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89TH CONGRESS, 1st Session | SENATE | REPORT No. 524

PAINTING, MARKING, AND DISMANTLEMENT OF RADIO TOWERS

JULY 28 (legislative day, JULY 27), 1965.—Ordered to be printed

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

REPORT

[To accompany S. 903]

The Committee on Commerce, to which was referred the bill (S. 903) to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of S. 903 is to amend section 303(q) of the Communications Act of 1934 to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to a license issued by the Federal Communications Commission. The bill further empowers the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

Under section 303(q) of the Communications Act, the Federal Communications Commission has 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. Pursuant to this statutory authority, the Commission has adopted criteria to gage the aeronautical hazard in particular cases and has prescribed rules specifying the painting and lighting requirements for these towers (pt. 17 of FCC rules).

However, when a radio station license expires, is canceled, or is revoked, these towers are no longer used in connection with authorized

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radio station operation. They are then "abandoned towers," and as such, do not appear to fall within the Commission's jurisdiction to compel continued marking or lighting. Radio towers, which are of latticed construction, are inherently less visible than solid structures such as buildings, water towers, smokestacks, and the like. The potential menace to air navigation of such a tower left standing unlighted and unpainted is obvious.

The Joint Industry Government Tall Structures Committee (JIGTSC), established by the Air Coordinating Committee to investigate the problems raised by the joint use of airspace by the aviation and broadcast industries, and to recommend appropriate action establishing the position of the Federal Government, recommended in 1957 that—

> the Federal Communications Commission require the removal or appropriate lighting and marking of unused or abandoned towers if it has such authority, and if such authority does not exist * * * that the Federal Communications Commission seek appropriate legislation to attain this objective.

GENERAL STATEMENT

Legislation designed to accomplish the lighting and painting of unused or abandoned towers was introduced in the 85th and succeeding Congresses at FCC request. One such bill, S. 684, was favorably reported to the Senate by the committee on May 10, 1961, with an amendment to include authority for the Federal Communications Commission to require the owner to dismantle and remove such a tower when there is a reasonable possibility that it may constitute a menace to air navigation. S. 684, as reported, passed the Senate on May 16, 1961. The House of Representatives took no action on that bill.

S. 903, the legislation here under consideration, includes FCC authority to require the owner to dismantle and remove such a tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

A hearing was held on the bill by the committee on June 23, 1965, at which the Federal Communications Commission Chairman, E. William Henry, and David D. Thomas, Associate Administrator for Programs, of the Federal Aviation Agency, testified in support of the proposal. No witness appeared in opposition to the bill.

CONCLUSION

The committee desires to make it perfectly clear that the legislation herein reported deals with abandoned or unused radio towers. Orderly administration requires that the Federal Communications Commission be authorized to deal with the problem of assuring to the fullest extent possible that radio antenna towers be properly lighted and painted at all times both during and subsequent to their use for radio transmitting purposes. If necessary, when the Administrator of the Federal Aviation Agency finds that there is a reasonable possibility that an abandoned or unused tower constitutes a menace to air navigation, the Federal Communications Commission should be empowered to require the owner to dismantle and remove it.

The committee feels that the enactment of this legislation will help increase air safety.

AGENCY COMMENTS

The following communications were received from the interested Government agencies: a letter from the Chairman of the Federal Communications Commission requesting this legislation dated December 31, 1964, together with the Commission's explanatory statement; a letter from the Comptroller General of the United States dated February 9, 1965; a letter from the Department of Justice dated March 18, 1965; a letter from the Civil Aeronautics Board dated April 5, 1965; a letter from the Federal Aviation Agency dated April 9, 1965; and a letter from the Department of the Air Force dated April 21, 1965. They are set forth below.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., December 31, 1964.

Hon. CARL HAYDEN,
President pro tempore of the Senate,
U.S. Senate, Washington, D.C.

DEAR MR. PRESIDENT: The Commission has adopted as a part of its legislative program for the 89th Congress a proposal to amend section 303(q) of the Communications Act to require that abandoned radio towers continue to meet the painting and lighting requirements applicable to towers used in connection with the licensed transmission of radio energy, and be subject to dismantlement at the Commission's direction in the event the tower constitutes a menace to air navigation.

The Commission's draft bill to accomplish the foregoing objective was submitted to the Bureau of the Budget for its consideration. We have now been advised by that Bureau that from the standpoint of the administration's program there would be no objection to the presentation of the draft bill to the Congress for its consideration. Accordingly, there are enclosed six copies of our draft bill and explanatory statement on this subject.

