

January 8, 1970

Dear Charlie:

I hate to take issue with such a cogent and concise memo as yours on telecommunications organization. Let me first disarm you by saying I agree with most of your inclinations, and then explain why we came out so differently.

First, I believe there is adequate provision for improved policies for the government's own communications needs under the new organization. The need for improvement here is uncontroversial and largely managerial in nature, but quite complex. Therefore it did not receive prominence in the memorandum; rather, we wanted to establish the machinery necessary to get it done.

Second, I simply did not and do not feel that the executive branch can develop the experience and competence rapidly enough to take on the FCC spectrum allocation and authority at this time, even if Congress would agree. To do so would result in strong political pressures being brought to bear directly on the President by competing economic and social interests, not unlike the international airline route cases. Without a very strong, professional capability in the executive branch, this has the potential to cause the President significant and needless political trouble. We have dealt with the need for better spectrum management in two ways: (1) by building up the executive branch capability, expressed through improved management of government spectrum usage and through occasional recommendations to the FCC on civilian spectrum usage where we are on solid ground; and (2) by initiating formal consultation between the executive and the FCC on consolidated spectrum management possibilities. I am convinced much good can be done without formally "taking over" the FCC responsibilities if executive branch competence is built up and believe this approach builds for the future more soundly than immediate consolidation.

Your last point is more fundamental. It is important to note that we have not proposed any formal change in the relative responsibilities or authorities of the FCC, the Congress, or the executive. Rather, we have emphasized the strengthening of executive branch abilities in carrying out its own responsibilities and in formulating its positions on issues in the policy dialogue with the FCC and Congress.

While a very large part of the new office's efforts will be devoted to internal executive branch matters, this alone would not warrant Executive Office prominence. We must realize the need for a stronger executive branch capability to meet its role in the formulation of Federal telecommunications policies. Telecommunications is becoming increasingly important in other aspects of our economy and society. The FCC cannot by itself fully consider the broader implications of its actions and is too much caught in the reconciliation of disputes among competing interests and firms. I see no satisfactory alternative to a broader executive branch role. We need some place in the Federal Government where these issues can be addressed more fully on their merits and in close cooperation with other policy-makers, such as CEA, OST, HEW, and DOT. Having Dean Burch at the FCC will be a great help, but every regulatory agency chairman operates under severe constraints, and we need help in formulating our own positions.

I share your concern about those 30 (or fewer) policy-makers showing up for work each morning; there will undoubtedly be pressure to get involved in disputes not vital to the Administration's interests. However, I believe this is somewhat mitigated by the Executive Office location and the opportunity for White House control on major policy issues; the Executive Office location also helps us control filings by various departments before the FCC.

In summary, I feel strongly that we need an improved executive branch capability and that our proposal offers more potential protection to the President than potential harm even though strong White House oversight will be needed for some time. I also feel

that our proposal is a good mix between getting important things done and preserving flexibility for the future. I would welcome talking to you about this in the near future.

Sincerely,

Clay T. Whitehead
Staff Assistant

Mr. Charles McWhorter
American Telephone and Telegraph
195 Broadway
New York, New York 10007

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:jm


MEMORANDUM

THE WHITE HOUSE
WASHINGTON

January 2, 1970

FOR: Tom Whitehead

FROM: Peter M. Flanigan



Charlie McWhorter is a thoughtful fellow with a long history of service to the President. His memorandum of December 23rd (attached) cuts directly across your proposals. I think it deserves a thoughtful answer which I would appreciate your preparing. Particularly, you should respond to his charge that the White House should not be involved in policy formulation. I would appreciate seeing the draft as soon as it is prepared.

December 23, 1969

CONFIDENTIAL

Memorandum

To: Messrs. Peter M. Flanigan and Clay T. Whitehead

From: Charlie McWhorter *KM*

Re: Reorganization of the Office of the Director of Telecommunications Management

This memorandum is submitted by me in order to express to you my personal thoughts and concern with regard to the proposed changes for reorganization of the ODTM within the Executive Office of the President. The views expressed herein are my own and are not presented on behalf of A.T. & T. since their comments have been expressed separately. My comments deal with only two aspects of this matter. First, in my opinion, there is a failure to provide adequately for the two problems which almost everybody admits exist in this area, namely:

1. To coordinate the effective use of the frequency spectrum.
2. To develop the necessary policies for the government in connection with its acquisition of communications facilities for its own needs.

If the Administration could take the initiative in providing leadership and developing the necessary policy and internal structure to deal with these two problems, there would be widespread approval within the communications industry. This in turn should provide some political benefits to the extent that "good government is good politics."

The other point, however, which troubles me most deeply is the suggestion that a policy making group for telecommunications matters be set up within the Executive Office which would "initially" have up to 30 people. This proposal does not make sense to me either on the merits or politically. The implicit suggestion that there is no present policy making group within the Federal Government for communications is simply not true. The Congress itself in the Communications Act of 1934 delegated to the Federal Communications Commission a broad policy role in communications matters. This policy role of the FCC has been sustained by the courts and expanded to cover new situations in many instances. It could reasonably be expected that Congress would strongly resent any effort by the Administration to preempt this policy making role that Congress has delegated to the FCC.

To the extent that the White House feels it is necessary or politically advantageous to take on the responsibility for resolving policy disputes, this could be handled on an ad hoc basis as was done in the matter of domestic satellites. I question, however, whether it is politically wise

for any Administration to attempt to resolve most such "policy questions" since many are really a contest between various economic interests. Politically, it would be much better to let the FCC carry out its responsibilities in this area, particularly where we have a strong chairman to represent any views of the Administration.

If the Executive Office has to maintain an initial staff of some 30 policy making people for telecommunications matters, it would inevitably result in the employment of a group of theoretical and academic types who would attempt to use their status as White House policy makers to restructure and meddle with the industry in competition with the FCC. This would inevitably drag the White House into the middle of unnecessary disputes. Politically, there is no way you can win with this approach. Rather, it is my opinion that the White House staff should attempt to discourage their involvement in economic controversies which are a healthy and vital part of our private enterprise system.

In my view the Nixon Administration staff procedures which call for the use of special task forces as needed to deal with a specific problem and then go out of existence seems to be the best approach. If you have 30 policy makers showing up for work every morning trying to justify their existence and providing a basis for larger appropriations and staff the following year, the Administration would be stuck with a trouble-making apparatus that would inevitably create unnecessary political problems. Rather, I would strongly recommend that this suggestion for such a policy-making group be rejected and that the Nixon Administration rely on either Dean Burch as Chairman of the FCC or the special task force approach where that seems to be the best alternative.

cc: Hon. John D. Ehrlichman

FROM DIRECTOR OF TELECOMMUNICATIONS MANAGEMENT

TO: Dr. Whitehead

DATE: January 16th

The attached letter to FCC Chairman Burch was coordinated with Mr. William E. Watkins, FCC Chief Engineer.


W. E. Plummer
Acting

Atch.

P. S. Chairman Burch wishes no publicity to be given to this letter while certain radio frequency allocation matters are pending before the Commission therefore have classified this letter "Confidential".

DECLASSIFIED
E.O. 13526, Sec. 3.3n

By MW, NARA, Date 11/24/12

~~CONFIDENTIAL~~
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

DTM

OFFICE OF THE DIRECTOR

January 16, 1970

Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Chairman:

One of the responsibilities of this office, in coordination with the Federal Communications Commission, is to ensure that the limited and valuable radio frequency resource is used in the best national interest.

The pressing needs of a "nation on the move" are placing an ever-increasing strain upon this resource, particularly in the satisfaction of requirements associated with land mobile (police, fire, business and educational radio), the applications of space technology, and the growth of requirements in such areas as safety of life, pollution control and national defense. The satisfaction of these requirements dictates that careful stewardship be exercised in the use and management of the radio frequency spectrum and a continuing review is necessary to ensure that telecommunication services using the spectrum remain essential to the national interest and can be met only through the use of hertzian waves.

It appears that a valuable contribution could be made in the area of efficient spectrum management if a thorough study were made jointly between the Commission and this office looking initially at the portion of the radio spectrum between 100 and 1,000 MHz, which is particularly valuable from a propagation standpoint for short range mobile applications. For example, it would be useful to explore the possibilities of meeting some current operations through means other than radio, reducing substantially channel widths not consistent with the existing state of the radio art and gradually introducing improved receivers in the case of certain radio services. It might be feasible to develop a ten or fifteen year

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GROUP 3

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2.

conversion plan which would ultimately free valuable portions of the radio spectrum to meet requirements of increasing importance to the Nation which can be met only through the use of radio.

Before proceeding further in this regard, the views of the Commission would be appreciated as to whether the FCC would be willing to participate in a study of the type envisaged.

Sincerely,

W. E. Plummer

W. E. Plummer
Acting

cc: Dr. Clay T. Whitehead

~~CONFIDENTIAL~~

GROUP 3

+
OTF

March 30, 1970

Dear Mr. Huszagh:

I regret taking so long to reply to your letter of January 9 regarding government policies toward the communications industry. As you know, however, we have been moving very actively in that area, and I wanted to take the time to read through the article you forwarded.

I will forward your resume to the new Office of Telecommunications Policy when it is established next month. If you would like to pursue this area, I suggest you contact the Director of the new office directly.

Sincerely,

Clay T. Whitehead
Special Assistant to the President

Mr. Fredrick W. Huszagh
Washington College of Law
The American University
Washington, D. C. 20016

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:jm/ed

THE AMERICAN UNIVERSITY

WASHINGTON, D. C. 20016

WASHINGTON COLLEGE OF LAW

January 9, 1970

Dr. Clay T. Whitehead
Staff Assistant
Room 110 Executive Office Bldg.
17th and Pennsylvania, Ave., N.W.
Washington, D. C. 20500

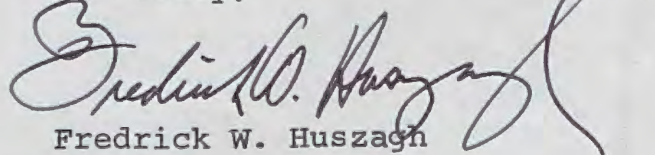
Dear Dr. Whitehead:

I have followed with great interest the public reports on the Executive Office's active involvement concerning the relationship between government and the communications industry. I personally feel that it is an activity that should have started several years ago.

Recently I prepared an article on certain relationships between The President, regulatory agencies and foreign commerce, which is enclosed in the belief that it may be of some value to your staff. It does not bring to light any new facts, but rather makes comparisons in diverse areas where independent regulatory agencies and The President have concurrent or complementary responsibilities.

Along with the article is enclosed a short resume for the purpose of indicating that the observations in the article are based on some experience in the area in addition to the usual ingredient of "academic" curiosity.

Sincerely,



Fredrick W. Huszagh

FWH: jm

Enclosures - 2

cc: Honorable Peter M. Flanigan
Assistant to the President
The White House
Washington, D. C. 20500

FREDRICK W. HUSZAGH
5016 Fulton St., N.W.
Washington, D.C. 20016
Tel. (202) 537-1652

Married - 3 children

EDUCATION

Northwestern University, 1955-1958, except for a semester of geology courses at the University of Texas. Graduated in December of 1958 with B.A. in Geology.

University of Chicago, 1959-1962 (J.D.); 1963 (LL.M., specialized in international relations); 1964 (J.S.D., doctorate dissertation entitled, "The International Law-Making Process: A case study on the international regulation of space telecommunications").

Hague Academy of International Law, summer study in 1963.

Night study at American University in 1965 (Seminar on International Business and Marketing).

EXPERIENCE

Fall 1968 - Present - Assistant Professor of Law, American University Law School (Washington, D.C.). Major teaching and research interests centered on transnational problems involving law, economics and political science. Now developing a program that will permit law students to spend two years on concentrated study of Latin American, including language, economics and legal, political and social institutions. Legal consultant to Communications Satellite Corporation and Debevoise & Liberman.

1967-1968 - Associate with Debevoise, Liberman & Corben (Washington, D.C.) Legal work involving electric utilities and international communications common carriers, and consultant to the President's Task Force on Communications Policy.

1964-1967 - Attorney-International, Office of the General Counsel, Communications Satellite Corporation (Washington, D.C.)

Preparation and negotiation of international agreements (e.g. communications service agreements, satellite earth station lease and operation agreements, technical consulting service agreements, multilateral arbitration agreement).

Legal counseling to Technical, Operational, Financial and International Vice-Presidents and their staffs concerning relationships with domestic and foreign governmental entities.

Legal counseling, including preparation and presentation of documents, to the Interim Communications Satellite Committee and its subcommittees. The Committee functions as the Board of Directors for the sixty-one nation consortium (INTELSAT) organized to establish a global commercial communication satellite system.

Participation in international conferences, meetings and exploratory discussions with potential foreign and domestic customers for satellite communication services.

In 1964 and 1965 worked on general corporate and regulatory matters (e.g., real estate acquisition, zoning and business arrangements for earth stations; filings before the Federal Communications Commission; Commerce Department and Munitions Control Office for foreign distribution of equipment and data; tariff and customs matters; proposal evaluation; preparation of presentations to corporate board of directors and testimony for Congressional hearings).

1963-1964 - field research at the International Telecommunication Union (Geneva, Switzerland) for doctorate dissertation.

Jan. to Oct. 1959 - employed at Leo Burnett Advertising Agency, Chicago, Illinois, as marketing research analyst. Worked on the preparation of consumer sales reports and marketing studies for Swift & Co. and Kellogg, and economic trend reports for the Harris Trust Bank.

ADDITIONAL DATA

Admitted to practice in District of Columbia, Illinois and the U.S. Supreme Court; Lecturer at the International Telecommunication Union on frequency management in fall of 1966; Chairman of Ad Hoc Group of Frequency Experts from member countries of the International Telecommunications Satellite Consortium (INTELSAT) in winter of 1967; and Chairman of Communications Satellite Corporation frequency management committee during 1966 and 1967.

Member of Phi Eta Sigma (undergraduate scholastic honorary); National Moot Court Team and Best Brief Award; N.A.S.A. Fellowship for doctorate studies during 1962-1964.

PUBLICATIONS

"Relationship between Foreign Policy, National Security and the Regulation of Foreign Commerce," 18 Amer. Univ. L.R. (Aug. 1969) and Review of Abe Fortas, "Concerning Dissent and Civil Disobedience," 18 Amer. Univ. L.R. (Dec. 1968) and "NonTechnical Aspects of Space Service Frequency Registration" Article in special publication of International Telecommunications Union (1966).

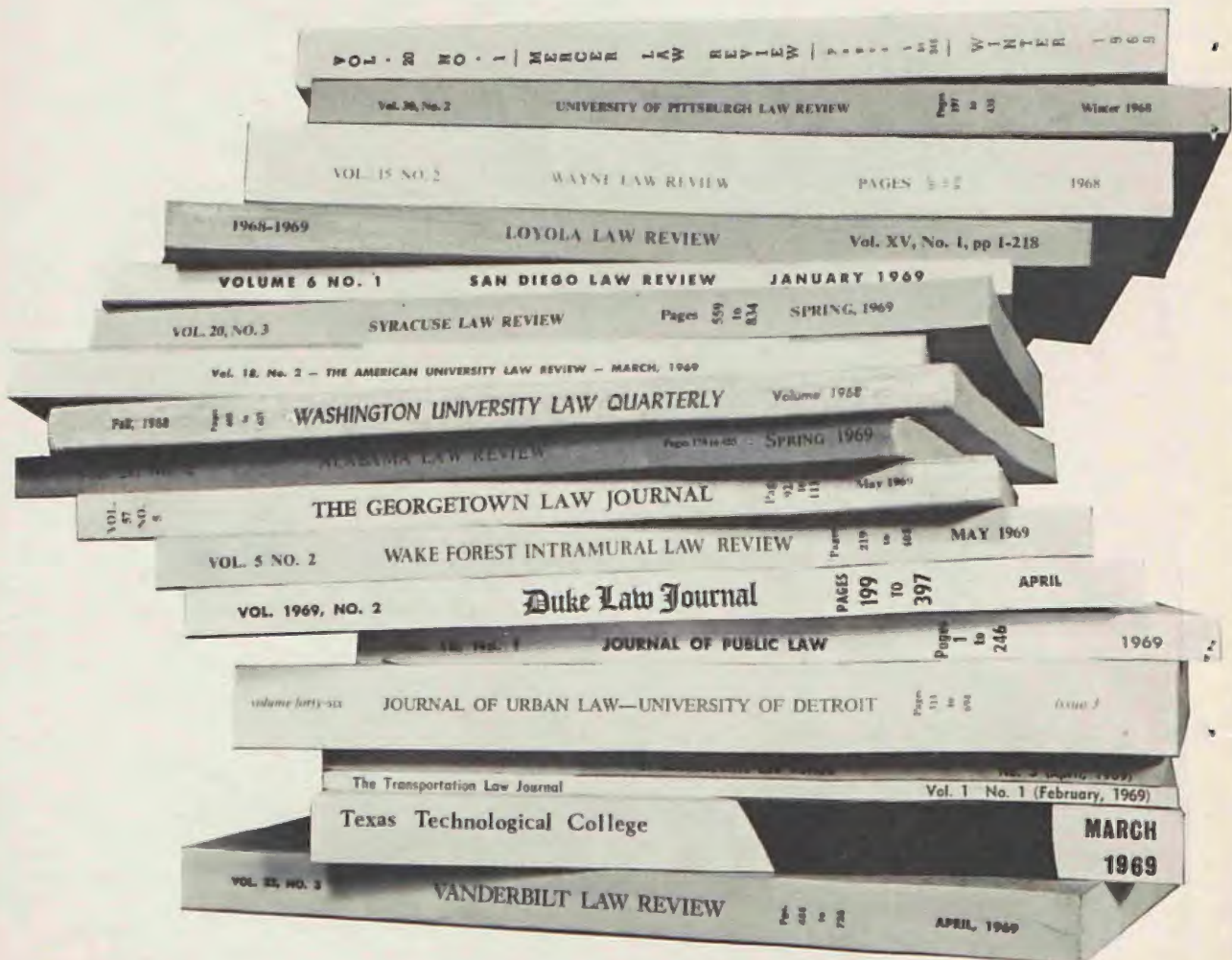
The American University Law Review



- FEDERAL REGULATION OF BANK
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- RELATIONSHIPS BETWEEN FOREIGN POLICY, NATIONAL
SECURITY AND THE REGULATION OF INTERNATIONAL
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- ON CLEARING THE COURTROOM—THE PUBLIC'S
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RELATIONSHIPS BETWEEN FOREIGN POLICY, NATIONAL SECURITY AND THE REGULATION OF INTERNATIONAL COMMERCE: VARIATIONS WITH OR WITHOUT A THEME?

*Fredrick W. Huszagh**

Federal regulation of industry is employed frequently to protect the consumer, frustrate extensive concentrations of power, and safeguard the national interest. History demonstrates that the effectiveness of regulatory provisions involving independent regulatory agencies is substantially affected by congressional and presidential attitudes and actions.¹ The President's actions may be premised on his congressionally delegated powers over particular regulatory activities, his prestige and strategic leverage, or his own constitutional powers. How the President's constitutional and congressionally delegated powers over foreign relations and national security interact with the activities of independent regulatory agencies with respect to international commerce, especially those concerning communication by satellite, will be examined herein.

