

STATE AND LOCAL ENFORCEMENT OF REGULATIONS
 REGARDING USE OF CITIZENS BAND RADIO EQUIPMENT

SEPTEMBER 22, 2000.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
 submitted the following

R E P O R T

[To accompany H.R. 2346]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2346) to authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 2346 is to improve enforcement of Federal Communications Commission's (FCC) rules governing Citizens

Band (CB) Radio Service. Today, a small number of people are using their CB radios in a manner not permitted under the FCC rules. Such behavior is causing unnecessary and harmful interference for other people using radio devices operating in nearby spectrum bands, including consumer telephones and televisions. The bill would delegate authority to State and local governments to enact and enforce a statute or ordinance requiring users of CB radios to comply with FCC rules, thus providing an additional enforcement compliance mechanism.

BACKGROUND AND NEED FOR LEGISLATION

Summary and FCC rules covering CB Radio Service. Citizens Band (CB) Radio Service is a two-way, short-distance, voice communication service for use in personal and business activities. CB Radio Service can be extensively helpful during emergencies or other times when traditional communications techniques are failing. The distance of the communications from CB radios can range from typically one to five miles. Users of CB radio equipment are not required to obtain individual licenses from the FCC, but users are allowed to only use an unmodified FCC certified CB unit (one that has an identifying label placed on it by the manufacturer). This differs from similar services, such as amateur radio services, which do require individual licenses for operation.

CB Radio Service is governed by Subpart D of Part 95 of the Commission's Rules (47 C.F.R. §95.401 et seq.). These rules include (but are not limited to): restricting operation within frequencies 26.965 MHz and 27.405 MHz (40 channels, spaced .01 MHz apart); prohibiting the use of power amplifiers; restricting some types of speech (e.g., obscene or indecent); prohibiting the payment for use of a CB station; restricting the length of communications (i.e., 5 continuous minutes with a one minute break before restarting communications); limiting the height of antenna to no more than 20 feet above the building or tree it is mounted on; prohibiting the operation of CB Radio stations by remote control; and conditioning the connection of a CB radio to a telephone.

FCC Enforcement. The newly created Enforcement Bureau of the FCC is charged with ensuring that the FCC rules are obeyed and taking remedial action when the rules are not followed. Specifically, the mandate of the bureau accordingly to the FCC is to: execute on-scene investigations; conduct inspections and audits; immediately respond to safety of life issues; investigate and resolve interference; and investigate violations in all communications services. In order to conduct its work, the Enforcement Bureau maintains offices throughout the U.S. to serve as local point of contacts and operation points for FCC staff operating in those locations. The FCC has three Regional Offices, 16 District Offices, and nine Resident Agent Offices located across the United States. The FCC's three Regional Offices, covering the Northeast, South Central, and Western regions of the nation are located in Chicago, IL, Kansas City, MO, and San Francisco, CA, respectively. The 16 District Offices are located in Atlanta, GA; Boston, MA; Chicago, IL; Columbia, MD; Dallas, TX; Denver, CO; Detroit, MI; Kansas City, MO; Los Angeles, CA; New Orleans, LA; New York, NY; Philadelphia, PA; San Diego, CA; San Francisco, CA; Seattle, WA; and Tampa, FL. The nine Resident Agent Offices are located in Anchorage, AK;

Buffalo, NY; Honolulu, HI; Houston, TX; Miami, FL; Norfolk, VA; Portland, OR; Saint Paul, MN; and San Juan, PR.

Violators of FCC rules governing CB radios are subject to orders by the FCC to stop whatever action caused the violation. Further, the FCC can impose monetary penalties that includes up to \$10,000 per violation for willfully and knowingly violating FCC rules (up to a total of \$75,000). The FCC, including its field agents, have the right pursuant to section 303(n) of the Communications Act to conduct inspections of radio installations without a search warrant.

According to the FCC, in order to report a suspected violation of FCC rules pertaining to CB Radio Service a written document must be submitted to an FCC district or field office closest to the complainant. The submission must include specific facts to support the alleged violation. Further, the FCC has made clear that reported violations may be investigated, only as time, manpower, and priorities permit. The FCC has also indicated that it will only investigate CB violations where there is a convincing evidence that results from a violation of the rules has occurred and then only on a low priority basis.

Need for Legislation. While much use of the CB Radio Service is valid and commendable, a number of individuals have taken advantage of the unlicensed nature of the service to operate outside the boundaries of FCC rules. In particular, a recurring problem is CB users boosting signal strength in order to reach a greater area than the one to five mile coverage area. Further, some CB users operate outside the permit frequencies allocated for CB Radio Service. When these violations occur, unexpected and potentially harmful interference can result for users of other services. Given the wireless nature of CB Radio Service and the intermittent broadcasts by CB radio users, it is often difficult to catch rogue CB radio users operating outside the FCC rules. However, individuals suspecting interference by rouge CB radio users often are forced to deal with the problem repeatedly. Many people believe that the FCC has not given the problem and the nuisances that rogue operators create significant priority and resources. Thus, creative solutions, such as the one contained in H.R. 2346, have been proposed to reduce violations of the FCC's CB Radio Service rules.

