

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION
ON S. 920, A BILL TO AMEND SECTIONS 303 AND 310
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
WITH RESPECT TO ALIEN AMATEUR RADIO OPERATORS

S. 920 would amend section 303 (dealing with operators) and section 310 (dealing with station licenses) to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by United States amateurs on a reciprocal basis. The bill also provides that other provisions of the Communications Act and the Administrative Procedure Act will not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

This Commission has no objection, in principle, to permitting operation by alien amateurs on a reciprocal basis. However, as Congress is aware, such licensing would constitute a departure from the general concept embodied in the Communications Act against granting radio station licenses or radio operator licenses to aliens. At the present time, there are only two exceptions to this prohibition contained in sections 303(1) and 310(a) of the Communications Act against the granting of radio operator licenses and radio station licenses to aliens. The first was contained in a convention between the United States and Canada, effective May 15, 1952 (TIAS No. 2508), which permits citizens of either country who are station licensees to operate certain radio equipment, including amateur radio stations, while in the other country. The second exception results from amendments to sections 303(1) and 310(a), adopted in 1958 (Public Law 85-917), which permit the licensing of certain alien pilots flying aircraft in the United States. 1/

The Commission commented on a bill in the 87th Congress, S. 2361, also designed to permit alien amateurs to operate in the United States. S. 920 was apparently drafted in an attempt to meet some of the factors which the Commission indicated in its earlier comments should be given careful consideration if Congress determined that legislation permitting reciprocal authorization of alien amateurs should be enacted.

1/ Section 310(a) of the Communications Act also provides that nothing in that subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when such apparatus is required by law or treaty.

-2-

The Commission's position can be summarized as follows: While the Commission has received a small number of sporadic inquiries from United States citizens desiring to use their amateur equipment in other countries and who cannot do so because the United States does not grant reciprocity, we have no indication that the interest in the matter, or its merits, considering the problems involved, would warrant our active support of the measure. We do, however, have no objection in principle - should the Congress determine such legislation is in the public interest.

One of the principal difficulties with any such proposal is the question of national security. The Commission's chief concern with S. 2361 was based on the requirement that the Commission find that the national security not be endangered by such grant. At that time, we pointed out our strong feeling that the Commission is not the appropriate agency to assume such responsibility. Our comment continued:

"... This Commission is not staffed to make such national security findings with reference to alien applicants. There would appear to be a serious problem concerning the Commission's ability to obtain the information necessary to carry out this sensitive task as well as our ability to evaluate adequately whatever information is obtained. It should be noted that this Commission has not been given the task of making security clearances for alien applicants under the two exceptions which now exist: e.g., with respect to foreign pilots and Canadian mobile equipment. To the extent, therefore, that national security considerations are involved, we believe they should not be the responsibility of this Commission...."

While S. 920 would not specifically place this burden upon the Commission, and while reciprocal agreements -- which would likely be limited to friendly nations -- might reduce the national security problem -- consideration of national security would remain in individual cases.

What the Commission would prefer -- should Congress determine some legislation along this line is desirable -- is that the Commission's role in the matter be essentially a ministerial function of registering such operators. Thus, enactment of a bill by the Congress would itself

-3-

be a determination that it is in the public interest to permit the operation. The Department of State and other appropriate agencies concerned could be given the responsibility of determining with which countries reciprocal agreements would be concluded. And -- of overriding importance -- the Department of Justice or other appropriate agency of Government, other than the Federal Communications Commission, should be given the statutory obligation to undertake whatever security measures are appropriate and to report its findings and recommendations to the Commission.

Under this type of procedure the Commission would then -- without the necessity of a public interest finding (which, in effect, would have been made by the Congress) and without any responsibility for security determinations (which would have been accomplished by other appropriate agency) -- perform the ministerial task of registering such individuals in the absence of any indication from the agency performing the security duties that registration of particular individuals should be denied. The Commission also could engage in such limited monitoring of such operations as proves necessary and feasible. These are essentially the same functions the Commission already performs under the treaty with Canada on this subject.

Any such legislation should provide that registration, renewal, or termination of registration shall be in accordance with procedures established by the Federal Communications Commission (without the necessity of rule making) and not entitled to any substantive or procedural benefits of the Communications Act or the Administrative Procedure Act.

As already mentioned, operation similar to that intended is permitted with respect to Canadian citizens in the United States by virtue of a treaty which was ratified by the Senate. The main purpose of S. 920 seems to be to pave the way for some similar authorization with respect to citizens of other countries -- but apparently through executive agreements not requiring Senate ratification. If this is what is intended, it may be profitable, should Congress determine that some such legislation is in the public interest, to explore the desirability of a separate statute embodying the entire statutory scheme, and placing specific security responsibility outside the Commission.

In the event the Committee determines that some legislation dealing with this subject is in the public interest, the Commission would be pleased to make its staff available to provide such technical assistance as may be desired.

Adopted: July 3, 1963