To isolate some basic principles applicable to the President's interaction with independent regulatory agencies in matters involving foreign affairs and national security, attention is focused on three types of international commerce that reflect the diverse approaches to such functional interaction: air transport, gas transmission, and communication via satellite.² An analysis of the three regulatory areas illustrates the substantial qualitative differences in the allocation of

* Assistant Professor of Law, The American University; J.D., L.L.M., J.S.D., University of Chicago. The author would like to acknowledge Allen E. Throop of Washington, D.C. for his constructive criticism on various aspects of this article.

1. The extensive scope of presidential and congressional impact upon independent regulatory agencies is identified and discussed in CARY, *POLITICS AND THE REGULATORY AGENCIES* 5-66 (1967); Redford, *The President and the Regulatory Commissions*, 44 TEXAS L. REV. 288, 289-305 (1965); Welborn, *Presidents, Regulatory Commissioners and Regulatory Policy*, 15 J. PUB. L. 1, 3-29 (1966).

2. All three areas have been recognized as involving extensive interaction between the President and regulatory commissions, and as requiring extensive coordination among such entities for effective promotion of the national and public interests, SENATE COMM. ON THE JUDICIARY, REPORT ON REGULATORY AGENCIES TO THE PRESIDENT-ELECT, 86th Cong., 2d Sess., 24-33 (Comm. Print 1960); Redford, *supra* note 1, at 291-94.

responsibilities between the President and the independent regulatory agency cognizant over each form of commerce. Study of these differences in the regulation of international air transport and gas transmission provides several insights concerning the past, present, and future regulation of communication by satellites.

I BASIC RELATIONSHIPS BETWEEN CONGRESSIONAL AND PRESIDENTIAL RESPONSIBILITIES CONCERNING INTERNATIONAL COMMERCE

International air transport, natural gas transmission and communication by satellite are each subject to regulation by Congress.³ Such commerce also involves national resources and contacts with foreign nations that fall within the ambit of the President's constitutional authority to conduct foreign relations and to maintain national security.⁴

Interrelationships between these congressional and presidential powers have followed several general patterns lying within two extremes. On matters involving considerations of foreign policy, national security and foreign commerce, Congress may delegate to the President the right to exercise certain "foreign commerce" type powers, by executive agreement or otherwise.⁵ Conversely, Congress has occasionally delegated substantial powers over international

3. The fundamental basis for such regulation is Article I, § 8, cl. 3 of the Constitution which provides that "Congress shall have the power . . . to regulate commerce with foreign Nations, and among the several States, and with the Indian tribes . . ." The scope of the word "commerce" was construed, at an early date, very broadly in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 193-95 (1824). Subsequent decisions explicitly recognize the clause to embrace comprehensive congressional legislation regulating gas transmission, radio communications and air transportation. *Natural Gas Pipeline Co. v. FPC*, 120 F.2d 625, 629 (7th Cir. 1941), *aff'd*, 315 U.S. 575, 582 (1941); *General Elec. Co. v. FCC*, 31 F.2d 630, 633 (D.C. Cir. 1929), *cert. denied*, 281 U.S. 464 (1930); *California Interstate Tel. Co. v. FCC*, 328 F.2d 556, 560 (1964) (relates specifically to communications by satellite); and *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 107-08, 114 (1948).

4. Art. II, §§ 2-3, of the Constitution have been relied upon to sustain presidential actions affecting all three forms of commerce. *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 108-11 (1948); Exec. Order No. 10485, 3 C.F.R. 970 (1949-52 Comp.); Exec. Order no. 10995 3 C.F.R. 535 (1959-63 Comp.). In contrast, see the limits established in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *United States v. Guy W. Capps*, 204 F.2d 655, 659, 660 (4th Cir. 1953), *aff'd*, 348 U.S. 296 (1955).

5. Samples of such congressional delegations are: Communications Satellite Act of 1962 § 201(a), 47 U.S.C. § 721a (1964); Federal Aviation Act § 801, 49 U.S.C. § 1461 (1964); Trade Agreements Act of 1934, 48 Stat. 943, *as amended*, 57 Stat. 125 (1943); Tariff Act of 1890, 26 Stat. 567, 612 (1890). Such delegations have been repeatedly upheld by the courts. *Marshall Field & Co. v. Clark*, 143 U.S. 649, 691 (1892); *Star-Kist Foods, Inc. v. United States*, 275 F.2d 472, 479-84 (1959); *Trans World Airlines v. CAB* 184 F.2d 66, 70-71 (2d Cir. 1950), *cert. denied*, 340 U.S. 941 (1951).

commerce to independent regulatory agencies without explicitly recognizing the President's inherent powers or specifying its intentions for coordination between such agencies and the President.⁶ The former approach clearly minimizes potential conflict between Congress and the President,⁷ but it does not obviate issues over legality of the congressional delegation and over whether a presidential act is premised directly on a constitutional power or on such a delegation.⁸

The multiplicity of relationships between the President and Congress stemming from the exercise of their respective constitutional powers over these three forms of commerce, frustrates direct identification of fundamental jurisdictional criteria for their activities. Such identification is further hampered by the fact that the independent regulatory agencies charged with implementing congressional regulation of such commerce are subject, to varying degrees,⁹ to presidential control not premised on his constitutional powers concerning foreign policy and national security.¹⁰

6. See Natural Gas Act, § 3, 15 U.S.C. § 717b (1964); Federal Power Act § 202(e), 16 U.S.C. § 824a (1964).

7. Of course, potential disputes always exist over whether a presidential act is within the scope of the delegation and what is the import of the act with regard to other portions of the legislation incorporating the delegation. Occasionally it has been argued that if the President enters into an executive agreement with another nation to discharge his responsibilities under the legislation, such an agreement takes on the status of a treaty, and even supersedes the legislation in the event of a conflict. BYRD, *TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES* 148-63 (1960); Moore, *Federalism and Foreign Relations*, 1965 DUKE L.J. 248, 253; McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 YALE L.J. 181, 534 (1945); Borchard, *Treaties and Executive Agreements—A Reply*, 54 YALE L.J. 616, 643-50 (1945). With regard to the Communications Satellite Act of 1962, discussed later in this article, a commentator has suggested that the international decision-making structure established by executive agreement in furtherance of the Act should perhaps not be encumbered by Federal Communications Commission regulatory action that is consistent with a literal interpretation of the Commission's responsibilities under the Act. Throop, *Some Legal Facets of Satellite Communication*, 17 AM. U.L. REV. 12, 23 (1967).

8. For discussion of these problems see Hochman, *Judicial Review of Administrative Processes in which the President Participates*, 74 HARV. L. REV. 684, 690, 695-97 (1961). See also *United States v. Guy W. Capps*, 204 F.2d 655 (4th Cir. 1953), *aff'd*, 348 U.S. 296 (1955).

9. For example, the President may remove a Civil Aeronautics Board member from his position only for "inefficiency, neglect of duty or malfeasance in office" whereas there are no such explicit and limiting removal criteria for members of the Federal Communications Commission and the Federal Power Commission. Federal Aviation Act of 1958 § 201(a)(2), 49 U.S.C. § 1321(a)(2) (1964); Federal Power Act § 1, 16 U.S.C. § 792 (1964); Communications Act of 1934 § 5, 47 U.S.C. § 155(a) (1964). The statutory and judicial basis for the President's removal powers are discussed in Redford, *supra* note 1, at 299-301.

10. For range of presidential powers over regulatory agencies see Redford, *supra* note 1, at 299-301.

II FOREIGN AIR COMMERCE: PRESIDENTIAL SUPREMACY

The Federal Aviation Act of 1958¹¹ requires that commercial air transportation between the United States and foreign points be authorized by the Civil Aeronautics Board (CAB).¹² Such authorizations must be premised upon appropriate findings resulting from public hearings.¹³ Although these sections flowing from the commerce clause are relatively unambiguous, substantial confusion has arisen over the impact of other sections which make such authorizations subject to presidential approval¹⁴ and to conformity with treaties and agreements.¹⁵ The absence of criteria for the exercise of the broad presidential prerogative suggests that more is involved than the discharge of a congressionally delegated responsibility.

Litigation in 1947 involving statutory language similar to that now embodied in the Federal Aviation Act of 1958 seems to hold that the President's powers are unlimited and flow in part from his constitutional prerogatives pertaining to foreign affairs and national security.¹⁶ By implication, the only limitation is that the Chief

11. 49 U.S.C. §§ 1301-1542 (1964). For short summary of the Act and its international impact see Lissitzyn, *International Aspects of Air Transport in American Law*, 33 J. AIR L. & COM. 86-101 (1967).

12. Federal Aviation Act of 1958 §§ 401(a), 402(a), 49 U.S.C. §§ 1371(a), 1372(a) (1964).

13. *Id.* §§ 401(c), 402(d), 49 U.S.C. §§ 1371(c), 1372(d) (1964); CAB v. Delta Airlines, Inc., 367 U.S. 316, 331-32 (1961); CAB v. State Airlines, 338 U.S. 572, 581-82 (1950).

14. The Federal Aviation Act of 1958, § 801, provides:

The issuance, denial transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same territory or possession, or any permit issuable to any foreign air carrier under Section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

49 U.S.C. § 1461 (1964). See commentary on impact of this section in Hochman, *supra* note 8, at 689-92, 697-712.

15. The Federal Aviation Act of 1958, § 1102, provides:

In exercising and performing their powers and duties under this chapter, the Board . . . shall do so consistently with any obligation assumed by the United States in any treaty, convention or agreement that may be in force between the United States and any foreign country or foreign countries

49 U.S.C. § 1502 (1964). For discussion of this section's broad ramifications on the CAB-President relationship see Kittrie, *United States Regulation of Foreign Airlines Competition*, 29 J. AIR L. & COM. 1, 5-13 (1963).

16. Chicago and Southern Airlines v. Waterman S.S. Corp., 333 U.S. 103, 107-08 (1948). See also, Lissitzyn, *Legal Status of Executive Agreements on Air Transport*, 17 J. AIR L. & COM. 436, 438-53 (1950); Edles, *IATA. The Bilaterals and International Aviation Policy*, 27 FED. B.J. 291, 310-11 (1967).

Executive cannot initiate action to compel establishment of commercial international air service.¹⁷ Conversely, the Act's requirement that CAB action cannot be implemented without presidential approval appears to extend even to a CAB denial of a foreign air service application.¹⁸ It could be argued that the CAB does have substantive responsibilities as an initiator of foreign air service licenses and permits, but these powers have a practical limitation. The possible repercussions of the President's disenchantment over CAB decisions not in harmony with his requirements would undoubtedly have a sobering influence on the commissioners and agency employees.

Due to the President's broad powers over foreign air commerce, the public hearing and fact finding requirements for CAB action on applications for foreign air service do not have the significance traditionally associated with domestic CAB proceedings.¹⁹ Thus the CAB's expertise with regard to foreign air commerce regulation serves primarily a persuasive function and, if the President chooses to ignore such expertise, little can preclude the eventual submission by the CAB of a decision meeting his approval.²⁰

III GAS TRANSMISSION: SEPARATE BUT INTERDEPENDENT EXERCISE OF PRESIDENTIAL AND REGULATORY POWERS

Section 3 of the Natural Gas Act, as passed in 1938, requires that all natural gas transmission between the United States and foreign points be authorized by the Federal Power Commission (FPC).²¹ The FPC Regulations under the Natural Gas Act specify the application procedures for obtaining the necessary FPC export and import authorizations.²² In contrast with the Federal Aviation Act's

17. See Lissitzyn, *supra* note 11, at 88.

18. *Id.*

19. *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 114-18 (1948) (Douglas, Black, Reed and Rutledge, J.J., dissenting); See also commentary in Jaffe, *The Right to Judicial Review, Part II*, 71 HARV. L. REV. 769, 778-81 (1958).

20. See references cited in notes 1, 8 and 9 *supra*. See also Edles, *supra* note 16, at 297; and the erratic history of the Trans-Pacific Route Investigation (International Phase) recorded, in part, in 2 Av. L. Rep. 21,857, 21,833 and 21,832 and in New York Times, July 3, 1969, at 1, col. 2 (city ed.). This has been commented upon in Keyes, *The Transpacific Route Investigation: Historical Background and Some Major Issues*, 34 J. AIR L. & COM. 3-26 (1968).

21. "... no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so." 15 U.S.C. § 717b (1964).

22. FPC Regulations under the Natural Gas Act, 18 C.F.R. §§ 153.1-153.8 (1969).

recognition of the President's authority, the Natural Gas Act does not denote any presidential responsibility over the foreign commerce under FPC jurisdiction.²³

Explicit limits on the FPC's authority over international gas transmission, vis-a-vis the President, were first evidenced in Executive Order No. 8202 issued on July 13, 1939.²⁴ The order, without identifying its legal foundation, authorized the FPC to receive applications for the construction, operation, maintenance or connection at United States borders of facilities for the transmission of natural gas to or from foreign countries. After obtaining the recommendations of the Secretaries of State and War (now Defense), the FPC was empowered to draft a response to an application, including the terms and conditions, and then forward the application and draft response to the President for action. This presidential declaration, acquiesced in by the FPC,²⁵ specifically reserved to the President final action on such applications and the authority to impose various terms and conditions.

FPC decisions concerning international gas transmissions issued subsequent to the 1939 Executive Order focused primarily on gas transmission volumes and rates.²⁶ In addition, they acknowledged the necessity of a presidential permit for the facilities. In most instances the FPC released the permit simultaneously with the authorizations required under the Natural Gas Act. By specifying that the applicant's right to engage in such activities would terminate whenever the permit or the authorization expired, the FPC also established both approvals as pre-requisites for international gas transfers.

Aside from demonstrating a presidential-FPC interdependence, Commission actions concerning international gas transmissions elucidate critical elements of its decisionmaking process. The first

23. A similar omission has been made in Section 202(e) of the Federal Power Act which provides: ". . . no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so." 16 U.S.C. § 824a (1964). FPC approval of electric energy imports was specifically excluded in the original legislation, 49 Stat. 848 (1935), and no amendment has been made to require approval in such cases despite FPC pleas for such jurisdiction. See letter dated February 16, 1962, from the FPC to the Senate Commerce Committee in support of Senate Bill 2882 amending the Federal Power Act, 108 CONG. REC. 2573 (1962).

24. 3 C.F.R. 560 (1938-1943 Comp.).

25. See *Union Gas Corporation*, 2 F.P.C. 803, 804 (1940); 12 Fed. Reg. 8461, 8469.

26. See *Union Gas Pipe Line Company*, 2 F.P.C. 775, 776 (1940); *Union Gas Corporation*, 2 F.P.C. 803, 804 (1940); *Juarez Gas Company, S.A.*, 2 F.P.C. 931, 932 (1941).

FPC decisions on this matter contain only terse findings of threshold compliance with Section 3's vague criteria that the Commission authorize international gas transmissions "... unless ... it finds that the proposed exportation or importation will not be consistent with the public interest."²⁷ However, within seven years the Commission broadly extended its scope of inquiry. In one application for authority to export gas to Mexico the FPC applied interstate certification criteria and inquired into the adequacy of sources of foreign fuel supply and the availability of foreign natural gas in the areas where the applicant proposed to make deliveries.²⁸ On the basis of this "domestic" type analysis, the FPC refused to permit the exportation of gas into Mexico, since it determined that Mexico's fuel supplies, especially oil, were adequate to cover its own needs. This assessment assumed that the Mexican government would allocate its rather scarce supply of natural gas to priority customers in accordance with an allocation scheme used in the FPC's analysis. Further, it rejected the pleas of the Mexican and U.S. Governments in support of the proposed exportation.

On September 9, 1953, the President issued a second order, Executive Order No. 10485, pertaining to international gas transmission facilities, that substantively expanded, in three major respects, the 1939 order it supplanted.²⁹ First, it articulated the President's reliance on his constitutional powers over foreign relations as a legal foundation for requiring a presidential permit.³⁰ Second, it

27. *Id.* Also see *Texas Cities Gas Corporation*, 2 F.P.C. 932, 933 (1941) wherein the only findings in support of an FPC authorization for gas exportation were:

- (1) that the gas now being exported is not needed to supply the requirements of applicant's consumers in the State of Texas;
- (2) that the exportation of such gas does not impair the ability of applicant to render adequate service to its customers in the State of Texas;
- (3) that the exportation of natural gas by the applicant herein will not be inconsistent with the public interest.

28. *Reynosa Pipe Line Company*, 4 F.P.C. 282 (1945).

29. 3 C.F.R. 970 (1949-1953 Comp.).

30. The preamble of Executive Order 10485 stated in part:

WHEREAS the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas

The President's constitutional prerogatives as Commander-in-Chief of the Armed Forces might also provide a basis for some control over natural gas transmission, especially in times of national emergency when it could be considered a strategic resource. However, such control, to be valid, might need the support of some congressional action in light of the voluminous judicial commentary in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582-710 (1952).

authorized the FPC to grant or deny applications for the construction, operation, and maintenance of gas transmission facilities, provided such action was consistent with the recommendations of the Secretaries of State and Defense. Third, it empowered the FPC to attach conditions to such permits that it considered necessary in the public interest. The President, however, retained the absolute right to take final action on all applications where the FPC's grant or denial would not be consistent with the recommendations of the Secretaries of State and Defense, and he specified that FPC issuance of a permit must also be consistent with the public interest. It is not clear from the executive order whether this latter guideline was intended to parallel the Section 3 criterion that a permit must be issued *unless* it would be inconsistent with the public interest.

The FPC Regulations implementing both Executive Orders have changed little since their initial promulgation in 1947. They omit reference to the President's personal involvement and specifically note the necessity for obtaining authority to transmit gas pursuant to Section 3.³¹ The Regulations associated with Section 3 refer to the FPC facility authorizations required by executive order, and specify, consistently with the criteria established in FPC decisions immediately following enactment of Section 3, that the issuance of a transmission authorization is dependent upon the applicant's showing that the proposed transmission will not:

1. be inconsistent with the public interest and
2. will not in any way impair the ability of the applicant to render natural gas service at reasonable rates to its customers in the United States.³²

The genesis of FPC powers concerning international gas transmission authorizations and facility permits reflect a definite cleavage. Regulatory responsibilities over transmission flow directly from Congress to the FPC. Authority to regulate transmission facilities crossing international borders is acknowledged by the FPC to flow from the President; presumably by virtue of his constitutional powers over foreign relations. The major significance of this dichotomy is that it has resulted in the application of different criteria for discharging each power. Pursuant to Congress' delegated authority in Section 3, the Federal Power Commission regulates the volume and

31. FPC Regulations under the Natural Gas Act, 18 C.F.R. §§ 153.10-153.12 (1969).

32. *Id.*, § 153.3(h).

rate of international gas transmission. Application denials or limitations presumably must be imposed solely to avoid impairing the applicant's ability to render natural gas service at reasonable rates to its domestic customers and to avoid arrangements inconsistent with the public interest. However, language in several FPC decisions, including the *Reynosa Pipe Line Co.* case,³³ implies that such criteria may be synonymous with that criteria used pursuant to Section 7 of the Natural Gas Act³⁴ to guide the issuance of certificates of convenience and necessity for domestic gas facilities and transmission.³⁵

Although the FPC, in discharging this duty, may request information on the facilities, foreign needs, etc.,³⁶ Section 3 does not encompass regulation of transmission facility design, maintenance or operation. Presumably the criteria for granting presidential permits for transmission facilities pursuant to Executive Order No. 10485, involve foreign policy, and perhaps national defense, considerations traditionally associated with the President, and do not involve solely the public interest criteria that guides domestic FPC proceedings for gas line certificates of public convenience and necessity.