The consideration by the Senate of the proposed amendment to the Communications Act of 1934 would be greatly appreciated. The Commission would be most happy to furnish any additional information that may be desired by the Senate or by the committee to which this proposal is referred.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 303(q) OF THE COMMUNICATIONS ACT OF 1943, RELATING TO THE PAINTING, ILLUMINATION, AND DISMANTLEMENT OF ABANDONED RADIO TOWERS

This proposal would amend section 303(q) of the Communications Act of 1934 to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to license issued by the Federal Communications Commission (47 U.S.C. 303(q)). It further empowers the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that

there is a reasonable possibility that they may constitute a menace to air navigation.

Concern has been expressed by aviation interests, both Government and non-Government, and by the general public, over the potential air navigation hazards posed by abandonment of tall antenna towers, particularly those over 1,000 feet, left standing unlighted and unpainted. The seriousness of this hazard is aggravated by the current trend toward the construction of more and higher radio antenna towers. Being of latticed construction, radio towers are inherently less visible than solid structures such as buildings, water towers, smokestacks, and the like.

Abandonment can occur by voluntary act of licensee, as when the license is permitted to expire or is submitted for cancellation, or when the licensee fails to contest an order to show cause, in consequence of which the license is revoked. Involuntary abandonment normally results from bankruptcy, death, or other legal disability affecting the licensee. Since the events leading to abandonment normally coincide with expiration, cancellation, or revocation of the station license, the Commission is at this juncture powerless to compel continued obstruction marking by invoking the administrative sanctions normally available to it except in those cases where other radio licenses are outstanding in the name of the same person.

The concern about the potential hazard to aviation safety prompted the Air Coordinating Committee to establish a Joint Industry-Government Tall Structures Committee (JIGTSC) to investigate the problems raised in the joint use of airspace by the aviation and broadcast industries and to recommend appropriate action establishing the position of the Federal Government in this matter. One of JIGTSC's recommendations was that "the Federal Communications Commission require the removal or appropriate lighting and marking of unused or abandoned towers if it has such authority, and if such authority does not exist * * * that the Federal Communications Commission seek appropriate legislation to attain this objective."

After study and consideration of the JIGTSC and other parallel recommendations, the Commission, convinced that the public interest would best be served by implementation of such recommendations, submitted a legislative proposal which was introduced in the 85th Congress. That proposal would have amended section 303(q) of the Communications Act to authorize the Commission to require the continued lighting and marking of radio towers although the tower has since ceased to be used for radio transmitting purposes. The same proposal was introduced in both the 86th and 87th Congresses; however, in the 87th Congress the Senate Commerce Committee added an amendment authorizing the Commission to require the owner to dismantle and remove the tower when there is a reasonable possibility that it may constitute a menace to air navigation (S. Rept. 214, 87th Cong.) The Senate passed the bill, S. 684, 87th Congress, with the committee amendment.

At present, section 303(q) of the Communications Act of 1934 reads as follows:

"Sec. 303. Except as otherwise provided in this act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

* * * * * * *

"(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 menance to air navigation."

The subject proposal would amend section 303(q) to read as follows:

"(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers consitute, or there is a reasonable possibility that they may constitute, a menance to air navigation. The permittee or licensee shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menance to air navigation."

The criteria which have been adopted pursuant to the authority under the present section 303(q) against which aeronautical hazard is gaged in particular cases are set forth in part 17 of the rules of this Commission and entitled "Construction, Marking, and Lighting of Antenna Structures." In general, these criteria provide that radio towers exceeding 170 feet in height require obstruction marking irrespective of location, and under these criteria the number of radio towers that can be approved without obstruction marking greatly exceeds those requiring such marking. The painting and lighting specifications imposed under part 17 provide an adequate vehicle for the protection of aviation interests and otherwise meet the Commission's responsibilities under present law; however, these criteria are applicable at this point only to towers used in connection with authorized radio operation. Accordingly, these criteria would not be applicable under present law and regulations to towers presently not used in connection with the licensed transmission of radio communications, Such abandoned towers constitute the particular problem sought to be remedied by this proposal.

The language suggested is essentially that approved by the Senate in the 87th Congress (S. 684). The sole difference from S. 684 is that the FCC's authority to require that a tower be dismantled is based upon a finding by the Administrator of the Federal Aviation Agency that there is a reasonable possibility that it may constitute a menace to air navigation.

We believe that the proposal constitutes an effective and desirable solution to a problem raised by the joint use of airspace by the broadcast and aviation industries.

(Adopted: December 9, 1964, Commissioner Bartley dissenting and starting: "I know of no necessity for this legislation." Commissioner Lee absent.)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 9, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of February 3, 1965, transmitted copies of S. 903, S. 904, S. 905 and S. 906 and requested our comments thereon.