Empowering State and local governments to enact and enforce statutes and ordinances requiring compliance with FCC rules on CB radios will only improve compliance with FCC rules and prevent needless interference caused by those who feel they are not obligated to follow FCC rules. State and local government action will complement and should not be a substitute for the FCC enforcing its rules.

HEARINGS

The Committee on Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On September 14, 2000, the Subcommittee on Telecommunications, Trade, and Consumer Protection was discharged from the further consideration of H.R. 2346. On September 14, 2000, the

Full Commerce Committee met in open session and approved H.R. 2346 with a favorable recommendation by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2346 reported. A motion by Mr. Bliley to order H.R. 2346 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2346, a bill to authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 2000.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2346, a bill to authorize the enforcement by state and local governments of certain Federal

Communications Commission regulations regarding use of citizens band radio equipment.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2346—A bill to authorize the enforcement by state and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment

H.R. 2346 would allow state and local governments to enforce certain Federal Communications Commission (FCC) regulations regarding the use of citizens band (CB) radio equipment. The bill also would require the FCC to provide technical assistance to state and local governments on how to detect unauthorized CB use. In addition, H.R. 2346 would establish an appeals process for CB operators who claim that local law enforcement officials acted outside of the authority provided by this bill.

CBO estimates that implementing H.R. 2346 would not have a significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2346 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Although the bill would expand state and local government authority to enforce certain FCC regulations, the establishment of such enforcement mechanisms is entirely voluntary. Any benefits or costs associated with enforcement also would be voluntary.

CBO estimates that the cost to the FCC of implementing H.R. 2346 would be less than \$200,000, subject to the availability of appropriated funds. Based on information from the FCC, we expect that providing technical assistance to state and local governments would have a minor impact on the agency's workload, and that the FCC would receive few appeals from CB operators each year.

The CBO staff contact for this estimate is Ken Johnson. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

The legislation amends section 302 of the Communications Act to create a new subsection (f). New subsection (f)(1) provides State or local governments authority to enact and enforce an ordinance or statute that prohibits a person from violating Commission rules prohibiting (1) the use of unauthorized CB radio equipment, or (2) unauthorized operation of CB equipment on a frequency between 24 MHz and 35 MHz.

Paragraph (2) clarifies that any radio station licensed by section 301 of the Communications Act shall not be subject to the provisions of subsection (f) as added by this bill. This paragraph also requires that in exercising authority provided in new paragraph (1), the State or locality must identify that they are taking such action pursuant to this new section of the Communications Act.

Paragraph (3) requires the FCC to provide technical assistance to the State and local governments on the detection and determination of violations of the FCC rules governing CB Radio Service.

Paragraph (4) permits a person affected by a decision of a State or local government ordinance or statute to file an appeal, within 30 days, of the decision to the FCC. This right exists notwithstanding any other rights or remedies an affected person may have by law. The Commission is given 180 days to rule on the appeal and can preempt the decision of a State or local government if it determines that a State or local government acted outside its authority granted by this bill.

Paragraphs (5) and (f)(6) clarify that: (1) the bill does not preclude the FCC from taking enforcement action notwithstanding action taken by a State or local government, and (2) the FCC's authority over matters involving the interference of radio devices is not altered.

Paragraph (7) requires that a State or local government must have probable cause to find that a commercial mobile vehicle, as defined in 31101 of title 49 U.S.C., with CB radio equipment on board is in violation of Commission rules before taking enforcement action. The definition of probable cause shall be determined pursuant to paragraph (3).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic* and existing law in which no change is proposed is shown in *roman*):

SECTION 302 OF THE COMMUNICATIONS ACT OF 1934

SEC. 302. DEVICES WHICH INTERFERE WITH RADIO RECEPTION.

(a) * * *

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(f)(1) Except as provided in paragraph (2), a State or local government may enact a statute or ordinance that prohibits a violation of the following regulations of the Commission under this section:

(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

(2) A station that is licensed by the Commission pursuant to section 301 in any radio service for the operation at issue shall not be subject to action by a State or local government under this subsection. A State or local government statute or ordinance enacted for purposes of this subsection shall identify the exemption available under this paragraph.

(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a statute or ordinance under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, enacted a statute or ordinance outside the authority provided in this subsection.

(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final, but prior to seeking judicial review of such decision.

(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a statute or ordinance, the Commission shall preempt the decision enforcing the statute or ordinance.

(5) The enforcement of statute or ordinance that prohibits a violation of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.

(7) The enforcement of a statute or ordinance by a State or local government under paragraph (1) with regard to citizens band radio equipment on board a "commercial motor vehicle", as defined in section 31101 of title 49, United States Code, shall require probable cause to find that the commercial motor vehicle or the individual operating the vehicle is in violation of the regulations described in paragraph (1). Probable cause shall be defined in accordance with

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the technical guidance provided by the Commission under paragraph (3).

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