The present regulatory arrangement between the President and the Commission reflects a decision-process that is both different from and similar to that applied to international air route applications. The President's designated representative often participates, directly or indirectly, in the negotiations of the business arrangements that eventually become the subject of an application to the CAB. He also has the ultimate decision-making powers with regard to the necessary regulatory approvals associated with the foreign commerce aspects of the arrangement. This, presumably, insures effective control over the commerce, foreign policy, and national defense issues associated with the arrangement. It could be argued that arrangements for international gas transmission do not effectively involve the President since the FPC issues both the facility and transmission permits. However, a closer examination of the exercise of these respective powers discloses that the President retains ultimate control over facility permits by deciding cases where the Secretaries of State or Defense do not endorse FPC conclusions. Thus the only significant difference between the gas facility authorization process and the air

33. 4 F.P.C. 482 (1945). See discussion p. 715 *supra*.

34. 15 U.S.C. § 717f (1964). Also see notes 18-19 under 15 U.S.C.A. 717f (1963).

35. *Contra*, *Borden Pipe Line Co. v. FPC*, 171 F.2d 149 (D.C. Cir. 1948).

36. FPC Regulations under the Natural Gas Act, 18 C.F.R. § 153.3(d-g) (1969).

regulatory scheme is that when an application for a gas transmission facility is referred directly to the President, he may actually frame the final facility permit whereas air route decisions must be framed by the CAB.³⁷ Off-setting the President's powers over pipeline facilities is the FPC's congressionally-authorized control over international natural gas transmission. The distinction between facilities and transmission is clear, but the logic behind excluding the President from the latter decisional process is not self-evident. Certainly the effects of gas transmission upon foreign policy and national defense can be similar to those associated with the interconnection of two national pipeline facilities. Does congressional silence on the President's responsibility concerning gas transmission across national borders somehow limit presidential jurisdiction? Would the presence of foreign policy and national defense issues justify assertions of the President's constitutional prerogatives that might frustrate conflicting FPC actions pursuant to Section 3? The Supreme Court's decision in *Chicago & Southern Air Lines v. Waterman Steamship Corp.*³⁸ provides precedent for an affirmative response at least to the second question, but, in light of the FPC's congressionally delegated responsibilities, the President would appear to have the burden of demonstrating a conflict based on foreign policy or national defense considerations before overriding an FPC action. Such a conclusion is compatible with the *Waterman* case, since the President's responsibilities were explicitly recognized in the Federal Aviation Act. However, the President's burden of going forward in order to achieve positive action on these grounds does not detract from the fact that the prerequisite of a presidential facility permit for an international gas line is equivalent to a presidential veto power over affirmative FPC action under Section 3.

Because of the presidential delegations by Executive Order No. 10485, FPC decisions regarding natural gas transmission have a close inter-relationship with facility permits. Thus, if, in consultation with the Secretaries of State and Defense, the FPC should grant a facilities permit due to pressing foreign policy or defense considerations, the same considerations should influence determinations with regard to transmission. Although from a practical standpoint this is most likely, a question is raised whether the standards to be applied under Section 3 can properly incorporate

37. See note 17 *supra*.

38. 333 U.S. 103, 109-111 (1948).

foreign policy and national defense considerations in construing the public interest. In the *Reynosa Pipe Line Co.* case the Commission added substantial dimensions to the scope of the national interest in Section 3, and it would seem that further extensions to include foreign policy considerations would be no more extreme. The only remaining issue is whether the FPC's perception of the relevant foreign policy considerations and of the deference that should be accorded them, would and should be the same as the President's perceptions of such matters.

IV COMMUNICATION VIA SATELLITE: RATIONAL EVOLUTION OR *Ad Hoc* FLUCTUATION IN EXERCISE OF PRESIDENTIAL AND REGULATORY POWERS?

A. *Historical Perspective of Jurisdictional Patterns.*

The basic jurisdiction of the Federal Communications Commission (FCC) over international radio communications flows from the Communications Act of 1934 (Communications Act).³⁹ Title Two of that Act requires FCC authorization of commercial communication channels operated by common carriers between the United States and foreign countries, and empowers the Commission to prescribe just, reasonable and non-discriminatory rates for services provided over these facilities. Title Three vests the FCC with responsibility for allocating radio frequencies among non-governmental uses and for granting radio transmitter construction permits and operating licenses. Explicit recognition of presidential cognizance over these matters is restricted to emergency war powers and the coordination of all government frequency uses.⁴⁰ In contrast, another congressional act makes the President solely responsible for issuing landing permits for submarine cables designed to establish channels of communications between the United States and foreign points.⁴¹ The President has re-delegated this function to the FCC, subject to mandatory coordination with the Secretary of State.⁴²

39. 47 U.S.C. §§ 151-609 (1964).

40. Communications Act §§ 305, 606, 47 U.S.C. §§ 305, 606 (1964).

41. Submarine Cable Act §§ 1-3, 47 U.S.C. §§ 34-36 (1964). The jurisdiction of Congress and the President over the landing of submarine cables prior to this legislation was the subject of extensive controversy. See *United States v. Western Union Telegraph Co.*, 272 F. 311 (2d Cir.), *aff'd*, 272 F. 893 (1921), *rev'd on other grounds*, 260 U.S. 754 (1922); 22 Op. Att'y Gen. 13, 408 (1898).

42. Executive Order No. 10530, 3 C.F.R. 192 (1954-1958 Comp.) (1961), 3 U.S.C. § 301 (1964).

Analogous to the regulatory arrangements for international gas transmission, broad presidential cognizance over non-governmental international radio communications during peace time was publicly disclosed by an executive order. Based on his constitutional responsibilities for foreign affairs and national security, the Chief Executive issued Executive Order No. 10995 on February 16, 1962,⁴³ which established, within the Executive Office, the position of Director of Telecommunications Management (DTM) to coordinate governmental telecommunications activities and to formulate overall policies with regard to United States telecommunications. Included within DTM's broad charge under the order is the:

development of telecommunications plans, policies and programs under which full advantage of technological development will accrue to the Nation and the users of telecommunication; and which will satisfactorily serve the national security; sustain and contribute to the full development of world trade and commerce; strengthen the position and serve the best interests of the United States in negotiations with foreign nations; and permit maximum use of resources through better frequency management

In relation to space communications the DTM was "to implement the national policy of development and effective use of space satellites for international telecommunication services," and, along with the FCC, to assist and give policy advice to the Department of State in the discharge of its functions in the area of international telecommunications policies, positions, and negotiations. Despite this broad charge, the DTM was actually endowed with little substantive authority over non-governmental communications facilities handling international traffic.

The Communications Satellite Act of 1962 (Satellite Act),⁴⁴ in contrast with the silence of the Communications Act, expressly vests in the President broad powers over the development and operation of international commercial communications via satellite. Despite this explicit congressional call for extensive presidential involvement, the Satellite Act's somewhat wholesale projection of traditional FCC regulatory responsibilities into the relatively uncharted area of satellite communications obscures the new presidential-FCC relationship which Congress presumably intended. The FCC's functions of issuing construction permits and operating licenses,

43. 3 C.F.R. 535 (1959-1963 Comp.).

44. 47 U.S.C. §§ 701-44 (1964).

assigning frequencies and controlling rates are extended to the communication satellite service, along with other functions of supervising the financial structure of the Communications Satellite Corporation (Comsat), of insuring competitive procurement and adequacy of service, and of passing on the technical and operational characteristics and compatibility of the communications satellite system.⁴⁵ Simultaneously with these delegations to the FCC, Congress directed the President 1) to "coordinate activities of governmental agencies with responsibilities in the field of telecommunication so as to achieve the policies set forth in" the Satellite Act; 2) to "exercise such supervision over relationships of the corporation with foreign governments or entities or with international bodies as may be appropriate to assure that such relationships shall be consistent with the national interest and foreign policy of the United States"; and 3) to insure timely arrangements for foreign participation.⁴⁶ Congress also recognized the President's traditional functions regarding the efficient use of the radio frequency spectrum and the maintenance of adequate communications for national security. As noted in the discussion of the Federal Aviation Act, such legislative recitation of the President's responsibilities does little to identify their origin as either a recognition of executive constitutional powers or a delegation of Congress' foreign commerce power.

Pursuant to the Satellite Act's stated policies, the United States Government and Comsat negotiated and signed, with numerous other countries and communications entities, two interrelated agreements (the Agreement and Special Agreement) establishing interim arrangements for a global communications satellite system.⁴⁷ While recognizing inherent limitations posed by domestic laws,⁴⁸ the two

45. *Id.* § 721(c).

46. *Id.* § 721(a).

47. Agreement establishing Interim Arrangements for a Global Commercial Communications Satellite System, 15 U.S.T. 1705, T.I.A.S. No. 5646 (1964). For summary and discussion of the Agreement and Special Agreement see Simsarian, *Interim Arrangements for a Global Commercial Communication Satellite System*, 59 AM. J. INT'L 344 (1965); Colino, *Intelsat: Doing Business in Outer Space*, 6 COLUM. J. OF TRANSNAT'L L. 17-34 (1967).

48. Article II of the Agreement provides:

(a) Each Party either shall sign or shall designate a communication entity, public or private, to sign the Special Agreement which is to be concluded further to this Agreement and which is to be opened for signature at the same time as this Agreement. Relations between any such designated entity and the Party which has designated it shall be governed by the applicable domestic law.

(b) The Parties to this Agreement contemplate that administrations and communications carriers will, subject to the requirements of their applicable domestic law, negotiate and

agreements (collectively called the "Interim Arrangements") created the International Telecommunications Satellite Consortium (Intelsat), a self-financed "entity,"⁴⁹ to achieve a wide spectrum of objectives pursuant to an elaborate set of provisions. Such provisions cover financing, technical development, operating arrangements, decision-making, distribution of industrial rights, contracting, and the eventual negotiation of "permanent" arrangements.⁵⁰

The Agreement, signed only by governments, sets forth the organizational principles for the system. The Special Agreement contains provisions relating to the commercial, technical and financial aspects of the system, and was executed by parties to the Agreement or by their designated telecommunications entities.⁵¹ Although the provisions of the Interim Arrangements deal with satellites, earth

enter directly into such traffic agreements as may be appropriate with respect to their use of channels of communication provided by the system to be established under this Agreement, services to be furnished to the public, facilities, divisions of revenues and related business arrangements.

49. The basic financing provisions of Intelsat are Article VI of the Agreement and Articles 3, 4 and 9 of the Special Agreement. With regard to the legal nature of Intelsat, Article III of the Agreement provides that:

The space segment shall be owned in undivided shares by the signatories to the Special Agreement in proportion to their respective contributions to the costs of the design, development, construction and establishment of the space segment.

No provision is made for liquidation of a member's ownership interests upon withdrawal from Intelsat. Whether such arrangements endow Intelsat with legal identity remains an unanswered question. Executive Order No. 11277, 31 FED. REG. 6609 (1966), designated Intelsat as a public international organization pursuant to the International Organization Immunities Act § 1, 22 U.S.C. § 288 (1964). However, congressional legislation specifically provides that Intelsat is not a taxable entity under the Internal Revenue Code [Section 883(b)] and the contracts for the purchase of Intelsat facilities are executed by Comsat, as Manager for Intelsat. Also see: *Hearings on Government Use of Satellite Communications Before Subcomm. on Military Operations of the House Comm. on Government Operations*, 89th Cong., 2d Sess. 503 (1966) [hereinafter cited as 1966 *Hearings*]; *Hearings on Satellite Communications—1964 Before the Subcomm. on Military Operations of the House Comm. on Government Operations*, 88th Cong., 2d Sess., pt. 2, 661 (1964); Colino, *supra* note 47, at 42-45.

50. Article IX of the Agreement establishes a time table for formulation and implementation of definitive arrangements for the international global system to supersede the Interim Arrangements. A plenipotentiary conference of all Intelsat members was convened in Washington, D.C. on February 24, 1969. The conference was not able to develop definitive arrangements for ratification by Intelsat members during its five week session. Therefore a preparatory committee was formed to develop provisions for submission at the Conference's second session scheduled to convene on Feb. 16, 1970, 35 Telecommunications Reports 8 (Jul. 14, 1969). For review of major issues involved in this conference see Trooboff, *Intelsat: Approaches to the Renegotiation*, 9 HARV. INT'L L. REV. 1-84 (1968).

51. See note 48 *supra*. For list of the specific entities signing each agreement see COMMUNICATIONS SATELLITE CORPORATION, REPORT TO THE PRESIDENT AND THE CONGRESS FOR THE CALENDAR YEAR 1968, 46-51 (1969). This annual report was submitted pursuant to § 404(b) of the Satellite Act.

stations, etc., Intelsat owns and operates only the satellites and associated support equipment (space segment).

Under the Interim Arrangements, Comsat assumed broad responsibilities both as manager for the international enterprise and as the designated U.S. participant with a system ownership interest that entitles it alone to a veto in the organization's decision-making process.⁵²

B. Jurisdictional Problems, Expedient Solutions, and Evolving Guidelines

The Interim Arrangements, when read in conjunction with the Communications and Satellite Acts, raise numerous questions concerning the inter-relationship between the President and the FCC. Activities undertaken pursuant to these arrangements have resulted in substantial actual conflict. Illustrative problems yet to be resolved are whether: (1) all space segment additions or changes in orbital positions of operational satellites must be approved by the FCC, including those portions not handling communications terminating or originating in the United States; (2) all elements of a multi-purpose satellite, even communications equipment not handling traditional commercial communications traffic, are subject to FCC jurisdiction; (3) the President or the FCC, in supervising Comsat, can enjoin it to undertake certain courses of positive action as well as preclude it from initiating or supporting certain actions; (4) the President and FCC are to use specific substantive and procedural standards in discharging their respective responsibilities; and (5) the Interim Arrangements, though executed by the United States solely pursuant to executive action, modify the provisions of the Communications and Satellite Acts.⁵³

The existence of such major issues discloses that the legislation pertaining to international satellite communications inadequately delimits the respective functions of the FCC and the President,⁵⁴ and even obscures the significance of historical constitutional relationships between Congress and the President. Despite these legislative infirmities, an analysis of three well documented events that are landmarks in the development of international communication via

52. Article XII(c) does not specifically endow Comsat with such a veto, but the mathematical impact of the section is to insure Comsat's ownership shall always exceed 50 percent.

53. See note 7 *supra*.

54. See H.R. REP. NO. 613, 90th Cong., 1st Sess. 13-14 (1967).

satellite discloses several evolving guidelines for Presidential and FCC action. These events were: (1) the procurement of the Intelsat III series satellites; (2) the establishment of Pacific satellite service for the Department of Defense; and (3) the development of procurement policies and procedures associated with the development and construction of Intelsat facilities.

Intelsat III Procurement—Perhaps the greatest single catalyst for clarifying the respective responsibilities of the FCC and other agents of the Government with respect to the development and operation of international communication satellite facilities was the procurement of the Intelsat III series satellites. The Interim Arrangements designated 1967 as the date for establishment of an initial global system.⁵⁵ Pursuant to this mandate the executive body of Intelsat, the Interim Communications Satellite Committee (ICSC), in mid-1965, solicited bids from contractors for the development and fabrication of the Intelsat III series satellites. Several major domestic aerospace manufacturers submitted proposals which were evaluated according to criteria and procedures outlined in or based upon the Interim Arrangements.⁵⁶ The ICSC finally selected Thompson Ramo Woolridge, Inc. (TRW), and contract negotiations were commenced at the end of 1965.⁵⁷ In February of 1966, the ICSC decided that the initial global system should utilize synchronous satellites. Comsat immediately thereafter filed a construction application with the FCC in which it sought authorization to participate in Intelsat's sponsorship of construction of six satellites with the specifications identical to those proposed by TRW for use in synchronous orbit.⁵⁸ The FCC issued a public notice of inquiry on March 7, 1966, concerning Comsat's application and, at the close of the statutory thirty-day public notice period, requested from Comsat additional information about the application. By April of 1966 the ICSC approved the final terms for the contract with TRW and instructed Comsat, as Manager, to execute and implement the contract. Later in

55. Article I(a)(ii) of the Agreement provides:

The Parties to this Agreement shall cooperate to provide . . . succeeding phases employing satellites of types to be determined, with the objective of achieving basic global coverage in the latter part of 1967

56. See Article X of the Agreement and Article 10 of the Special Agreement.

57. Wall Street J., December 17, 1965, at 24, Col. 2. (East Coast Ed.).

58. Application of Communications Satellite Corporation, 4 F.C.C. 2d. 8 (1966). The actual filing and the materials noted in the above paragraph as subsequently filed in connection therewith are contained in FCC's public files under Application of Communications Satellite Corp., File No. 5-CSS-P-66 (FCC, February-June, 1966).

the month Comsat, presumably as the United States signatory, filed the executed contract with the FCC pursuant to the FCC procurement regulations,⁵⁹ and responded on May 6, 1966, to the Commission's questions concerning the construction application. Approximately one month subsequent to the deadline for comments in response to the public notice of inquiry, Hughes Aircraft Corporation, a rejected bidder for the Intelsat III satellites contract, sent a letter to the FCC expressing doubts about the economics of the proposed Intelsat III construction program and, in a subsequent letter, suggested an alternative satellite design and operating configuration. The FCC forwarded these letters to Comsat for comment. Finally, after numerous complaints by various foreign members of Intelsat over the delays in implementing the ICSC's decision and the deleterious effect which further delay would have upon timely establishment of the basic global system, the FCC authorized Comsat on June 22, 1966, to participate in the Intelsat III construction program, subject to several conditions.⁶⁰

The FCC's use of Hughes' letters seems inconsistent with accepted notions of orderly procedure for processing construction permit applications, but this problem is minor in contrast to the repercussions from the timing of ICSC action and the FCC's regulatory actions regarding the Intelsat III series satellite. The FCC was accused of asserting regulatory jurisdiction over the activities of an international organization.⁶¹ In defense of its actions, the FCC contended that affirmative participation by Comsat in the ICSC decision to contract with TRW before seeking FCC approval made a mockery of the FCC's regulatory responsibilities under the Communications and Satellite Acts.⁶²

The TRW controversy prompted ICSC members to request that Comsat, as the American representative, clarify the Government's relationship with Comsat when acting as Manager for Intelsat pursuant to the terms of the Interim Arrangements. Comsat referred the inquiry to the State Department, presumably on the theory that foreign policy considerations would govern the ultimate determination. The State Department responded that the Government did not seek to negate or impair ICSC decisions or their

59. FCC Regs. 47 C.F.R. §§ 25.151-25.201 (1967).

60. Application of Communications Satellite Corporation, 4 F.C.C. 2nd, 8 (1966).

61. See 1966 Hearings, *supra* note 49, at 503-505, 735-737.

62. Application of Communications Satellite Corporation, 4 F.C.C. 2d, 8, 10-11 (1966).

implementation by Comsat, acting as Manager.⁶³ By a separate letter to Comsat, the State Department forwarded procedures to be followed by Comsat, as the United States' representative participating in the ICSC decision-making process.⁶⁴ The letter's preface to the actual procedures indicated that:

Their implementation will successfully carry out the United States Government's constitutional and statutory responsibilities, including those under the Communications Satellite Act of 1962, without needlessly inhibiting Comsat's freedom of action at meetings of the ICSC and without interference with Comsat's corporate responsibilities.

