tentative valuation under—	
Each item of protest listed separately	105.21(a)
Includes statement of protestant's interest in the matter	105.21
Subscribed and verified by protestant	105.21(a)
To contain a concise statement of essential elements of the protest	105.21(a)
Title III:	
Action on applications under	104.4–104.8
Applications granted without a hearing under section 309 (a) of protests of:	
Must contain—	
Proof of service upon applicant	105.21(b)
Statement of facts which protestant expects to prove at the hearing	105.21(b)
Statement of protestant's interest in the matter	105.21(b)
Subscribed and verified by protestant	105.21(b)
Order of procedure in hearings under	106.7
Respondent not to be heard in proceeding under, unless he has complied with rule 105.26	105.26
Transcript of argument or testimony:	
Commission not to furnish	100.8
Furnished by official reporter upon payment of charges therefor	100.8
Transcript of testimony:	
Hearing dockets open to inspection as to	100.6

	RULE
Transfer of control of corporation holding construction permit or license:	
Application for consent to—	
Certain information must be set forth in support of	103.18
Filed 60 days prior to effective date of transfer	103.18
Transmitting apparatus:	
Installation of new, application for construction permit or modification involving, filed at least 60 days prior to contemplated changes	103.10
Removal of existing, application for construction permit or modification involving, filed at least 60 days prior to contemplated changes	103.10
Trust:	
Included in definition of "person"	100.9
Trustee of a common carrier:	
To be made party to any proceeding in which such carrier is a party	103.9
Undue preference, advantage, or prejudice alleged in formal complaint:	
Complaint must specify—	
Description of traffic affected thereby	105.13
Particular preference or prejudice relied on as a violation	105.13
Person, company, firm, corporation, locality, affected thereby	105.13
United States:	
Parties outside of, have additional period of 20 days in which to file documents or take procedural steps in connection with a hearing	100.12
United States courts:	
Attorney at law admitted to practice before, may be admitted to practice before the Commission	101.2
Unjust or unreasonable discrimination alleged in formal complaint:	
Specific charge, practice, classification, regulation, facility, or service complained of must be set forth	105.12
Unsworn documents:	
Not accepted in evidence	106.12
Valuation:	
Protests in opposition to tentative. *See* Protests.	
Valuation proceedings:	
Party who files protest to tentative valuation, is termed "protestant"	102.7
Verification of pleadings initiating or supplementing proceeding before the Commission	105.34
Vessels of United States:	
Licenses, etc., for stations on, formal requirements of applications for, may be waived by the Commission with respect to	103.6

RULE

Violation of more than one provision of the Act:
Alleged in formal complaints, separately stated with respect to each provision 105.9
Violations of Act, treaty, or rules to which licensee is subject:
Upon receipt of notice of, licensee must file written reply within 3 days at certain designated places..... 105.23
Voluntary assignment:
Application fully executed by both assignor and assignee..... 103.18

Washington:
Communications to Commission addressed to, unless otherwise specified 100.1
Principal office of the Commission..... 100.1
Withdrawal of application:
Applicant may withdraw his application prior to conclusion of a hearing thereon, if other parties will not be adversely affected 103.8
Must be requested within 30 days prior to hearing if to be "without prejudice" if it—
Adversely affects other parties..... 103.8
Aggrieves other parties 103.8
Witness:
Former Commission employees or officers may appear as, without regard to rule 101.7..... 101.7
Testimony taken by deposition, to be sworn or affirmed before any question is put to him..... 106.24
Witness fees:
Paid by party at whose instance testimony is taken..... 106.20
Witnesses:
Attendance of, subpena may be issued to require..... 106.18
Commission reserves the right to limit the number of, that may be heard in behalf of a party on any issue..... 106.13
May be summoned in connection with informal hearings..... 106.2
Summoned and responding to subpenas are entitled to fees..... 106.20
Work of the Commission:
Three divisions established to simplify and facilitate..... 100.2
Written request:
Certain files open to inspection upon, describing document to be inspected and reasons therefor..... 100.6
Written request for copies of documents open to inspection under rule 100.6. *See* Request.
Writing:
Application for instrument of authorization made in..... 103.1–103.6