S. 903 proposed to amend section 303(q) of the Communications Act of 1934 (47 U.S.C. 303(q)) so as to enable the Federal Communications Commission to require the owner of a radio tower which is no longer licensed to maintain the painting and/or illumination thereof until it is dismantled, and to require the owner to remove such tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

Our Office has no special information that would assist the committee in its consideration of this measure. Hence, and since the bill, if enacted, would not affect the functions and responsibilities of our Office, we have no comments with respect to its merits or recommendations regarding its enactment.

S. 904, S. 905 and S. 906 will be the subjects of separate correspondence.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF JUSTICE,
March 18, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 903, a bill to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

CIVIL AERONAUTICS BOARD,
Washington, D.C., April 5, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of February 3, 1965, acknowledged February 9, 1965, asking the Board for its comments on S. 903, a bill to amend the Communications Act

of 1934, as amended, with respect to the painting, illumination, and dismantlement of radio towers.

S. 903 would amend section 303(q) of the Communications Act of 1934, authorizing the Federal Communications Commission to require the painting and illumination of radio towers used in connection with the licensed transmission of radio energy when it believes such towers constitute a menace to air navigation, so as to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used pursuant to license. The Commission would also be empowered to require the dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

The Commission pointed out in its letter transmitting draft legislation to the Congress which was identical to S. 903 that since the events leading to abandonment normally coincide with expiration, cancellation, or revocation of a station license, it is powerless to compel continued obstruction marking except in those cases where other radio licenses are outstanding in the name of the same person. The Commission also pointed out that a Joint Industry Government Tall Structures Committee (JIGTSC), established to investigate the joint use of airspace by the aviation and broadcast industries, recommended that the Commission seek legislation, if necessary, authorizing it to require the removal or appropriate lighting and marking of unused or abandoned towers.

Since S. 903 would contribute to air safety by requiring appropriate markings of unused or abandoned radio towers, the Board urges its enactment.

The Board has been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the administration's program.

HAROLD R. SANDERSON,
Secretary
(For the Civil Aeronautics Board).

FEDERAL AVIATION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., April 9, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Agency with respect to S. 903, a bill to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers.

This proposal would amend section 303(q) of the Communications Act to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to license issued by the Federal Communications Commission. The proposal further empowers the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is

a reasonable possibility that they may constitute a menace to air navigation.

The Federal Aviation Agency favors enactment of this bill, for it would remedy a serious problem of long standing. Antenna towers constitute a particular danger to pilots, both because of their height and their peculiar structure. Today we have such towers extending as high as 2,000 feet above ground. These structures, being extremely narrow and of latticed construction, create unusual visibility problems for pilots, and it is particularly important that they be properly marked and illuminated both for the protection of persons using the airways and for the protection of persons on the ground in the vicinity of a tower. As long as a broadcasting tower is subject to FCC jurisdiction, broadcasters are required to provide standard marking and lighting protection prescribed in regulations issued by the FCC. When a broadcasting tower is abandoned, however, the protection of this marking and lighting is no longer assured, for the Commission's authority to regulate in that area is terminated. S. 903 would extend the Commission's authority to fill this regulatory gap, and thus afford the public continued protection against unmarked and unlighted towers.

S. 903 also authorizes the Commission to require the dismantling of abandoned towers constituting a menace to air navigation, and it identifies the Administrator of the Federal Aviation Agency as the individual authorized to make the determination on the question of the effect of an abandoned tower on air navigation. We believe this measure necessary and appropriate for the public protection. Where a tall tower no longer serves a useful purpose, and where its existence may create a hazard to air navigation, its owner should be required to dismantle and remove it.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, April 21, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 903, 89th Congress, a bill to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Communications Act of 1934 to require that a permittee or a licensee shall maintain the painting and/or illumination of a tower which has been licensed to transmit radio energy. In the event the tower should cease to be licensed by the Federal Communications Commission for

the transmission of radio energy, the owner of the tower would maintain the prescribed painting and/or illumination until it is dismantled and the Federal Communications Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

The Department of Defense, as a major user of the air space, supports the principle that existing radio transmission towers should be adequately painted and lighted and that abandoned or unused radio towers should be dismantled. However, since this matter is of direct concern to the Federal Communications Commission and the Federal Aviation Agency, the Department of Defense defers to these agencies for a determination of the exact statutory legislation required.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, for the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

ROBERT H. CHARLES,
Assistant Secretary of the Air Force
(Installations and Logistics).

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman);

COMMUNICATIONS ACT OF 1934, AS AMENDED

GENERAL POWERS OF THE 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) * * *

(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. *The permittee or licensee shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.*

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