This was succeeded by a brief six-step procedural program.⁶⁵

With regard to defining the relationship between the President and the FCC, the State Department letter is significant in several respects. First, the reference to "the United States Government's constitutional and statutory responsibilities" indicates that the prescribed procedures flow, in part, from the President's inherent constitutional powers, since all the FCC's responsibilities presumably are derived solely from

63. See Trooboff, *supra* note 50, at 30.

64. 1966 Hearings, *supra* note 49, at 406-407.

65. (1) Comsat shall circulate copies of proposed agenda for meetings of the ICSC to the Department of State, the Director of Telecommunications Management, and the Federal Communications Commission at least four weeks before the matters on the agenda are to be considered by the ICSC. Amendments to agenda shall be circulated as soon as possible.

(2) The Department will inform Comsat of those items on which prior United States Government instructions to Comsat are required and Comsat shall not take action on such agenda items until it receives United States Government instruction. As to such items, Comsat shall furnish pertinent documentation as soon as possible.

(3) On important matters Comsat should advise the Department of State, the Director of Telecommunications Management, and the Federal Communications Commission of the position it desires to take well before the time such matters are placed on the agenda and as soon as meaningful considerations can be given by the agencies, so as to allow interagency consultation in arriving at a determination of instructions to Comsat.

(4) In cases where Comsat is informed that consideration of certain matters by the FCC is required, Comsat's submission to the FCC shall be in such form, and with sufficient supporting data, so that the United States Government instructions may provide the flexibility required in discussion in the ICSC.

(5) Ordinarily, the United States Government instructions will be transmitted to Comsat by the Department of State following expeditious and non-public consideration by appropriate Government agencies. The agreed procedures do not preclude, however, that the FCC, after consultation with the Department of State and the DTM, may find it appropriate and desirable from time to time to hold public hearings relating to matters on which Comsat is to be instructed.

(6) In any event, after appropriate governmental procedures have been accomplished, the Department of State will, taking into account the respective government agency determinations, issue instructions to Comsat as to the position it should take on the agenda items which require United States Government instructions.

statutory provisions. Second, coordination of government supervision through the State Department implies that as the President's representative, it shall be ultimately responsible for the instructions to Comsat concerning its activities as a member of Intelsat. The reference in the letter to FCC public hearings seems to confirm this point with regard to most matters, perhaps including hardware acquisitions, for even in situations where the FCC initiates public hearings, the final paragraph of the procedure specifies that the State Department shall make the final decision with regard to Comsat's instructions.⁶⁶

Pacific Satellite Service for Defense Department—Simultaneously with the TRW controversy, the Executive Branch, FCC, and Comsat became embroiled in a dispute over a different aspect of the Satellite Act. Section 201(a)(6) directs the President to "insure . . . appropriate utilization of the communications satellite system for general governmental purposes . . ." and Sections 305(a)(2)(b) and 305(b)(4) authorize Comsat to contract with the United States Government for the services of the communications satellite system. Under these provisions the National Aeronautics and Space Administration (NASA) had contracted in the fall of 1965 with Comsat and several other Intelsat members for extensive satellite communication services to support the Apollo Program.⁶⁷ The FCC, without delay or difficulty, granted the appropriate construction permit.⁶⁸ Several months later the Department of Defense (DOD) sought from Comsat, thirty satellite voice circuits between the United States and locations in Japan, Thailand and the Philippines, to be provided initially by the same Pacific satellite which would provide part of the service to NASA.⁶⁹ Immediately after DOD's initial inquiries, Comsat undertook to negotiate with appropriate communication entities in these three countries suitable service agreements for handling the requested circuits. Several American

66. This interpretation is consistent with important portions of the Satellite Act's legislative history dealing with FCC jurisdiction over Comsat participation in satellite system decisions involving other nations. See statement of FCC Chairman Newton Minow set forth in note 91, *infra*, and statement made by Senator Pastore, Senate floor manager of the Satellite Act, in 108 CONG. REC. 16870 (1962).

67. For brief summary of events associated with the NASA-Comsat communications service arrangement see 1966 Hearings, *supra* note 49, at 476-479.

68. 1 F.C.C. 2d 1216 (1965).

69. For comprehensive description of all the events surrounding this service request see H.R. REP. NO. 2318, 89th Cong., 2d Sess. 23-56 (1966); H.R. REP. NO. 613, 90th Cong., 1st Sess. 6-11 (1967).

international common carriers, who traditionally met the government's commercial circuit requirements and who claimed that they were entitled to be the exclusive middlemen between Comsat's communication satellite facilities and commercial end users, objected to the proposed direct service arrangement between Comsat and DOD. The carriers' formal protests to various government officials resulted in DOD requesting competitive bids for the service. However, even on the basis of such competition DOD awarded the communications service contract to Comsat.

As the controversy developed to a crescendo, the FCC issued a memorandum opinion that barred Comsat from serving the Government directly unless necessary due to "unique and exceptional circumstances" or inadequate service offerings by the other carriers.⁷⁰ In effect, the opinion required the Executive Branch to justify to the FCC's satisfaction, the need for direct dealing. During the ensuing acrimonious debate with the Government, DTM stated that Congress intended the Executive Branch to be the sole judge of the need for direct dealings with Comsat and that there was no limitation regarding unique or exceptional circumstances. The Director also threatened to contest the matter before Congress and the courts if necessary.⁷¹

Within the next several months one of the Government's major motivations for contracting directly with Comsat dissolved with the U.S. carriers' offer to reduce their overall rate structure for government communications via cable and satellite. This set the scene for a compromise that was embodied in the FCC's final opinion on the matter issued on February 1, 1967.⁷² The FCC acknowledged that Comsat could provide communication services to the Government

70. This FCC determination, although clearly intended to dispose of the immediate issues surrounding DOD's thirty circuit service request, was made in connection with a FCC Notice of Inquiry issued in June of 1965 that had been the subject of voluminous comment by all segments of the communications industry. Notice of Inquiry Regarding Telecommunication Services, 30 Fed. Reg. 8018 (1965). This inquiry was intended to resolve alleged ambiguities in the Satellite Act's provisions pertaining to the types of entities that could acquire communication services directly from Comsat. See short history of proceeding in Throop, *supra* note 7, at 28-32.

The first official notice of the FCC's position in this matter was issued in the wake of rumors that DOD would soon award the communications service contract to Comsat. FCC Public Notice, 4 F.C.C. 2d 12 (1966). Presumably after the Commission was able to resolve internal disputes over the details of its controversial "declaration of principle," the complete decision was released. In the Matter of Authorized Entities and Authorized Users Under the Communications Satellite Act of 1962, 4 F.C.C. 2d 421-436 (1966). Also see H.R. REP. NO. 2318, 89th Cong., 2d Sess. 36-39 (1966).

71. See 1966 Hearings, *supra* note 49, at 304-309.

directly if required in the national interest, and that such national interest determinations are peculiarly within the province of the Executive Branch.⁷³ In recognition of the special duties in the telecommunications field flowing from Executive Order 11191, issued on January 4, 1965,⁷⁴ DTM was designated the focal point for the judgment of the executive agencies' need for such direct dealings in the national interest. Thus, the criteria of "national interest" eclipsed the earlier threshold requirement of "unique and exceptional circumstances" and the FCC conceded that the criteria should be applied primarily by DTM rather than by the Commission.

Another aspect of the controversy that sheds light on the FCC-President relationship concerns Comsat's and the American carriers' contacts with foreign governments. As noted earlier, Comsat negotiated service arrangements with governmental entities in Japan, Thailand, and the Philippines. At least one carrier sent the Department of State a written complaint stating that in concluding these arrangements, Comsat misused its position as the designated entity under the Satellite Act by jeopardizing the carriers' established franchises in such foreign countries.⁷⁵ A related problem was thrust upon the FCC by an alleged exclusive agreement between RCA Communications, Inc. (RCAC) and the Government of Thailand that ostensibly imperiled the Commission's ability to implement its final order in the controversy.⁷⁶

In the first situation, the carrier's appeal solely to the State Department concerning Comsat's alleged misconduct can be regarded as further evidence of the President's dominance with respect to foreign matters, but it may be argued the FCC's responses to the RCAC-Thailand agreement reflect that there are certain limits in which the FCC will defer to the President. In the latter situation, the FCC thrust itself into the foreign relationship by virtue of its jurisdiction over RCAC under the Communications Act, and declared

72. *In re* Authorized Entities and Authorized Users Under the Communications Satellite Act of 1962, 6 F.C.C. 2d 593-596 (1967).

73. *Id.* at 594. For legal precedent see *Bendix Aviation Corp. v. United States*, 272 F.2d 533, 542 (D.C. Cir. 1959) *cert. denied*, 361 U.S. 965 (1960).

74. 3 C.F.R. 273 (1964-1965 Comp.). The Order specifically authorized the DTM and the Secretary of State to provide assistance to the President in connection with the discharge of his major responsibilities under Section 201(a) of the Satellite Act.

75. See 1966 *Hearings*, *supra* note 49, at 386-388, 658-661, 678-683.

76. *Hearings on Government Use of Satellite Communications—1967 Before the Subcomm. on Military Operations of the House Comm. on Government Operations*, 90th Cong., 1st Sess., at 13-14, 37-42, 104-105 (1967).

that it was against FCC policy for a common carrier to make exclusive arrangements with foreign governments. However, the significance of the FCC's actions with respect to the limits of presidential power may be minimized by the fact that such actions promoted the Executive Branch's interests, as a communications user, as well as FCC policies on competition in foreign commerce. Further, congressional testimony relative to this dispute makes it clear that the Department of State is still dominant in these matters.⁷⁷

Intelsat Procurement—The evolution of procurement policies and procedures associated with the development and fabrication of Intelsat equipment provides an additional illustration of the inter-relationships between foreign policy and foreign commerce regulation. The Satellite Act directs the FCC to insure competition in the procurement of the satellite system hardware and to encourage small business participation in such procurements.⁷⁸ This directive prompted the FCC to enact regulations providing for full disclosure of proposed procurements, freedom of entry to all bidders and opportunities to contest Comsat activities inconsistent with the regulations' objectives.⁷⁹ In harmony with the Comsat Act, these administrative provisions seek to facilitate eventual public realization of the full cost savings inherent in the new satellite technology by insuring procurement of the lowest cost equipment.⁸⁰

The Interim Arrangements negotiated and signed by the Executive Branch also call for effective competition in satellite hardware and development contracts, but the objectives underlying Intelsat's procurement policies are not fully congruent with those supporting the Satellite Act's charge to the FCC. The arrangements are designed to stimulate members' industrial sectors to participate directly in the establishment of the system by allocating procurements in proportion

77. *Id.* at 62-65; 1966 *Hearings*, *supra* note 49, at 392-393; H.R. REP. NO. 2318, 89th Cong., 2d Sess. 80-81 (1966). For sample of supporting legislative history concerning the Satellite Act see *Hearings on H.R. 10115 and 10138 Before the House Comm. on Interstate and Foreign Commerce*, 87th Cong., 2d Sess. 418 (1962).

78. Section 201(c)(1) provides in part that the FCC shall: insure effective competition, including the use of competitive bidding where appropriate, in the procurement by the corporation and communications common carriers of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations.

79. FCC Regs., 47 C.F.R. §§ 25.151-25.201 (1965).

80. 1966 *Hearings*, *supra* note 49, at 700-701; *Hearings on Antitrust Problems of the Space Satellite Communications System Before The Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 282-291 (1962).

to each member's ownership quota, provided the bids from countries are equal in terms of timely performance, quality, and cost.⁸¹ Conflict with the FCC mandate arises in part from the fact that cost comparisons are based on C.I.F. prices, although the Satellite Act does not reflect a congressional intent to have system procurements immune from American import duties.⁸² Thus, if the import tariffs are not waived on the ground that importation into the United States is primarily for the purpose of export or eventual destruction,⁸³ *i.e.*, launch into outer space, system costs will be increased by the tariff increment not included in the bid evaluations.

Another major problem arises from the inherent difficulty of objectively evaluating, solely on a time, price and quality basis, competing hardware and development proposals involving complex technology almost beyond the state of the art. The inadequacies of simple, objective evaluation criteria permit Intelsat members to resort to subjective criteria without fear of openly breaching faith with the basic tenets of the Interim Arrangements. This subjects a United States contractor of the risk of being "black-balled" by influential Intelsat members having aerospace industries wishing to share in sales to Intelsat, if the contractor seeks to facilitate a low bid by doing all the work "in-house" or sharing it with other domestic

81. Article X of the Agreement provides:

In considering contracts and in exercising their other responsibilities, the Committee and the Corporation as manager shall be guided by the need to design, develop and procure the best equipment and services at the best price for the most efficient conduct and operation of the space segment. When proposals or tenders are determined to be comparable in terms of quality, c.i.f. price and timely performance, the Committee and the Corporation as manager shall also seek to ensure that contracts are so distributed that equipment is designed, developed and procured in the States whose Governments are Parties to this Agreement in approximate proportion to the respective quotas of their corresponding signatories to the Special Agreement; provided that such design, development and procurement are not contrary to the joint interests of the Parties to this Agreement and the signatories to the Special Agreement. The Committee and the Corporation as manager shall also seek to ensure that the foregoing principles are applied with respect to major sub-contracts to the extent that this can be accomplished without impairing the responsibility of the prime contractor for the performance of work under the contract.

82. The impact of the C.I.F. clause must be evaluated primarily in terms of American tariff regulations. The United States, with respect to other Intelsat members, has a monopoly in satellite launch vehicles and supporting facilities, and thus it is essential that all Intelsat procurements of flight hardware be delivered eventually in the United States, *e.g.*, Cape Kennedy, for final acceptance tests and launch. For examples of applicable custom duties see Tariff Act of 1930, *as amended*, 19 U.S.C. § 1202, Schedule 6, pts. 5, 6 (subpt. C, item 694.50) (1964).

83. See Tariff Act of 1930, *as amended*, 19 U.S.C. §§ 1202 (Schedule 8, pt. 5, subpart C), 1311, 1313, 1553 (1964).

companies capable of applying highly efficient production and design techniques. Consequently, the major American contractors, the only ones normally capable of achieving minimum costs, protect themselves from subjective rejection by relying heavily upon subcontractors from many Intelsat countries.⁸⁴ The undeniable impact of the customs waiver and the multi-national biases engrafted upon the Intelsat procurement policies consistently with the dictates of foreign policy, is a higher system cost.⁸⁵

Possible conflict between FCC and Intelsat procurement provisions has been minimized by an FCC decision to exclude Intelsat procurements from the ambit of its relevant regulations; primarily on the grounds that detailed procurement policies recently adopted by the ICSC are effectively similar.⁸⁶ However, as noted above, Intelsat practices puissantly foster foreign participation even though it may temper the full impact of competition contemplated under the Satellite Act. Apparently the FCC has restrained the exercise of its congressionally delegated powers in deference to the foreign policy objectives implemented by the President in the Interim Arrangements pursuant to the Satellite Act and presidential responsibilities under the Constitution.⁸⁷

A synthesis of the FCC-presidential relationships evolving from the above-mentioned problems discloses that maximum FCC regulation of international communications has been tempered in the interest of presidentially defined foreign policy and national security objectives. Such deference has a parallel in the international gas transmission and

84. See 1966 Hearings, *supra* note 49, at 325, 343-344, 505-506; Johnsen, *Intelsat 4 Program Stresses International Subcontracting*, 89 AVIATION WEEK & SPACE TECHNOLOGY 52-59 (July 1, 1968); Johnsen, *Communications Satellites Future Clouded by Politics*, *Competiton*, 90 AVIATION WEEK & SPACE TECHNOLOGY 298-299 (June 2, 1969).

85. See 35 Telecommunications Reports 11 (March 10, 1969).

86. Memorandum Opinion and Order Regarding Procurement of Equipment, Materials, and Services, 33 FED. REG. 3638 (Mar. 1, 1968). The opinion stated in part:

The Commission has carefully reviewed the INTELSAT regulations and has consulted the other interested agencies with respect to them. See section 201(c)(1). We find that the INTELSAT regulations, which parallel our own in major respects, adequately provide for insuring effective competition in procurement for the global communications satellite system.

87. The Department of State has further stated that reliance upon these regulations as to procurements by or on behalf of INTELSAT will further the foreign policy interests of the United States. We have therefore concluded that reliance on the INTELSAT procurement regulations constitutes an appropriate means of carrying out our statutory responsibilities under section 201(c)(1) of the Communications Satellite Act of 1962 and that the public interest would be served by amending our procurement rule (Part 25) accordingly.

Id.

air commerce fields, but, unlike that observed by the CAB, it has not been definitively established that FCC regulation of international telecommunications via satellite must be subservient to conflicting foreign policy and national security considerations, or be restrained in the absence of conflict. Although there are many forces tending to institutionalize this pattern of "discreet deference," several issues may arise that will force re-evaluation and perhaps substantial modification.

The Intelsat III, Pacific service for DOD and Intelsat procurement problems all involved communication satellite facilities primarily dedicated to international telecommunication services terminating or originating in the United States. Aerospace technology portends distinctly different service configurations that will generate issues requiring a greater definition of the jurisdictional interfaces between the FCC and the Executive Branch than has evolved from past problems. This year will witness the placement of a satellite over the Indian Ocean dedicated exclusively to non-U.S. communications traffic,⁸⁸ and other satellites will soon handle only United States domestic traffic.⁸⁹

Little justification can be given for FCC cognizance over Comsat's participation in an Intelsat Indian Ocean satellite, even in the absence of foreign policy and national security limitations, and yet the FCC may seek to influence Comsat actions with respect to such a satellite on the basis of the Satellite Act's inexplicit language.⁹⁰ Certainly

88. COMMUNICATIONS SATELLITE CORPORATION, REPORT TO THE PRESIDENT AND THE CONGRESS FOR THE CALENDAR YEAR 1968 12-13 (1969).