APPLICATION FOR ADMISSION TO PRACTICE BEFORE THE COMMISSION UNDER RULE 101.3

I, ..., hereby apply for admission to practice before the Federal Communications Commission under rule 101.3 of the rules of practice of the Commission, and submit the following:

1. I reside at ....., ..., ... County,
(Street number) (City)
State of ..... My office address is ....., ...
(Street number) (City)
..... County, State of .....

2. I was admitted to practice as an attorney at law by the ..... Court of ..... on the ..... day of ....., 19..., and am now a member of the bar of that court; I have never been suspended or disbarred from practice before any court (state here any exception) .....

.....
(Signature of applicant)

STATE OF .....
County of ..... *ss.:*

....., being first duly sworn, on his oath deposes and says: I am the person named in the foregoing application for admission to practice before the Federal Communications Commission, and that the statements of facts therein contained are true. .....
Signature of applicant)

Subscribed in my presence, and sworn to before me, this ..... day of ....., 19...

[SEAL]

.....
.....
(Title)

Commission expires .....

CLERK'S CERTIFICATE

I, ..., clerk of the ..... court of ....., hereby certify that ....., the above-named applicant for admission to practice before the Federal Communications Commission, is duly admitted to practice as an attorney at law by the said court, and is now in good standing as a member of the bar of said court.

Dated this ..... day of ....., 19....

[SEAL] .....
(Clerk of said court)

PLEASE NOTE CAREFULLY:

Rule 101.2 provides: "Attorneys at law admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State or Territory may be admitted to practice before the Commission."

If this certificate is not from a Court of the United States or the District of Columbia, THEN IT MUST BE FROM THE HIGHEST COURT OF THE STATE OR TERRITORY, OR THE APPLICANT MUST FURNISH EVIDENCE THAT HIS ADMISSION ENTITLES HIM TO PRACTICE BEFORE THE HIGHEST COURT OF SUCH STATE OR TERRITORY.

APPROVED FORMS

(These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.)

COMPLAINT

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMPLAINANT

.... COMPLAINANT v. .... DEFENDANT	Docket No. ..... (To be inserted by the secretary of the Commission.)

The complainant (here insert full name of each complainant and if a corporation the corporate title of such complainant) respectfully shows:

(1) That (here state occupation and post-office address of each complainant).

(2) That (here insert the full name, occupation, and post-office address of each defendant).

(3) That (here insert fully and clearly the specific act or thing complained of together with such facts as are necessary to give a full understanding of the situation).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at ..... this ..... day of ....., 19...

.....
(Name of each complainant)

.....
(Name and address of attorney, if any)

FORM OF VERIFICATION

..... being first duly sworn, on oath, deposes, and says:

That he is the complainant (or one of the complainants), in the above-entitled matter; that he has read the within and foregoing complaint and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge, save and except those matters therein stated on information and belief, and as to those he believes them to be true.

.....

Subscribed and sworn to before me this ..... day of ....., 19...

[SEAL]

.....
(Notary public or other proper officer)

The following list of the radio districts gives the address of each field office of the Federal Communications Commission and the territory embraced in each district:

