EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(d)(4) of Pub. L. 86–752 provided that: ''The amendment made by paragraph (2) of subsection (c) of this section [amending this section] shall only apply to petitions for rehearing filed on or after the date of the enactment of this Act [Sept. 13, 1960].''

§ 406. Compelling furnishing of facilities; mandamus; jurisdiction

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 chapter, of any of the provisions of this chapter 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 given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this chapter.

(June 19, 1934, ch. 652, title IV, § 406, 48 Stat. 1095.)

§ 407. Order for payment of money; petition for enforcement; procedure; order of Commission as prima facie evidence; costs; attorneys' fees

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 a part of the costs of the suit.

(June 19, 1934, ch. 652, title IV, § 407, 48 Stat. 1095.)

§ 408. Order not for payment of money; when effective

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date. All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.

(June 19, 1934, ch. 652, title IV, § 408, 48 Stat. 1096; Pub. L. 97–259, title I, § 123, Sept. 13, 1982, 96 Stat. 1098.)

AMENDMENTS

1982—Pub. L. 97–259 substituted provision that all orders of the Commission but for payment of money shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date, and that such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order, for provision that such orders would take effect within such reasonable time, not less than thirty days after service of the order, and would continue in force until its further order, or for a specified period of time, as prescribed in the order, unless the same were suspended or modified or set aside by the Commission, or suspended or set aside by a court of competent jurisdiction.

§ 409. Hearings

(a) Filing of initial decisions; exceptions

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

(b) Exceptions to initial decisions; memoranda; determination of Commission or authority within Commission; prohibition against consideration of own decision

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 155(d)(1)[1] of this title: *Provided, however*, That such authority shall not be the same authority which made the decision to which the exception is taken.

[1] See References in Text note below.

(c) Notice and opportunity for participation by parties; applicability of administrative procedure provisions

(1) In any case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for a hearing, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to the Commission, or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 155(d)(1)[1] of this title, unless upon notice and opportunity for all parties to participate.

(2) The provision in section 554(d) of title 5 which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

(d) Applicability of administrative procedure provisions

To the extent that the foregoing provisions of this section and section 155(d)[1] of this title are in conflict with the provisions of subchapter II of chapter 5, and chapter 7, of title 5, such provisions of this section and section 155(d)[1] of this title shall be held to supersede and modify the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(e) Subpenas; witnesses; production of documents; fees and mileage

For the purposes of this chapter 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.

(f) Designated place of hearing; aid in enforcement of orders

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.

(g) Contempts

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 court may be punished by such court as a contempt thereof.

(h) Depositions

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 proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States magistrate judge, 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.

(i) Oaths; testimony in writing

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.

(j) Foreign depositions

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.

(k) Deposition fees

Witnesses whose depositions are taken as authorized in this chapter, 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.

(*l*) Repealed. Pub. L. 91–452, title II, § 242, Oct. 15, 1970, 84 Stat. 930

(m) Penalties

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 sub-

pena 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.

(June 19, 1934, ch. 652, title IV, §409, 48 Stat. 1096; July 16, 1952, ch. 879, §16, 66 Stat. 721; Pub. L. 87–192, §4, Aug. 31, 1961, 75 Stat. 422; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 91–452, title II, §242, Oct. 15, 1970, 84 Stat. 930; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Section 155(d) of this title, referred to in subsecs. (b), (c), and (d), was redesignated section 155(c) of this title by Pub. L. 97–259, title I, §105(b), Sept. 13, 1982, 96 Stat. 1091.

CODIFICATION

In subsecs. (a), (b), and (c)(1), ''adjudication (as defined in section 551 of title 5)'' substituted for ''adjudication (as defined in the Administrative Procedure Act)'', in subsec. (c)(2) ''section 554(d) of title 5'' substituted for ''subsection (c) of section 5 of the Administrative Procedure Act'', and in subsec. (d) ''subchapter II of chapter 5, and chapter 7, of title 5'' substituted for ''the Administrative Procedure Act'' and ''that Act'', respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (*l*). Pub. L. 91–452 struck out subsec. (*l*) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1961—Subsec. (a). Pub. L. 87–192 substituted provision for filing of initial decisions, with stated exceptions, formerly contained in first sentence of subsec. (b) of this section but amplified to include tentative or recommended decisions, for provision relating to assignment of cases to examiners.

Subsec. (b). Pub. L. 87–192 provided for filing of memoranda in support of exceptions to initial, tentative, or recommended decisions, to be passed upon by the Commission or the designated authority within the Commission, and eliminated provisions for oral argument on the exceptions, filing of initial decisions, with stated exceptions, incorporated in subsec. (a) of this section, and making all decisions part of the record and requiring the decisions to include a statement of findings, and conclusions upon all material issues of fact, law, or discretion and the appropriate decision, order, or requirement. See section 557 of Title 5, Government Organization and Employees.

Subsec. (c). Pub. L. 87–192 continued requirement of notice and opportunity for participation by all parties when person seeks to make any additional presentation of case, having previously participated in the presentation of or preparation for presentation of the case, made applicable provisions of section 554(d) of Title 5 to applications for initial licenses and eliminated provisions for separation of functions of examiners from the investigative and prosecutory functions of persons engaged in performance of such functions, prohibition against consultation with Commission or any member or employee thereof with respect to initial decisions or exceptions taken to findings, rulings or recommendations, prohibition against members of Office of The General Counsel, Office of the Chief Engineer or the Office of the Chief Accountant from making any presentations respecting a case, and prohibition against persons engaged in performance of investigative or prosecuting functions for the Commission from consulting in any case of adjudication.

Subsec. (d). Pub. L. 87–192 inserted references to section 155(d) of this title.

1952—Act July 16, 1952, amended section generally, inserting subsecs. (a) to (d) and redesignating former subsecs. (b) to (j) as (e) to (m), respectively.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (h) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''United States magistrate'' substituted for ''United States commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Section 5 of Pub. L. 87–192 provided that: ''Notwithstanding the foregoing provisions of this Act [amending this section and sections 155 and 405 of this title], the second sentence of subsection (b) of section 409 of the Communications Act of 1934 [subsec. (b) of this section] (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act [Aug. 31, 1961], shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) [see sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees] designated by the Federal Communications Commission for hearing by a notice of hearing issued prior to the date of the enactment of this Act.''

§410. Joint boards and commissions

(a) State joint boards; reference of communication matters; composition; jurisdiction, powers, duties, and obligations; conduct of proceedings; force and effect of joint board action; members: nomination, appointment, and rejection; allowances for expenses

Except as provided in section 409 of this title, the Commission may refer any matter arising in the administration of this chapter 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. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 3105 of title 5, designated by the Commission, and shall be subject to the same duties and obligations. 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