89. Cf. PRESIDENT'S TASK FORCE ON COMMUNICATIONS POLICY, FINAL REPORT, ch. 5, at 17-46 (Dec. 7, 1968) [Hereinafter cited as TASK FORCE REPORT]. For short discussion of the multifarious issues surrounding the establishment of domestic communications via satellite see Throop, *supra* note 7, at 32-39.

90. Section 201(c) of the Satellite Act contains several "open-ended" charges to the FCC.

(6) approve technical characteristics of the operational communications satellite system to be employed by the corporation . . .

(9) insure that no substantial additions are made by the corporation . . . with respect to facilities of the system . . . unless such additions are required in the public interest, convenience, and necessity;

Section 103 of the Satellite Act defines "communications satellite system" broadly "as a system of communications satellites in space . . ." with no geographic limitation. Thus, it can be argued that the implementation of (6) and (9) requires the FCC to have jurisdiction over *all* communication satellites owned and operated by Comsat, in whole or in part, pursuant to its powers and objectives set forth in the Satellite Act. Commissioner Cox, in his concurring statement on the FCC's June 22, 1966, approval of the Intelsat III construction program [4 F.C.C. 2d 8, 11 (1966)], alluded to such jurisdiction as premised on more than just protection of the communications users. He asserted that the FCC also had responsibility to insure that the investors in Comsat are protected from corporate activities that, because of alternative methods

under the evolving guidelines, enunciated foreign policy or national security objectives would deserve priority over the implementation of FCC regulatory policies. Further, it is questionable whether FCC jurisdiction could be asserted even in support of State Department policies disclosed pursuant to Section 201(c)(3) since that section envisions an extension of communications from the United States to foreign destinations.⁹¹ In juxtaposition, Comsat's activities with respect to domestic communications via satellite should logically be regulated almost exclusively by the FCC,⁹² even if domestic satellite facilities are coordinated with Intelsat in a manner that involves foreign policy considerations with regard to procurement, technical design, and operation.⁹³ The design, development, and operation of domestic satellites will impact mainly upon this nation, and the FCC must insure proper integration of all domestic telecommunication facilities in conformity with national policy recently discerned by the courts.⁹⁴ Thus it seems essential that in the area of domestic satellite communication the FCC should be largely relieved of the restrictions normally imposed upon its regulatory actions concerning communication satellites as a result of foreign policy objectives. Of course, any limitations associated with national security considerations would appear to transcend the domestic-international distinction, especially during periods of national emergency.⁹⁵

of achieving the prompt development of an adequate global satellite system, are not required to be undertaken.

91. Newton Minow, in testimony as FCC Chairman before the Senate Committee on Foreign Relations, construed Section 201(c)(3) in the following manner:

Furthermore, section 201(c)(3) is concerned only with communication between this country and a foreign point. But the foreign nation, on the other hand, will undoubtedly wish to communicate via the satellite with many other nations, other than the United States. So on this ground, also, the question may not be the narrow one presented under section 201(c)(3), but rather a much broader one, calling for participation and decision by many countries.

If that is the case, it is unlikely that the determination as to the need for such new service will be made pursuant to section 214(d) proceedings [of the Communications Act]. It will be made at the international conference table where the U.S. position will be formulated under the supervision of the President, to the extent he deems appropriate in the interest of our national and foreign policy.

Hearings on H.R. 11040—Communications Satellite Act of 1962—Before the Senate Comm. on Foreign Relations, 87th Cong., 2d Sess. 21 (1962). See also *Hearings on H.R. 10115 and 10138 Before the House Comm. on Interstate and Foreign Commerce*, 87th Cong., 2d Sess. 476, 490-96 (1962).

92. But see TASK FORCE REPORT, *supra* note 89, ch. 5, at 39-45.

93. *Id.* at 37-39; BUSINESS WEEK 50 (June 14, 1969); 35 Telecommunications Reports 30 (June 23, 1969).

94. *United States v. Southwestern Cable Co.*, 392 U.S. 157, 167-69 (1968); *General Telephone Company of California v. F.C.C.*, No. 22,106 (D.C. Cir., April 30, 1969).

95. Communications Act § 606, 47 U.S.C. 606 (1964).

V. SIGNIFICANCE OF DIVERSITY IN REGULATORY RESPONSIBILITY
CONCERNING VARIOUS MODES OF FOREIGN COMMERCE, AND A
PROPOSAL

The foregoing analysis of government supervision in three areas of foreign commerce discloses diverse patterns for blending foreign relations and national security objectives, and the "regulation" of foreign commerce. There is no compelling rationale for these differences, but certainly they reflect the consequences of departmentalization without established procedures for cross-fertilization.⁹⁶ However, there appear to be some logical justifications for distinguishing between the regulation of international transmission of natural gas and the regulation of air routes and international communications. Airlines and communications facilities are frequently governmental or quasi governmental enterprises, except in the United States.⁹⁷ In contrast, private or quasi private entities dominate the gas industry in the United States as well as in the adjacent foreign countries. Foreign governments' proprietary involvement in commercial air transport and communications logically demands presidential cognizance in conformity with constitutional responsibilities for foreign affairs, since actions taken by private American entities frequently may have a direct impact upon this country's relationships with other governments.⁹⁸ International natural gas transmission would only indirectly concern foreign governments.

Differences between the relationship involved in the regulation of air routes and those concerning international communications must be explained by reference to the government's actual decision-making process in each area, if it is assumed they reflect more than the evolution of relationships at different times and places. Admittedly air route decisions are strongly premised on foreign policy considerations and this facilitates insulation from judicial review. However, the broad deference accorded to the President may rest in large part on the fact that he participates personally in the decision-making process and places his personal approval on the end result.⁹⁹ However,

96. The significant problems that may develop when several Government agencies each adopt a Ptolemaic approach concerning the regulation of interrelated activities are considered in Note, *Coordination of Intermodal Transportation*, 69 COLUM. L. REV. 247-276 (1969).

97. *Hearings on Antitrust Problems of the Space Satellite Communications System Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 300 (1962).

98. See *Hearings on H.R. 10115 and 10138 Before the House Comm. on Interstate and Foreign Commerce*, 87th Cong., 2d Sess. 421 (1962).

99. Cf. note 20 *supra*. The concept of conditioning such deference on the personal

notwithstanding the direct mandates of the Satellite Act, the President apparently assumes little direct jurisdiction over the important decisions concerning international communications and the activities of Intelsat. These responsibilities have been delegated by somewhat indefinite mandates, to the Director of Telecommunications Management and the Department of State. DTM and the Office of Telecommunications in the State Department have very limited resources in terms of funds, expertise and close contacts with the President.¹⁰⁰ Thus, the President's personal prestige seldom comes into play; and the reduced effectiveness of the delegated discharge of his responsibilities under the Satellite Act fosters jurisdictional in-roads by the FCC, whose vital responsibilities concerning the communications industry have had years of recognition. The Commission has actually exercised decision-making powers which significantly affect foreign policy, and this practice has occurred so often that staff members may actually perceive their responsibilities as encompassing such functions.¹⁰¹ The FCC's *de facto* extensive cognizance over matters involving foreign policy is questioned only when FCC actions are injected into the limelight and eventually come to the attention of the President or his close advisers. This occurred in both the TRW and DOD controversies. In such cases the FCC relinquished jurisdiction on an *ad hoc* basis, and perhaps on even a permanent basis,¹⁰² where the Executive Branch evidenced a determination to become an effective force in a disputed area. The unfortunate aspect is that such jurisdictional realignments have resulted only after substantial embarrassment within the Government as well as with foreign entities. Such a catalyst for a change is inefficient, highly costly in national prestige and unnecessary.

The Satellite Act recognizes the important foreign policy implications of communications via satellite and gives broad responsibilities to various governmental entities to insure that the nation's interests are projected properly. Unfortunately the inadequacies of the instrumentalities charged with these

involvement of a very high level official is inherent to the doctrine of Executive Privilege. See *Bendix Aviation Corp. v. FCC*, 272 F.2d 533, 543-544 (D.C. Cir. 1959).

100. TASK FORCE REPORT, *supra* note 89, ch. 9, at 10-23; H.R. REP. NO. 2318, 89th Cong., 2d Sess. 78 (1966).

101. E.g., 1966 *Hearings*, *supra* note 49, at 731-735.

102. The concessions made to DTM by the FCC in its final opinion on the Authorized User question (see note 70 *supra*) presumably cannot be withdrawn unilaterally since they were explicitly premised on interpretations of other legal delegations within the government and thus would be subject to administrative *stare decisis*.

responsibilities have frequently impaired the effective promotion of such interests.¹⁰³ Statutory emphasis is given to detailed rate-making, construction permit approvals and operating licenses that are processed by a broad variety of staff with varying competence and diverse disciplines. More importantly, the initiative on nearly all of these matters is assumed by interested parties, *i.e.*, the industry.¹⁰⁴ Thus requests for program approvals etc., are designed and timed frequently so that it is extremely difficult to insure effective regulation. The DOD and TRW incidents are classic examples of how this industry initiative makes it extremely difficult for the government to assume a creative role in formulating different approaches.

Governmental interest in some areas could perhaps be better served by augmenting existing regulatory policies with greater utilization of highly skilled planners of national repute who as individuals understand and appreciate the interplay of the numerous disciplines involved in industries such as communications, *e.g.*, technology, economics, and politics. If such planners are employed and given sufficient authorization to participate with their industrial counterparts in the basic formulation of major programs, then the Government will be in a better position to perceive the full scope and impact of the development programs of particular industry activities and to project governmental policies at stages in the development of programs where such policies can be efficiently and effectively implemented. Regulated international industries are becoming acclimated to the presence of the Government as an essential party in major program decisions, especially those involving foreign relations. It is now time to evaluate critically the special benefits that might flow from the utilization of such "participation" planners and the various approaches for their integration into the present regulatory regimes.¹⁰⁵ The FCC and DTM have repeatedly requested funds to vitalize the planning functions of their respective entities with extensive technology studies,¹⁰⁶ but such pleas, to have optimum

103. See generally *Behind the Communications Mess*, BUSINESS WEEK 66-74 (Nov. 18, 1967); TASK FORCE REPORT, *supra* note 89, ch. 8, at 26-28 and ch. 9, at 10-27; H.R. REP. NO. 2318, 89th Cong., 2d Sess. 77-81 (1966); H.R. REP. NO. 613, 90th Cong., 1st Sess. 11-14 (1967).

104. But see Satellite Act § 201(c) (3 & 10), 47 U.S.C. 721(c) (3 & 10) (1964); 1966 *Hearings*, *supra* note 49, at 721-722.

105. For example of U.S. Government efforts along this line see Electric Power Reliability Policy Statement, FPC News Release No. 16160 (June 25, 1969).

106. 35 Telecommunications Reports 4 (June 30, 1969); 35 Telecommunications Reports 22-23 (June 23, 1969); 35 Telecommunications Reports 5-7 (June 9, 1969); 34 Telecommunications

impact, must be projected as part of a dynamic regulatory scheme hallmarked by enlightened cooperation, surveillance and guidance. The jurisdictional relationships between government entities, *e.g.*, FCC, President and DOD, and the scope of their respective responsibilities under the Satellite Act have been, and will continue to be, core issues in the development of commercial telecommunications via satellite. The recent history of such development evidences a preoccupation with quantitative aspects of powers and duties, but the expected future merits and requires a creative focus on the procedures for insuring a quality of government involvement that will most effectively promote the nation's interests.¹⁰⁷

Reports 14-17, (April 1, 1968). *Also see* TASK FORCE REPORT, *supra* note 89, ch. 9, at 12-23, 26-39.

107. For most recent detailed study of procedural as well as substantive aspects of implementing governmental interests see TASK FORCE REPORT, *supra* note 89, chs. 8 & 9.

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March 30, 1970

Dear Mr. McGannon:

The President has asked that I reply to your letter of March 16 enclosing your statement before the Federal Communications Commission on the role of television in 1970.

The questions you raised in your statement are certainly very significant and will be of increasing concern in the years ahead. We appreciate your sending your views to us, since the issues involved will require a wide exchange of viewpoints in order to be resolved. I would also urge that you call this matter to the attention of the new Office of Telecommunications Policy when it is established.

Sincerely,

Clay T. Whitehead
Special Assistant to the President

Mr. Donald H. McGannon
President
Westinghouse Broadcasting Company, Inc.
90 Park Avenue
New York, New York 10016

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:jm/ed

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WESTINGHOUSE BROADCASTING COMPANY INC

DONALD H McGANNON
President
and
Chairman of the Board

March 16, 1970

PF

The Honorable Richard M. Nixon
President of the United States
The White House
Washington, D. C.

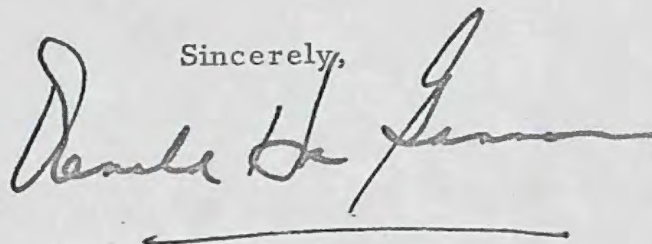
Dear Mr. President:

Dean Burch, Chairman of the Federal Communications Commission, last Friday, March 13, conducted a meeting of the full Commission for a presentation of views on various subjects.

In the process of this meeting, I submitted the enclosed statement for consideration of the Commission in the further role and function of television in 1970 and I wanted to bring it to your attention.

Kindest regards.

Sincerely,



/jm

07A +

March 30, 1970

Dear Mr. Barber:

Thank you for your letter of March 13th and the information on the CATV system proposed for Columbia, Maryland.

I think you are quite right in recognizing that communications will have a profound impact on our society in the not too distant future. I very much enjoyed reading through the materials you sent, and will call them to the attention of the new Office of Telecommunications Policy which is to be established next month. I believe the new office would be a far better forum for you and for the government in discussing these questions. I would, therefore, urge you to contact the new office after it is established.

Sincerely,

Clay T. Whitehead
Special Assistant to the President

Mr. Arthur W. Barber
President
The Institute for Politics and Planning
1411 K Street, N. W.
Washington, D. C.

cc: Mr. Whitehead
Central Files

CTWhitehead:jm/ed

Thursday 3/5/70

3:10 Called Arthur Barber's secretary and advised that Mr. Whitehead is swamped -- we would appreciate it if he would send a letter to Mr. Whitehead explaining what they are doing.

347-7413

Ltr recd 3/16/70

Tuesday

3/3/70

3/4 ?

2:50

Arthur Barber, Institute for Politics and Planning, called. He would like to drop by this week and tell you about a cable system they are building in Columbia, Maryland which he thinks you would be very interested in hearing about. He suggested Thursday morning.

*Swamped -
write letter -*

347-7413

THE INSTITUTE FOR POLITICS AND PLANNING

1411 K STREET, N.W.
SUITE 500
WASHINGTON, D. C. 20005

(202) 347-7413

March 13, 1970

Mr. Clay T. Whitehead
Special Assistant to the President
Room 110
Executive Office Building
Pennsylvania Avenue, N.W.
Washington, D. C.

Dear Mr. Whitehead:

I am writing to you to request a meeting to discuss the possibilities of some Federal leadership or assistance to the cities to translate the potential education, social, and political benefits of cable communications into reality.

Broad band communications in our cities could change our society more in the next 20 years than the automobile has in the past 20 years. While cable systems are being built in our large cities, the educational, political, and social benefits which could be achieved are passing unnoticed. City governments, educators, and the police should be informed and assisted. It is here that I think a limited program of federal assistance to the cities would pay very great benefits, would be politically attractive because it would serve all elements of the society, and would be consistent with the Nixon policy of decentralizing the federal power. Brooklyn, New York, Washington, D.C., and Tampa, Florida have all included such programs in their plans, but have been unable to move.

Furthermore, if the city is wise and informed, it can achieve these benefits at no cost to the city government---it does require, however, an informed and wise city government.

I am enclosing a copy of the plan for such a system which we are presently managing for Columbia, Maryland. The basic communication system should be operational by Christmas of this year. I believe a very modest effort of assistance to the cities could result in major social and political benefits soon.

- 2 -

If you would like to pursue this, give me a call or I can drop in for a chat.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur Barber".

Arthur W. Barber
President

Enclosure

AB:dbl

A REPORT TO THE COLUMBIA COMMUNITY ANTENNA SYSTEMS, INC.

ON

THE DESIRABILITY AND FEASIBILITY OF ESTABLISHING A CABLE
SYSTEM IN COLUMBIA, MARYLAND

Institute for Politics and Planning
1411 K. Street, N.W. - Suite 500
Washington, D.C. 20005

January 12, 1970

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I. INTRODUCTION

This report outlines a program to provide the citizens of Columbia with a unique, multi-purpose communications system by the fall of 1970. It will be the most advanced urban communications system in the country; at the same time, it will be based on sound financial planning.

The objective of this report is to describe the organization, financing, and construction of a multi-channel cable communications system and to examine the options available to management in creating the system.

Cable television represents a revolution in urban communications for the home and business. The reason is simple, yet fundamental: 25 television channels can now be brought into the home for a fee of \$5 a month, while the telephone company provides one voice channel for about \$7 a month. The capacity of the cable makes it possible to provide thousands of times more information into the home--and at less cost. (Appendix I is a fact sheet on cable systems currently installed in the United States).

At present few have begun to understand how this potential can be used. Like the designer who fashioned the first automobile in the form of a "horseless carriage," we tend to see the potential in the framework of our past experience rather than in terms of the future.

Columbia, because it was designed for the future, is an excellent place to bring into being the fascinating possibilities of this media.

The strategy of this report is based on the cultivation of three related, but somewhat independent markets:

1. A basic system capable of delivering improved reception of conventional television programs for home entertainment. This basic system would be expected to meet expenses through home subscriber fees.

2. An additional part of the system available for use by local public service groups to do original programming: educational, cultural, civic. Financial support for this type of programming, which can be extremely economical, may come from local groups themselves, from a share of the profits of the operation of the total system, from local advertising, or from any combination of these.

3. A third division of the system to be used for special services to industry and business, including fire and security systems, computer utility, and reference services.

This strategy of dividing the system into markets enables management to minimize financial risks while at the same time to capitalize on future markets and services.

At this time, we cannot predict--and we believe no one can-- what will be the response from local community groups and from industry. We do know that in other communities, very interesting programs with great viewer appeal have been produced by community groups at very low cost. We know also that there are many companies today with equipment in the laboratory which cannot be marketed because of the high cost of installing the communications equipment

required. We believe the existence of a cable facility can be a strong attraction to industrial innovators. With the rising interest in local self-expression, Columbia's community programming effort could lead the way for experiments in many other cities.

* * *

This report is based on certain assumptions. The first assumption is that plans for the evolution and growth of Columbia will be achieved.

Second, it is assumed that the plan for cable television and its use in Columbia will be discussed and reviewed with representative community groups, the Board of Education, and other community and county officials where appropriate. From these discussions, decisions regarding participation in and use of the cable system will emerge.