Radio district	Address of the inspector in charge	Territory within district	
		States	Counties
1	Customhouse, Boston, Mass.	Connecticut	All counties.
		Maine	Do.
		Massachusetts	Do.
		New Hampshire	Do.
		Rhode Island	Do.
		Vermont	Do.
2	Federal Bldg., 641 Washington St., New York, N. Y.	New York	Albany, Bronx, Columbia, Delaware, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Renssalaer, Richmond, Rockland, Schenectady, Suffolk, Sullivan. Ulster. and Westchester.
		New Jersey	Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex. Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren.
3	1200 U. S. Customhouse, Philadelphia, Pa.	Pennsylvania	Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, and York.
		New Jersey	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.
		Delaware	Newcastle.
4	Fort McHenry, Baltimore, Md.	Maryland	All counties.
		District of Columbia	Do.
		Virginia	Arlington, Clark, Fairfax, Fauquier, Frederick, Loudoun, Page, Prince William, Rappahannock, Shenandoah, and Warren.
		Delaware	Kent and Sussex.
5	402 New Post Office Bldg., Norfolk, Va.	Virginia	All except district 4.
		North Carolina	All except district 6.
6	411 New Post Office Bldg., Atlanta, Ga.	Alabama	All counties.
		Georgia	Do.
		South Carolina	Do.
		Tennessee	Do.
		North Carolina	Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey.
7	Post-office box 150, Miami,. Fla.	Florida	All counties.
		Puerto Rico	Do.
		Virgin Islands	Do.
8	Customhouse, New Orleans, La.	Arkansas	Do.
		Louisiana	Do.
		Mississippi	Do.
		Texas	City of Texarkana only.
9	209 Prudential Bldg., Galveston, Tex.	Texas	Arkansas, Brazoria, Brooks, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jefferson, Jim Wells, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patriolo, Victoria, Wharton, and Willacy.
10	464 Federal Bldg., Dallas, Tex.	Texas	All except district 9 and the city of Texarkana.
		Oklahoma	All counties.
		New Mexico	Do.

Radio district	Address of the inspector in charge	Territory within district	
		States	Counties
11	1105 Rives-Strong Bldg., Los Angeles, Calif.	Arizona	All counties.
		Nevada	Clarke.
		California	Imperial, Kern, Kings, Los Angeles, Monterey, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and Ventura.
12	Customhouse, San Francisco, Calif.	California	All except district 11.
		Nevada	All except Clarke.
		Hawaiian Islands	All counties.
		Guam	Do.
		American Samoa	Do.
13	207 New Courthouse Bldg., Portland, Oreg.	Oregon	Do.
14	808 Federal Office Bldg., Seattle, Wash.	Idaho	All except district 14.
		Alaska	All counties.
		Washington	Do.
		Idaho	Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.
		Montana	Beverhead, Broadwater, Cascade, Deerlodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Meagher, Mineral, Missoula, Pondera, Powell, Ravalli, Sanders, Silver Bow, Teton, and Toole.
15	538 Customhouse, Denver, Colo.	Colorado	All counties.
		Utah	Do.
		Wyoming	Do.
		Montana	All except district 14.
16	927 New Main Post Office, St. Paul, Minn.	North Dakota	All counties.
		South Dakota	Do.
		Minnesota	Do.
		Michigan	Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.
17	410 Federal Bldg., Kansas City, Mo.	Wisconsin	All except district 18.
		Nebraska	All counties.
		Kansas	Do.
		Missouri	Do.
		Iowa	All except district 18.
18	2022 Engineering Bldg., Chicago, Ill.	Indiana	All counties.
		Illinois	Do.
		Iowa	Allamakee, Buchanan, Cedar, Clayton, Clinton, Delaware, Des Moines, Dubuque, Fayette, Henry, Jackson, Johnson, Jones, Lee, Linn, Louisa, Muscatine, Scott, Washington, and Winneshiek.
		Wisconsin	Columbia, Crawford, Dane, Dodge, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, Sauk, Walworth, Washington, and Waukesha.
19	1025 New Federal Bldg., Detroit, Mich.	Michigan	All except district 16.
		Ohio	All counties.
		Kentucky	Do.
		West Virginia	Do.
20	514 Federal Bldg., Buffalo, N. Y.	New York	All except district 2.
		Pennsylvania	All except district 3.
21	Aloha Tower, Honolulu, Hawaii.		