Third, it is assumed that if the plan appears economically sound, the Rouse Company will support the program and encourage the cooperation of builders and tenants regarding matters such as easement and construction rights.

The fourth assumption is that a legal basis for the creation of the company will be established with the Howard County Commissioners or whatever appropriate political body is necessary.

The time has come to apply the promise of cable communications to the practical needs of the city. There is a growing awareness among city planners, businessmen and community leaders that the

concept of cable communications could mean a real breakthrough in the present urban stalemate.

With a plan for a communications system which is both imaginative and financially sound, Columbia could take the lead in a new kind of design for the future. This is an enterprise responsive to the broadest vision of this unique community.

II. NUMBER AND ALLOCATION OF CHANNELS

The design of the system depends primarily on the requirements of channel capacity and the direction of transmission. We will consider the general design of the system in two categories:

1) one-way transmission, providing television and FM radio service to the home, generally for entertainment and education and available to all subscribers, and 2) two-way transmission, providing selective use of cable for specialized industrial, business and educational services.

Based on program requirements discussed below, we recommend a minimum of 24 channels for all residential areas, to deliver the services covered by one-way transmission, and a minimum of 12 additional channels of two-way transmission, connecting village centers, the industrial park, and the office buildings at the Center (see Telesystems Distribution System Specifications, Appendix II).

1. Standard Television and FM Radio Service to the Home One-Way Transmission, 24 Channels

Channel requirements for standard television coverage of the home viewing market can be considered under the following categories:

- a. Carriage of TV network signals 15 channels
(including FM radio)
 - b. Channels available for local TV
programming (including channels. 9 channels
for education)
- 24 channels

The allocation of one-way channels will reflect--to the maximum extent feasible--the programming desires of the community.

Carriage of Network Signals -

The present FCC ruling requires that a CATV system must carry all standard network signals available in the area. At present, this consists of the following television stations:

WMAR	Baltimore	Channel 2	CBS
WRC	Washington	Channel 4	NBC
WTTG	Washington	Channel 5	independent
WMAL	Washington	Channel 7	ABC
WTOP	Washington	Channel 9	CBS
WBAL	Baltimore	Channel 11	NBC
WJZ	Baltimore	Channel 13	ABC
WFAN	Washington	Channel 14	independent
WDCA	Washington	Channel 20	independent
WMET	Baltimore	Channel 24	independent
WETA	Washington	Channel 26	NET
	Washington	Channel 50	not yet broadcasting
WMPB	Baltimore	Channel 67	NET
WGAL	Lancaster	Channel 8	NBC
WHAG	Hagerstown	Channel 25	NBC

In addition to these channels, the system must provide a band from 88 to 108 megahertz for FM radio transmission which can be used for both the retransmission of FM broadcasts and for local FM radio origination.

Channels Available for Local Television Programming, 9 Channels -

The Columbia system should allocate nine channels for local programming, including education. These channels could be operated by the colleges, the local school and/or library, and by community groups. The programs can be either locally originated programs or films or video tapes chosen to serve the Columbia audience.

As a matter of policy, the cable system will, during the initial period, assist in the creation of a studio that can be used by community groups.

Several channels of the system should be available to the public school system for general educational broadcasting to the community. The public library might share in the use of this facility. These channels could be used by the schools for their TV programming to the schools and community, not only during school hours, but in late afternoons and evening. Assigning TV watching of programs selected for homework by the teacher will be possible. Not only schools, but local groups might present some of the many excellent films and taped instructional television materials which can be borrowed or rented at very reasonable cost.

In offering facilities to the public school system, special considerations are involved because of the fact that the Board of Education serves the entire county. While the original cable facilities will be available only within the community of Columbia itself, Columbia should be willing to provide feed to adjacent schools in the county under arrangements worked out with the Howard County authorities.

We recommend that an additional channel be offered to each of the colleges operating in the community. The colleges would be responsible for arranging programming which could include not only educational programs for the public, but also entertainment and programs of civic interest.

2. Public and Industrial Development, Two-Way Transmission, 12 Channels

The Columbia cable system will be designed for the future and should, therefore, allocate a portion of its capacity to new creative services which the low cost of cable communications makes possible. Some of these concepts involve the use of video channels for television such as security surveillance; other new concepts involve non-television services such as the use of computer utility. The objective of cable policy in this area will be to bring into Columbia as many new and imaginative cable services as possible,

consistent with economic feasibility and the desires of the community. Because of the unexplored market potential for such new services, it is difficult to assign definite channel allocations. Tentatively, we suggest 12 two-way channels, with provision for adding 12 more if the demand warrants this. [Note: the cost of 8 channels would be almost the same cost as 12 channels. For practical purposes, 12 is the lowest number of channels that is economically feasible.]

These selective-use channels would, for the initial period at least, be available in the city center, the schools, and industrial areas as specified in the Telesystems Report. (See Appendix II).

Two-way cable transmission can be adapted to a whole new field of private, revenue-producing services. A profit-making television station, for example, could be organized to offer a variety of services and programs to subscribers. Channels and partial channels can be leased to private entrepreneurs to develop their own new services. A central computer could be set up on a leased channel and could be made available to customers on a time-sharing basis at a cost saving over conventional computer service. An entrepreneur could lease cable space for this purpose, agree to pay the system a fixed rate and/or a percentage of the profits, and create a new concept in computer utilities. A businessman could lease cable facilities to offer electronic alarm security

systems economically to customers. Another could provide micro-film reference service to specialized markets. Computer-aided educational instruction in manual skills, technical fields, and professional areas may also become a new consumer market through cable facilities. In cases where these services involve data channels or non-video electronic signals, only a small percentage of the capacity of one video channel is used. Specifically, 600 data lines can be carried on one video channel. Therefore, a great variety of such non-television services could be delivered by allocating just two or three video channels to such services.

New uses for video channels as retail sales media are also developing rapidly. For example, Woodward & Lothrop may wish to lease an entire video channel for merchandising.

The fact that a cable system exists in Columbia will also make it a logical resource for the expansion of public communications services, particularly the schools and colleges. In general, these new services require two-way transmission facilities so that students can use computer terminals in their homes, - businessmen in their offices, etc. The cable can also provide administrative links between police departments, schools, and public offices.

The Impact of Cable on Columbia Growth

The existence of the cable facility will undoubtedly be a drawing card to attract residents and industry to Columbia.

Innovators in both hardware and software communications uses will

find the climate of Columbia conducive to trying out new ideas, and the system should be built to capitalize on this. We recommend that 3 channels be set aside solely for experimentation by Columbia industries.

The relative economic advantage of building a 36-channel capacity system rather than the minimum 24 for such new and imaginative services should be considered, not only in order to attract new business in itself, but also in the light of the publicity and public relations "capital" which may incidentally be generated for Columbia.

It should be emphasized that the costs of installing different capacity systems do not vary in direct proportion to the number of channels. In general, the trenching costs and the cable costs do not change, only the costs of the amplifiers changes as the number of channels change. A doubling of the number of channels, therefore, might represent only a 15%-20% increase in total system costs.

* * *

In summary, we estimate that the programming needs of the community in the immediate period require a minimum system capacity of 24 channels of one-way service to the home, and 12 additional two-way channels to connect principal schools, colleges, offices and industrial centers.

We recommend that the system be built expandable to a 36-channel, one-way capacity to meet the probable market demand

within three to five years, to 24 channels of two-way transmission, and for possible expansion of the two-way system to the home if the market demand justifies this development.

III. PERFORMANCE SPECIFICATIONS OF THE SYSTEM

Specifications for the cable system can be considered under three headings:

- The Community Antenna, or "head end"
- The Cable Distribution System
- Studios for Local Origination

Below are listed general performance specifications for each of these three areas. Detailed technical specifications will be found in the Telesystems Report in Appendix II.

The Community Antenna

The antenna should be designed to bring in a sound picture for each of the 15 commercial and education channels the system is required to rebroadcast, plus clear FM radio signals.

The antenna should be located at such a place where it will be able to receive signals well, yet where it will not interfere unduly with life in the community, i.e. it cannot be an eyesore.

The Cable Distribution System

The original design of the cable should allow for the transmission of 24 channels to each residence in the town of Columbia. The basic plan to provide such service to all residents must be in existence from the inception of the cable system, and should

provide for service in new areas within 6 months of occupancy, if possible.

At least 12 two-way channels connecting the major industrial areas, each village center and each school in Columbia must be provided.

Studios for Local Origination

The main requirement is that the equipment should be suitable for both mobile and studio work. The basic equipment should include 2 cameras, a video switch, a special effects generator (for split screen, dissolves, etc.), a video tape machine, a modulator/demodulator (used mostly in conjunction with the head end), a film chain (to allow the showing of movies, locally made film clips, slides, etc.), and other basic studio equipment such as lenses, lights, tripods and microphones.

A physical location should be provided from which studio shows can be made. The original location need not be sophisticated: an unused storeroom, gymnasium, or other spare space can be made to serve. The location, however, must be identified as a "feed" location in planning the installation of the system.

IV. FINANCIAL FEASIBILITY

The ultimate feasibility of the cable system will depend upon its financial feasibility. If the system can be built and operated at a profit within a reasonable amount of time it should be built; if the system will require long term subsidies to remain in operation it probably should not be built. As has been indicated above, cable television is capable of providing a vast number of new and exciting services. It is premature, however, to plan for these new services until they can be justified economically. In this section we will discuss the financial feasibility of the basic system we recommend be installed in Columbia, Maryland.

The main variables which determine the financial feasibility of the cable system are the cost of installing the cables and the income that can be derived from the system. The major cost in installing the system lies in the laying of the cables from the community antenna or the studio to the individual houses. The least expensive way of laying cables is to string them along telephone poles. The cost per mile in installing cables on telephone poles runs about \$3,000.00. Laying cables in the ground, as will be done in Columbia is more expensive and the cost can vary significantly. It is estimated that in areas currently built up in Columbia, the cost of laying cable will be approximately \$10,000.00 per mile whereas in those areas not yet developed, the cost will be on the order of \$7,000.00 to \$8,000.00 per mile.

The head end system for the Columbia cable system, which comprises the antenna and the original amplification equipment, will cost about \$34,000.00

The only remaining capital variable is the cost of the studio for local origination. Cost of studios can vary from \$6,000 to \$100,000 depending upon the equipment and needs of the user. We believe that in order to facilitate local origination on the cable in Columbia, the original system should be prepared to assist in the creation of a studio. This studio need not be overly sophisticated, we believe a \$20,000 to \$25,000 studio would be sufficient for the initial needs. A low cost studio equipment set can be purchased for as little as \$6,000. A medium-good quality set can be purchased for between \$20,000 and \$25,000.

As we will see in Section VI, the cost of further studio needs will probably be born by the users, whether they be industrial or local origination. Yearly operating costs of the basic system should run approximately 10% of the capital costs.

Traditionally, the income of the cable system depends entirely on subscription fees from viewers. For the first several years, it is anticipated that this will continue to be true in Columbia. As the system develops, and as industrial use of the system increases, more and more of the systems income could conceivably come from the services or advertising revenue to the system. These sources of income, however, are long range. The

immediate sources of income come from the subscribers, which in turn is a function of how many people can be convinced that the services offered by the cable system are worth the price the system charges.

It should be clear from the above discussion, that in order to maximize the profitability of the cable system, it should be installed in such a manner as to minimize the installation cost and maximize the number of potential subscribers.

Attached are simplified proforma operating statements for the Columbia cable system. These operating statements are based on the limited data available at this time. Data sources and assumptions follow:

- Data on the market size is taken from the projections "Columbia Dwelling Units Occupied", November, 1969. (The figures used in the proforma statements are lagged 6 months from the November projections).
- Installation costs are taken from the Telesystems figures enclosed in Peter Sarfaty's letter to the IPP dated December 23, 1969.
- Connection fee is assumed at \$25.00 per connection.
- Subscriber fees are assumed at \$5.00 per month per subscriber. (The \$5.00 provides one television connection. We recommend that a minimum fee of \$0.50 per additional set per month be charged for additional connections in a

given home. No income is assumed from that additional source in these proforma statements.)

- Operating costs are assumed to be 10% of the capital costs, and are assumed to grow at a rate of 3% per annum.
- Only those areas currently being developed are included in the calculations.
- The two proforma statements differ only in the percent penetration (sign-up) assumed.

This simplified proforma is basically a cash flow statement. No calculations are made concerning depreciation and taxes. More detailed proformas including these items should be forthcoming from the Telesystems Reports. If they are not, the IPP will make them up in the next phase of the program.

From the data in the proforma statements, which cover approximately 50% of the ultimate total area to be built up in Columbia, and only 33% of the ultimate total population of Columbia, it can be seen that, even assuming the lower penetration rates, and assuming no income other than that from subscriptions, a cable television system for Columbia, Maryland will be a profitable venture.

PROFORMA OPERATING STATEMENT (1)

STATISTICS	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Market Size (DU's)										
Wilde Lake Village		1886	2312	2405	2405	2405	2405	2405	2405	2405
Harper's Choice Village		1315	1969	2237	2255	2255	2255	2255	2255	2255
Oakland Mills Village		466	1789	2820	3118	3118	3118	3118	3118	3118
Long Reach Village		----	1050	2792	3301	3301	3301	3301	3301	3301
TOTAL		3667	7120	10254	11079	11079	11079	11079	11079	11079
% Penetration		0.40	0.60	0.70	0.75	0.75	0.75	0.75	0.75	0.75
Connections/period		1467	2805	2906	1131	----	----	----	----	----
Cummulative Connections		1467	4272	7178	8309	8309	8309	8309	8309	8309
INCOME (000's omitted)										
Connections		\$37.7	70.1	72.6	28.3	----	----	----	----	----
Monthly Fees		\$88.0	256.3	430.7	498.5	498.5	498.5	498.5	498.5	498.5
TOTAL		\$125.7	326.4	503.3	526.8	498.5	498.5	498.5	498.5	498.5
EXPENSES										
Capital Costs										
Plant & Equip.		\$663	137							
IPP		\$86	12							
TOTAL										
Operating Costs		66.3	80.0	82.4	84.9	87.4	90.0	92.6	95.4	98.2
Cash Flow/period		(\$749)	(89.6)	246.4	420.9	441.9	411.1	408.5	405.9	403.1
Cummulative Cash Flow		(\$749)	(838.6)	(592.2)	(171.3)	270.6	681.7	1090.2	1496.1	1899.2

2299.5

PROFORMA OPERATING STATEMENT (2)

STATISTICS	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Market Size (DU's)										
Wilde Lake Village	1886	2312	2405	2405	2405	2405	2405	2405	2405	2405
Harper's Choice Village	1315	1969	2237	2255	2255	2255	2255	2255	2255	2255
Oakland Mills Village	466	1789	2820	3118	3118	3118	3118	3118	3118	3118
Long Reach Village	-----	1050	2792	3301	3301	3301	3301	3301	3301	3301
TOTAL	3667	7120	10254	11079	11079	11079	11079	11079	11079	11079
% Penetration	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.75	0.75
Connections/period	1467	1737	1923	966	554	554	554	554	554	-----
Cummulative Connections	1467	3204	5127	6093	6647	7201	7755	8309	8309	8309
INCOME (000's omitted)										
Connections	\$37.7	43.4	48.1	24.2	13.9	13.9	13.9	13.9	13.9	-----
Monthly Fees	\$88.0	192.2	307.6	365.6	398.8	432.1	465.3	498.5	498.5	498.5
TOTAL	\$125.7	235.6	355.7	389.8	412.7	446.0	479.2	512.4	498.5	498.5
EXPENSES										
Capital Costs										
Plant & Equip.	\$663	137								
IPP	\$86	12								
TOTAL										
Operating Costs	66.3	80.0	82.4	84.9	87.4	90.0	92.6	95.4	98.2	98.2
Cash Flow/period	(\$749)	(89.6)	155.6	273.3	304.9	325.3	356.0	386.6	417.0	400.3
Cummulative Cash Flow	(\$749)	(838.6)	(683)	(409.7)	(104.8)	220.5	576.5	963.1	1380.1	1780.4

V. LEGAL FEASIBILITY

The main issues to be considered when looking at the legal environment in which the Columbia Cable System is being built are the following:

1. The current status of cable television operation in Howard County and the state of Maryland;
2. The effect of FCC regulations on the operation of a cable system in Columbia, Maryland;
3. The future policy which should be pursued by the Columbia Communications System regarding the legal status of a cable system in Columbia, Maryland;
4. The effect that a cameraman's union or other operator's union would have on the operation of a cable system in Columbia, Maryland.

Let us look at each of these four points in turn.

1. The current status in Howard County and the state of Maryland -

It is the opinion of Thomas A. Garland, Council to the Rouse Company, that there are no county or state laws inhibiting the right of any group to establish a cable television system in Columbia, Maryland. Appendix III is a copy of a memorandum to Peter Sarfaty from Thomas A. Garland giving this opinion. The implications of this situation will be discussed in Section 3 below on future policy.

2. FCC regulations -

While the overall impact of the FCC regulations on cable television systems is not clear, in large part because that policy has not been fully formulated, the FCC does provide some policy guidelines on the establishment and operation of a cable television system. These guidelines are:

Location of Proposed CATV System

Where a proposed CATV operation is in the Grade A contour of any TV in a top-100 market, no distant signals can be carried without FCC approval. Where Grade B contours of any station in the top-100 markets overlap, ad hoc consideration is given upon petition. Grade A contours are approximately 35 miles from transmitters. Grade B contours are approximately 70 miles from transmitters. Stations falling within Grade B contours or better are listed on page 5.

Carriage of Signals

Except where limited channel capacity would preclude carriage of an independent or ETV, and there is substantial duplication of programming by a higher priority station, or there are duplicating stations of equal priority, a CATV must carry, at the request of a TV station, without degradation of quality and on the same channel only, the signals of all TV stations within whose Grade B contour or better contours, the CATV operates, and the signals of certain translators in the following priority:

1) principal city contour, 2) grade A contour, 3) grade B contour, 4) 100-watt or higher powered translator operating in the CATV's community. (No transmitters are operating in the Columbia area).

If, because of the exceptions, all TVs are not carried, the CATV must provide a switch so customers can receive the TVs on their home antenna.

Financial Reporting and Rate Regulation

There are no FCC requirements on CATV stations regarding financial reports or rate regulations or licensing.

Program Origination

CATV systems with more than 3,500 subscribers will be required to provide live, original programming as of January 1, 1971. The

FCC requires CATV systems to have cable casting equipment and to originate programs, which may include films and tapes from outside sources.

The FCC does not regulate hours of origination, categories of programming, or the type of equipment or technical standards to be used.

Advertising

CATV systems may present paid advertising during "natural breaks" in the program originations.

Equal Time, Fairness, and Sponsorship Identification Rules

FCC rulings applicable to broadcast programs are also in effect regarding cable-originated programs.

The Columbia Communications System will abide by all of the FCC guidelines.

3. Future policy -

In the legal area, future plans for a cable system all revolve around the issue of regulation. Legislation regarding cable television throughout the United States today is in turmoil. In general, until recently there has been no legislation. Many states have no laws and allow cable television systems to operate with basically no regulation whereas in other states, such as Nevada and Connecticut, the regulation is so stringent that the construction and operation of cable systems is virtually prohibited. In those states where there is currently no regulation, and Maryland is one of these, it should be assumed that there will be regulations shortly, and therefore all efforts should be made to influence the

character of that regulation so that it best suits the interest of the citizens of the state. If we accept that local control over cable systems is the ideal towards which we should aim, then regulations should take place at the local level. In other words, regulation by the county is preferable to regulation by the state, and regulation by the state is preferable to regulation by the federal government through the FCC. Appendix III is a Bill enacted by the state of California governing community antenna television in that state. The effect of that bill is to give the city or county governing bodies the right to control and regulate cable television in their areas. We recommend the enactment in the state of Maryland of a bill similar to that of the state of California. Appendix III is a Bill passed by the city of Aurora, Colorado, relating to community antenna television systems in that city. This bill stipulates the procedures that must be followed by a cable operator in installing and operating a cable system in the city of Aurora, Colorado. We recommend the use of such a bill, with changes, as a model for a bill to be passed by Howard County regulating the operation of cable system in Howard County.

The only certain thing with regard to regulation of cable television in Howard County is that it will come. The Columbia Communications System should, therefore, prepare itself for regulation and do its utmost to help the county and the state develop regulation which would be the most beneficial to the citizens of that state.

We recommend, therefore, that as soon as a decision to go ahead with the construction of a cable system for Columbia, Maryland is made, contact be made with officials of Howard County in order to develop the most appropriate regulatory legislation for cable television within the county.

4. Unions which might effect the operation of cable systems in Columbia -

It should be stated right from the start that the chances of having a significant amount of locally-originated programs would be diminished considerably, if not eliminated altogether, if the local originators had to pay union wages for cameramen and other operators. The presence of unionized labor in the more commercial aspects of the cable system such as the computer utility and other industrial uses would probably not be harmful to the finances of the system. Clearly, no decisions can be made about the possible role which union people would play in the function of the cable system. All we can do here is emphasize the impact that a requirement to use union labor would have upon the probability of getting good locally-originated programming.

VI. ORGANIZATIONAL STRUCTURE

The previous sections have described factors which must be taken into consideration in designing an institutional and organizational structure for an effective cable system in Columbia, Maryland. The purpose of this section is to describe the structure itself.

This section is organized as follows:

- a) A brief description of the overall organization
- b) The Hardware Company
- c) The Community Group

The Overall Organization

The cable communication system which we recommend should perform three basic functions:

1. It should provide programming for home entertainment both through the retransmission of existing TV programs and the transmission of locally-originated programs.
2. In addition to home entertainment, the system should develop among industrial and public clients, uses for the cable such as security systems and computer utilities.
3. It should install and maintain the cable system for the transmission of these materials.

To carry out these functions, we recommend the creation of an entity we shall refer to as the "Hardware Company." (This might be the Columbia Community Antenna Systems). This entity would do the following:

1. Assume full and complete responsibility for installing and maintaining the cable, for retransmission of broadcasts, and for the collection of fees for services.

2. Agree to assign nine channels to a community group for use by the schools, colleges, and local groups for original programming. Columbia Cable should indicate a willingness to assist in the creation of a studio for local programming.

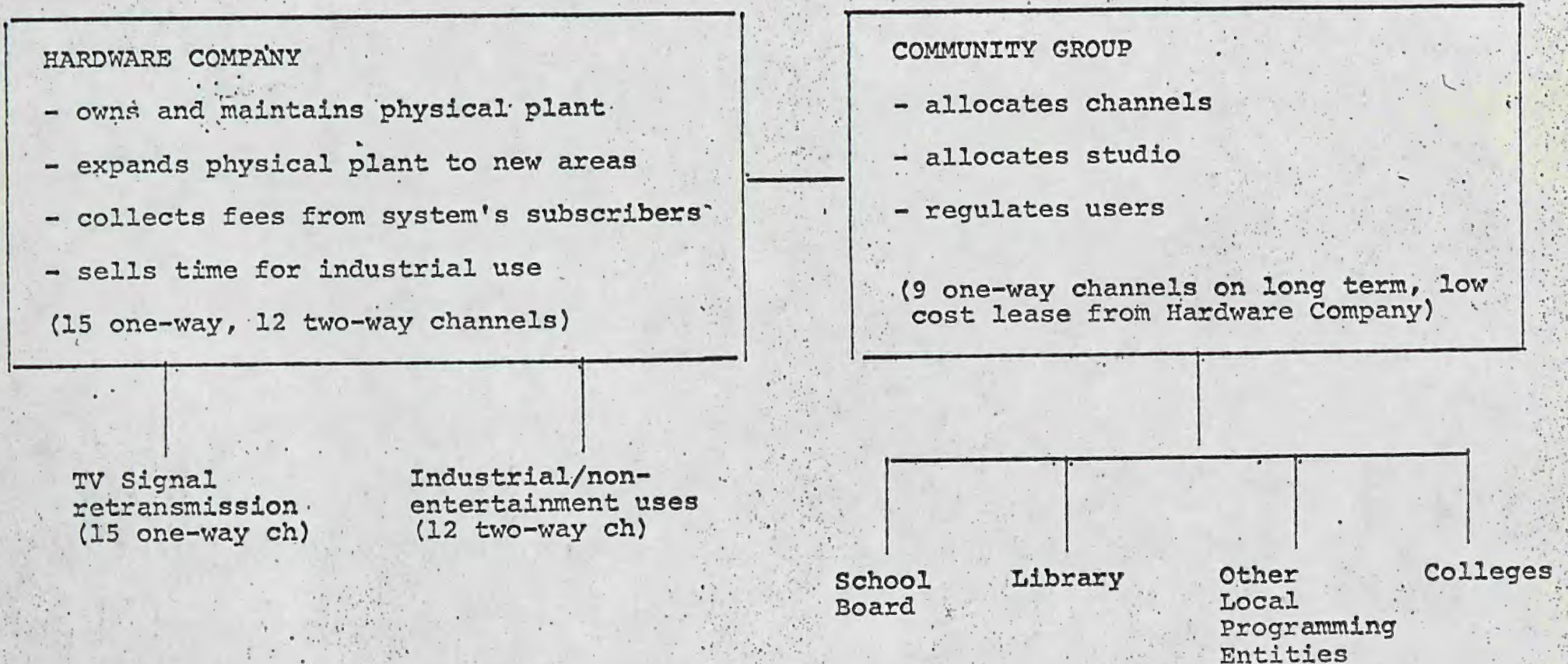
3. Initiate a program to interest industrialists in offering on the Columbia cable new cable services beyond home entertainment.

The Columbia Communications System can be thought of as a 3-part system: 1) a large company providing the facility for transmitting programs in much the same way as the electric company is a facility transmitting electricity; 2) a community group which would allocate and regulate those channels being used for home entertainment and education purposes; and 3) a large group of unrelated users contracting with the utility company or the community group for the use of one or more channels. Some of these users will be very highly organized companies providing services such as a computer utility, whereas others will be very informal, such as ad hoc volunteer groups providing original local programming.

The accompanying chart illustrates the organizational design.

Before the Hardware Company and the Community Group are described in detail, it is important to make the distinction

CHART OF THE RECOMMENDED ORGANIZATIONAL STRUCTURE



between their respective areas of responsibility. Simply stated, the Hardware Company is the operating body for the entire system; the Community Group is the policy-making body for the nine local origination channels. The former is a business and requires financial organization; the latter is a quasi-public body and should be responsive to the needs and desires of the people of Columbia. While it is not inconceivable that the two functions be combined in the same body, we recommend that they be considered separate and organized independently.

The Hardware Company

The functions of the Hardware Company will be:

- to install and maintain the physical plant
- to expand the physical plant to accomodate new areas
- to promote and sell the services of the cable system
- to collect the fees from the subscribers of the system
- to negotiate for use of the channel for industrial and other non-home entertainment use.

The Hardware Company should maximize its profits in the performance of these functions.

Under current tax regulations, it would be financially quixotic for the Hardware Company to be owned by any other than a straight profit-making group. The profit maker may or may not be limited return, but in any case, it should be a profit maker. The question now becomes who should own it: an outside entrepreneur, an

existing public utility, or a local company. Each is feasible, and each has advantages and disadvantages.

Outside Entrepreneur - Ownership by an outside entrepreneur (a traditional cable franchiser) has the advantage of being able to deliver a system to Columbia on a turnkey basis and at no capital expense to Columbia; the disadvantages of not being a local company, thereby depriving Columbia of the profit flow and at least some control over the system, and of having a basic bias in favor of the traditional ways of managing cable systems. It should be emphasized that Columbia, Maryland, because of its unique characteristics, would be in a position to extract significant "concessions" from a traditional cable franchiser. The concessions would relate to control of the cable, and perhaps even to the profit flow--Columbia could demand that a certain percent of the gross receipts be donated by the franchiser to the citizens of Columbia through the Columbia Association or some other entity such as the Community Group. These would be concessions, however, granted unwillingly by the franchiser (unwillingly because they reduce the franchiser's profit) and thus the Columbia-franchiser relationship would necessarily be that of a buyer-seller, not that of a community, as would be the case if the cable system were locally owned and controlled.

Existing Public Utility - Ownership by an existing public utility (The C&P Telephone Company) has all the advantages and disadvantages of ownership by an outside entrepreneur (franchiser).

plus the added disadvantage of subjecting the system to FCC regulations. The main disadvantage of being subject to FCC regulations lies in the rate structure which the FCC requires the public utilities to charge the cable user for the use of the cable. FCC rate structures are generally significantly higher than those which would result from either of the other two forms of ownership considered.

Local Company - Ownership by a local company has the advantage of keeping control within the community, the cable operation objectives being more likely to be consistent with the overall strategy for the development of Columbia. Local ownership has the disadvantage of having to raise the capital for the installation, and, not being expert in the field of cable, having to buy its expertise.

Each of the above three possibilities presents a pole-- it should be clear that variations and combinations of each are possible. For example, it might be desirable to have an outside entrepreneur with no knowledge of cable (i.e. not a traditional franchiser) put up the capital, and to have the maintenance work done by a private subcontractor.

We believe that in the interest of maintaining the greatest control over the system within Columbia, Maryland, all efforts should be made to organize the ownership of the Hardware Company

as close to that described above under the heading "Local Company" as possible.

This would mean ownership either by The Rouse Company or one of its affiliates, probably the CCAS, or by a group put together by Rouse. There is no reason, however, why shares of the company cannot be put up for sale to citizens of Columbia. In fact, it might be an interesting way of further involving the community in the communications system.

The Community Group

The Community Group should be a policy-making group with responsibility to:

- allocate the 9 channels available for local origination between interested parties
- make policy for and arrange for joint use of studios and equipment that are to be used by two or more groups
- establish rates for use of studios and television time when appropriate
- adjudicate any disputes regarding public acceptance of programs that are transmitted over the 9 community-use channels.

One of the most attractive selling points of a cable system for Columbia will be the feature of community programming. It is to encourage this activity that we recommend designing the system with nine channels set aside for local origination.

The main task of the Community Group will be to stimulate creative uses of this public resource.

Channel Allocation

As an incentive to potential users, the Community Group might grant 3 to 5 year leases at little or no cost to groups interested in providing local originated programs. The leases should contain cancellation clauses based on the percent utilization of the channel. Since the market for providing locally originated services is totally unknown, the leases should be made to be very favorable to those who would venture into this experiment. There should be no a priori decisions made on what should be done with the profits, if any, that would come from a channel providing locally originated programming. The Community Group should allow the local origination entrepreneur sufficient time to determine whether his operations will be profitable and only then decide if they should charge the entrepreneur for the use of the cable or require a percentage of his profits.

In the case of the channels allocated to the School Board, the colleges, and other local organizations, the Community Group's main task will be to ensure that the channels are used effectively. The Community Group, in effect, should work with the users in developing programs to be offered over the cable.

Studio Allocation

In the beginning, the scarce commodity in the cable system will be the studio. As the various users develop their knowledge of their needs and of the potential audience for their programs,

they will be able to plan for the acquisition of their own studios. In the meantime, however, they will have to depend upon the one studio which belongs to the entire system. The Community Group will have to allocate the use of the studio among the users, i.e. the local originators. It will be up to the Community Group to develop criteria for the allocation of studio time.

Contents Regulation

All disputes regarding the legality, morality and ethics of the content of the programming over the cable will be brought to the Community Group for settlement. It will be the responsibility of the Community Group to devise a set of standards by which all such disputes will be judged. Given the current inconclusiveness of regulation of cable systems by state and federal bodies, it will be very much to the Columbia Cable System's advantage to have an effective, straight-forward public regulatory policy which it follows.

Composition of the Community Group

Given the varied nature of the task that the Community Group must perform and given the close tie-in which it must have with the community itself, the Community Group should represent a broad spectrum of the residents of Columbia, as well as representatives of the School Board, the village councils, the colleges, the churches, and the Columbia Association. It should be a group that changes with some regularity.

We cannot foresee how the community may choose to use this facility, but we believe it is in the best interest of the cable system to let these different individuals and groups meet with each other, learn together, and formulate their own organization. If, as the cable system progresses, the Community Group itself decides that it should change the nature of its own role in the system, it may do so in accordance with its bylaws.

Our intention at this time is to design a system which is capable of performing well those tasks which are essential to the creation of an effective cable system but which is also flexible enough to change as the needs of the system change in the future.

VII. SUMMARY, RECOMMENDATIONS, AND SCHEDULE

Summary

1. The installation and operation of a profitable community communications system appears feasible in Columbia, Maryland, based on the data available at this time.
2. A locally owned, locally controlled system will best serve the interests and needs of the citizens of Columbia.
3. There are no current federal, state or local laws which inhibit the establishment of a communications system in Columbia.
4. The initial system should provide for at least 24 channels of one-way broadcasting capable of being received in all Columbia residences, and at least 12 channels of two-way service connecting the village centers, the industrial parks, and the school system. The system should be so designed that future expansion can be carried out at the lowest possible cost.

Recommendations

1. That the Columbia Community Antenna Systems, Inc. proceed with a program to put into operation at the earliest possible date a locally owned and controlled community communications system such as is described in this report.
2. That detailed plans, performance requirements, specifications and schedules--both institutional and technical--be drawn up toward that end.

3. That at the earliest reasonable time, the Columbia Community Antenna Systems, Inc. consult with the Howard County Commissioners to negotiate franchise for the cable system.

4. That 24 one-way channels be made available to all Columbia residences and buildings, both public and private. Of these, 15 channels must be used for rebroadcasting existing commercial and educational TV signals. We recommend that the remaining nine channels be assigned to a Community Group for subsequent allocation to schools, libraries, and local origination groups.

5. The 12 two-way channels connect the schools, colleges, village centers and industrial areas for special services such as computer utilities, surveillance and educational services.

6. That the Hardware Company provide a continuing, modest technical assistance program for both local groups interested in using the cable for original programming, and for groups interested in developing new services--technical or institutional-- on the cable.

Schedule

15 Feb.	Columbia/IPP Contract signed
15 March	Draft RFP prepared
15 March	Meeting with Howard County officials
25 March	Bidders Conference held
6 April	RFPs sent out
15 April	Franchise awarded by Howard County

20 April	Meeting with potential business/industrial users
18 May	Bids due
1 June.	Contract awarded, construction begins
15 June	Conference of interested business/industrial users
1 August	Assist in implementation of the Hardware Company
15 August	Assist in the establishment of the Community Group
Sept. through March	Assist and advise the Hardware Company on policies and procedures Assist and advise the Community Group on policies and procedures Assist local citizens set up local origination programming Assist and advise business/industrial users on use of cable
1 Dec.	Cable begins operation

APPENDICES

Largest U.S. CATV Systems

(Those with 10,000 & more subscribers.
as of Feb. 7, 1969)

System	Subscribers
San Diego, Cal.	35,429
Allentown, Pa.	21,680
Altoona, Pa.	21,500
Harrisburg, Pa.	20,707
Elmira, N.Y.	20,000
New York, N.Y. (upper Manhattan)	20,000
Williamsport, Pa.	20,000
Cumberland, Md.	19,000
Melbourne, Fla.	16,678
San Francisco, Cal.	15,000
Atlantic City, N.J.	14,550
Huntsville, Ala.	14,000
Bakersfield, Cal. (outside city limits)	14,000
Santa Barbara, Cal.	14,000
Santa Cruz, Cal.	14,000
Parkersburg, W. Va.	14,000
Everett, Wash.	13,856
Florence, Ala.	13,200
Eugene, Ore.	13,000
Tyler, Tex.	12,950
Austin, Tex.	12,900
New York, N.Y. (lower Manhattan)	12,500
Toledo, O.	12,100
Los Angeles, Cal.	12,000
Colorado Springs, Colo.	12,000
Binghamton, N.Y.	12,000
Northampton, Pa.	12,000
Mahanoy City, Pa.	11,314
Lafayette, Ind.	11,107
Clarksburg, W. Va.	11,030
Bakersfield, Cal. (within city limits)	11,000
Macon, Ga.	11,000
Kingsport, Tenn.	11,000
Dubuque, Iowa	10,930
Pottsville, Pa.	10,800
Johnstown, Pa.	10,600
Gainesville, Fla.	10,500
Aberdeen, Wash.	10,500
Palm Desert, Cal.	10,400
Palm Springs, Cal.	10,300
Seattle, Wash. (United system)	10,300
York, Pa.	10,300
Salinas, Cal.	10,079
Ft. Walton Beach, Fla.	10,000
Utica, N.Y.	10,000
Lima, O.	10,000

Growth of the CATV Industry

(as of January 1 of each year)

Year	Operating Systems	Total Subscribers
1952	70	14,000
1953	150	30,000
1954	300	65,000
1955	400	150,000
1956	450	300,000
1957	500	350,000
1958	525	450,000
1959	560	550,000
1960	640	650,000
1961	700	725,000
1962	800	850,000
1963	1,000	950,000
1964	1,200	1,085,000
1965	1,325	1,275,000
1966	1,570	1,575,000
1967	1,770	2,100,000
1968	2,000	2,800,000
1969	2,260	3,600,000

Media Ownership of CATV Systems

Of the 2,300 systems operating as of Feb. 7, 1969,
following is by media ownership:

Media	Systems	%
Broadcaster	741	32.2
Phone	150	6.5
Newspaper-publishing	220	9.6

Channel Capacity Of Existing CATV Systems (As of Feb. 7, 1969)

Over 12	29
6-12	1,559
5 only	511
sub-5	61
Not available	140
Total	2,300

U.S. CATV Systems By Subscriber Size (As of Feb. 7, 1969)

Size by Subscribers	Systems
10,000 & more	46
5,000-9,999	111
2,500-4,999	237
1,000-2,499	506
500-999	400
250-499	338
100-249	281
50-99	79
sub-50	43
Not available	259
Total	2,300

CATV ORIGINATIONS

By Existing CATV Systems
(As of Feb. 7, 1969)

Current	
Automatic originations	825
Time & weather	797
News ticker	88
Music	61
Stock ticker	15
Emergency warning	13
Test Patterns	1
Local originations	282
Local live	197
Public service	69
VTR	39
Film	35
Local news	17
Educational	16
Movies	11
Local interviews	3
TOTAL*	883
Planned	
Automatic originations	142
Local originations	76
TOTAL*	156

*Figure isn't total of "automatic" & "local" originations
due to overlap in categories.

APPENDIX II

TELESYSTEMS TECHNICAL SPECIFICATIONS

APPENDIX III

LEGAL

- Garland Memorandum
- California Legislature Bill
- Aurora, Colorado Bill

December 23, 1969

TO: Peter Sarfaty

FROM: Thomas A. Garland

RE: CATV: our file #6000, agreement with IPP

In reply to your memo of December 15, 1969, regarding any requirement to secure a franchise from Howard County to establish a CATV system, please be advised that subsequent to my memorandum to Dick Anderson and you, dated September 26, 1969, (copy enclosed) I have confirmed that there is no present state regulation of CATV enterprises and that there is no current Howard County law providing for the granting of a franchise. I have an inquiry with the department of legislative reference in Annapolis, regarding any legislation which is now awaiting submission to the 1970 session of the Maryland legislature. I expect to have the fruits of that inquiry, if any, by the first of the year.

At the present time, it is my opinion that a CATV operation is required only to secure such standard utility franchises as rights-of-entry on public roads and public easements, building permits and similar minor licenses as are ordinarily required of any corporation such as gas and electric, telephone, etc. engaged in the general utility business. It is further my opinion, that absent some legislation, the appropriate way to approach the county is simply to comply with existing general laws.

Thomas A. Garland

TAG:pds

12/29/69 No pre file bills
according to Tom Garland

Assembly Bill No. 383

CHAPTER 172

*An act to amend Section 53066 of the Government Code,
relating to community antenna television.*

[Approved by Governor May 21, 1968. Filed with
Secretary of State May 22, 1968.]

The people of the State of California do enact as follows:

SECTION 1. Section 53066 of the Government Code is amended to read:

53066. Any city or county or city and county in the State of California may, pursuant to such provisions as may be prescribed by its governing body, authorize by franchise or license the construction of a community antenna television system. In connection therewith, the governing body may prescribe such rules and regulations as it deems advisable to protect the individual subscribers to the services of such community antenna television system. The award of the franchise or license may be made on the basis of quality of service, rates to the subscriber, income to the city, county or city and county, experience and financial responsibility of the applicant plus any other consideration that will safeguard the local public interest, rather than a cash auction bid. The maximum franchise fee for any franchise or license hereafter awarded pursuant to this section or pursuant to any ordinance adopted under authority of this section by any city or county or city and county shall be 5 percent of the grantee's gross receipts from its operations within such city or county or city and county. Any cable television franchise or license awarded by a city or county or city and county pursuant to this section may authorize the grantee thereof to place wires, conduits and appurtenances for the community antenna television system along or across such public streets, highways, alleys, public properties, or public easements of said city or county or city and county. Public easements, as used in this section, shall include but shall not be limited to any easement created by dedication to the city or county or city and county for public utility purposes or any other purpose whatsoever.

ORDINANCE NO. 68-24

A BILL

FOR AN ORDINANCE AMENDING TITLE VI OF THE CITY
CODE OF _____, BY ADDING THERETO A
NEW CHAPTER TO BE ENTITLED "COMMUNITY ANTENNA
TELEVISION SYSTEMS".

SPONSORS _____

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
THAT:

Section 1. That Title VI of the City Code of
entitled "Business Regulations" is hereby amended by adding a new
Chapter 17 thereto to be entitled "Community Antenna Television
Systems" to read as follows:

TITLE VI

BUSINESS REGULATIONS

Subject	Chapter
Occupational Tax.....	1
Alcoholic Beverages.....	2
Cabarets.....	3
Pawnbrokers.....	4
Going-Out-Of-Business Sales.....	5
Trailers and Trailer Courts.....	6
Billiard and Pool Halls.....	7
Christmas Tree Sales.....	8
Vehicles for Hire.....	9
Peddlers.....	10
Professional Bondsmen.....	11
Mechanical Amusement Devices.....	12
Cigarettes.....	13
Rooming Houses; Lodging Houses; Hotels....	14
Retail Sales and Use Tax.....	15
Massage Parlors; Health Therapy Schools; Health Therapy Establishments.....	16
COMMUNITY ANTENNA TELEVISION SYSTEMS.....	17

CHAPTER 17

COMMUNITY ANTENNA TELEVISION SYSTEMS

SECTION:

- 6-17-1: PUBLIC POLICY
- 6-17-2: DEFINITIONS
- 6-17-3: COUNCIL AUTHORITY
- 6-17-4: APPLICATION
- 6-17-5: COUNCIL ACTION
- 6-17-6: ORDINANCE PROVISIONS

6-17-1: PUBLIC POLICY: THE CITY COUNCIL HEREBY FINDS AND DETERMINES THAT THE ESTABLISHMENT OF A CATV SYSTEM IN THE CITY OF AURORA AND THE REGULATION AND CONTROL THEREOF IS NECESSARY FOR THE PROTECTION OF THE HEALTH, WELFARE AND SAFETY OF THE INHABITANTS OF THE CITY OF AURORA, AND THAT THE USE OF THE PUBLIC RIGHT-OF-WAYS AND THE REGULATION OF RATES TO BE CHARGED TO CONSUMERS IN THE CITY OF AURORA FOR SERVICES TO BE PROVIDED BY THE HOLDER OF A CERTIFICATE OF CONVENIENCE AND NECESSITY IS A MATTER OF LOCAL AND MUNICIPAL CONCERN.

6-17-2: DEFINITIONS: FOR THE PURPOSE OF THIS ORDINANCE, THE FOLLOWING TERMS, PHRASES, WORDS AND THEIR DERIVATIONS SHALL HAVE THE MEANING GIVEN HEREIN. WHEN NOT INCONSISTENT WITH THE CONTEXT, WORDS USED IN THE PRESENT TENSE INCLUDE THE FUTURE, WORDS IN THE PLURAL NUMBER INCLUDE THE SINGULAR NUMBER, AND WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL NUMBER. THE WORD "SHALL" IS ALWAYS MANDATORY AND NOT MERELY DIRECTORY.

- (A) CITY: THE WORD "CITY" IS THE CITY OF AURORA.
- (B) COUNCIL: THE WORD "COUNCIL" IS THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO.
- (C) COMMUNITY ANTENNA TELEVISION SYSTEM: THE TERM "COMMUNITY ANTENNA TELEVISION SYSTEM," HEREINAFTER REFERRED TO AS "CATV" OR "CATV SYSTEM," MEANS A SYSTEM OF COAXIAL CABLES OR OTHER ELECTRICAL CONDUCTORS AND EQUIPMENT USED OR TO BE USED PRIMARILY TO RECEIVE TELEVISION OR RADIO SIGNALS DIRECTLY OR INDIRECTLY OFF-THE-AIR OR TO ORIGINATE TELEVISION OR RADIO SIGNALS AND PROGRAMMING AND TRANSMIT THEM TO SUBSCRIBERS FOR A FEE.

(D) PERSON: THE WORD "PERSON" IS ANY PERSON, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, COMPANY OR ORGANIZATION OF ANY KIND.

(E) GRANTEE: THE WORD "GRANTEE" IS THE PERSON, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, COMPANY OR ORGANIZATION RECEIVING A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE A CATV SYSTEM WITHIN THE CITY OF AURORA.

(F) CERTIFICATE OF CONVENIENCE AND NECESSITY: THE TERM "CERTIFICATE OF CONVENIENCE AND NECESSITY" SHALL MEAN THE AUTHORITY TO OPERATE A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF AURORA IN COMPLIANCE WITH THE ORDINANCE GRANTING THAT AUTHORITY AND IS SOMETIMES REFERRED TO HEREIN AS "CERTIFICATE" OR AS "AUTHORITY."

6-17-3: COUNCIL AUTHORITY: THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, SHALL HAVE THE POWER TO GRANT, BY ORDINANCE, CERTIFICATES OF CONVENIENCE AND NECESSITY TO THOSE APPLICANTS DESIRING TO INSTALL A COMMUNITY ANTENNA TELEVISION SYSTEM WITHIN THE CITY OF AURORA.

6-17-4: APPLICATION: EVERY PERSON, PARTNERSHIP, CORPORATION OR ASSOCIATION DESIRING TO MAKE APPLICATION FOR THE INSTALLATION OF A CATV SYSTEM IN THE CITY OF AURORA SHALL FILE AN APPLICATION THEREFOR WITH THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, WHICH APPLICATION SHALL BECOME A PART OF ANY ORDINANCE GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY TO INSTALL A CATV SYSTEM IN THE CITY OF AURORA. EVERY APPLICATION SHALL CONTAIN, BUT NOT BE LIMITED TO, THE FOLLOWING MATTERS:

(A) THE BUSINESS FORM OF THE ORGANIZATION MAKING THE APPLICATION.

(B) IF THE APPLICANT IS A PARTNERSHIP OR LIMITED PARTNERSHIP, THE NAMES AND ADDRESSES OF ALL SUCH PARTNERS AND THEIR RESPECTIVE INTERESTS; IF A CORPORATION, THE NAMES AND ADDRESSES OF THE OFFICERS AND DIRECTORS OF THE CORPORATION AND THE NAMES OF ANY PERSONS HOLDING MORE THAN TEN PER CENT (10%) OF THE STOCK OF THE COMPANY, TOGETHER WITH THEIR PROPORTIONATE INTERESTS INDICATED.

- (C) A PROPOSED PLAN FOR THE INSTALLATION OF THE CATV SYSTEM INDICATING METHOD OF CONSTRUCTION, INCLUDING SPECIFICATIONS FOR DESIGN, INSTALLATION AND TECHNICAL OPERATION AND MAINTENANCE, FOR ANY CONTRACT OR ARRANGEMENT WITH ANY OTHER COMPANY, PERSON, FIRM OR CORPORATION FOR USE OF CABLES, POLES OR OTHER FACILITIES OF SUCH OTHER COMPANY, PERSON, FIRM OR CORPORATION.
- (D) A TIME-TABLE OF CONSTRUCTION FOLLOWING THE GRANTING OF THE CERTIFICATE OF CONVENIENCE AND NECESSITY.
- (E) THE PROPOSED CHARGES TO BE MADE TO CONSUMERS FOR INITIAL INSTALLATION AND MONTHLY RATES FOR SERVICE.
- (F) THE PROPOSED FEE TO BE PAID TO THE CITY.
- (G) THE FINANCIAL STATEMENT OF THE APPLICANT.
- (H) EVIDENCE OF ABILITY TO FURNISH WITHIN FIFTEEN (15) DAYS AFTER FINAL APPROVAL OF THE FEDERAL COMMUNICATION COMMISSION'S WAIVER OR AN AMENDMENT OF THE FEDERAL COMMUNICATION COMMISSION'S DIRECTIVE THAT WILL ALLOW IMPORTATION OF DISTANT SIGNALS, PROVIDED SUCH SIGNALS ARE THEN AVAILABLE OR HAVE BEEN ASSURED TO BE AVAILABLE WITHIN THIRTY (30) DAYS AFTER FINAL APPROVAL OF THE FEDERAL COMMUNICATION COMMISSION, A PERFORMANCE BOND TO ASSURE CONSTRUCTION AND A LIABILITY AND INDEMNIFICATION BOND FOR NOT LESS THAN TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) CONDITIONED UPON COMPLIANCE WITH ALL OF THE PROVISIONS OF THE ORDINANCE GRANTING THE CERTIFICATE OF CONVENIENCE AND NECESSITY AND EVIDENCE OF ABILITY TO FURNISH LIABILITY INSURANCE COVERAGE INSURING BOTH THE GRANTEE APPLICANT AND THE CITY AGAINST CLAIMS, DEMANDS OR LOSSES FOR INJURY TO THIRD PERSONS OR DAMAGE TO PROPERTY IN THE AMOUNTS OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) FOR INJURY TO ONE PERSON IN ONE OCCURRENCE, THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) FOR INJURY TO TWO (2) OR MORE PERSONS IN THE SAME OCCURRENCE AND ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) FOR PROPERTY DAMAGE IN ONE OCCURRENCE.
- (I) THE APPLICANT'S EXPERIENCE IN THE FIELD OF CATV SYSTEMS.
- (J) TOTAL CHANNEL CAPABILITY AND MINIMUM INITIAL CHANNEL SERVICE.

- (K) SERVICE IS TO BE PROVIDED FREE OF CHARGE TO SCHOOLS, MUNICIPAL GOVERNMENT AND EMERGENCY USE OF FACILITIES.
- (L) EVERY APPLICANT SHALL SUBMIT AT THE TIME OF THE APPLICATION, OR IF A CERTIFICATE OF CONVENIENCE AND NECESSITY IS GRANTED, THEN IMMEDIATELY UPON FINAL APPROVAL OF THE FEDERAL COMMUNICATION COMMISSION'S WAIVER OR A WAIVER OF THE FEDERAL COMMUNICATION COMMISSION'S DIRECTIVE THAT WILL ALLOW IMPORTATION OF DISTANT SIGNALS, PROVIDED SUCH SIGNALS ARE THEN AVAILABLE OR HAVE BEEN ASSURED TO BE AVAILABLE WITHIN THIRTY (30) DAYS AFTER FINAL APPROVAL OF THE FEDERAL COMMUNICATION COMMISSION, WHICHEVER OF ANY OF THE FOREGOING LAST OCCURS, THE APPLICANT'S CERTIFIED OR CASHIERS CHECK IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) DRAWN ON A COLORADO BANK AND PAYABLE TO THE CITY OF AURORA, SAID TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) TO BE PAID TO AND BECOME THE PROPERTY OF THE CITY IF A CERTIFICATE OF CONVENIENCE AND NECESSITY IS GRANTED TO THE APPLICANT BY THE CITY AND THE APPLICANT FAILS OR REFUSES TO ACCEPT THE PERMIT AND TO FURNISH THE PERFORMANCE BOND AND INSURANCE REQUIREMENTS REQUIRED OR IN ANY MANNER OTHERWISE FAILS TO COMPLY WITH ALL OF THE CONDITIONS OF THE ORDINANCE GRANTING THE CERTIFICATE OF CONVENIENCE AND NECESSITY. THE SAID TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) CHECK SHALL BE RETURNED TO THOSE APPLICANTS WHOSE APPLICATIONS ARE REJECTED AND SHALL BE RETURNED TO THAT APPLICANT TO WHOM THE PERMIT IS GRANTED WHEN THE PERMIT HAS BEEN ACCEPTED BY THE APPLICANT AND THE APPLICANT HAS FURNISHED THE PERFORMANCE BOND AND INSURANCE REQUIREMENTS UNDER THE ORDINANCE GRANTING THE CERTIFICATE OF CONVENIENCE AND NECESSITY.

6-17-5: COUNCIL ACTION: NO CERTIFICATE OF CONVENIENCE AND NECESSITY SHALL ISSUE EXCEPT UPON A SHOWING BY THE APPLICANT OF A NEED FOR THE CATV SYSTEM TO BE INSTALLED IN THE AREA SOUGHT TO BE SERVED. THE COUNCIL MAY, IF DEEMED NECESSARY, CONDUCT HEARINGS TO DETERMINE WHETHER A CERTIFICATE OF CONVENIENCE AND NECESSITY SHOULD ISSUE. WRITTEN NOTICE SHALL BE GIVEN TO ALL EXISTING HOLDERS OF CERTIFICATES OF CONVENIENCE AND NECESSITY OF THE FILING OF THE NEW APPLICATION AND THEY SHALL HAVE THIRTY (30) DAYS AFTER THE MAILING OF SAID NOTICE IN WHICH TO FILE WRITTEN OBJECTIONS WITH THE CITY COUNCIL, TO THE GRANTING OF A NEW CERTIFICATE OF CONVENIENCE AND NECESSITY.

6-17-6: ORDINANCE PROVISIONS: EVERY ORDINANCE GRANTING
A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR A
CATV SYSTEM IN THE CITY OF AURORA SHALL CONTAIN, BUT NOT
BE LIMITED TO, PROVISIONS REGULATING THE FOLLOWING MATTERS:

1. GRANT OF NON-EXCLUSIVE REVOCABLE AUTHORITY.
2. TERRITORIAL AREA INVOLVED.
3. LIABILITY AND INDEMNIFICATION OF CITY.
4. PROHIBITION OF PAY TV.
5. COLOR TV.
6. SIGNAL QUALITY REQUIREMENTS AND CARRIAGE OF SIGNALS.
7. OPERATION AND MAINTENANCE OF SYSTEM.
8. PROGRAM ALTERATION.
9. SERVICE TO SCHOOLS AND MUNICIPAL GOVERNMENT.
10. EMERGENCY USE OF FACILITIES.
11. OTHER BUSINESS ACTIVITIES.
12. SAFETY REQUIREMENTS.
13. NEW DEVELOPMENTS.
14. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.
15. RIGHTS OF CITY ON TERMINATION.
16. LIMITATIONS ON TRANSFER OF CERTIFICATE OF CONVENIENCE
AND NECESSITY.
17. CHANGE IN CONTROL OR OWNERSHIP OF GRANTEE.
18. NUMBER OF CHANNEL CAPABILITY AND MINIMUM CHANNEL SERVICE.
19. RATES TO CONSUMERS AND REGULATION THEREOF BY COUNCIL.
20. FLOW-THROUGH REFUNDS AND SUBSCRIBER REFUNDS.
21. PAYMENTS TO CITY.
22. FAVORED NATIONS PROVISION.

Section 2. That all Ordinances or parts of Ordinances of the
City Code of Aurora, Colorado, in conflict herewith are hereby ex-
pressly repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this 18th day of
March, A.D. 1968.

PASSED AND ORDERED PUBLISHED this 22nd day of
April, A.D. 1968.

PAUL C. BECK, Mayor

ATTEST:

R. B. JOHNSTON, City Clerk

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OTM

OFFICE OF THE DIRECTOR

March 30, 1970

The Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Chairman Burch:

By an agreement worked out between this Office and the Federal Communications Commission in 1964, TV Channel 4 (66-72 MHz) was withdrawn from availability for broadcast assignment in the Guam, M.I. area and made available to the Department of Defense (DOD) for a Navy operational requirement for a meteor burst communications system in the Western Pacific. This action resulted in footnote US-95 being added to the Table of Frequency Allocations, the text of which is quoted as follows:

"US-95 - The band 66-72 MHz is not available for television broadcasting at Guam, Mariana Islands. Subject to agreement by the Commission, frequencies within this band may be authorized until 1 July 1970 for use by Government stations in the maritime mobile service in the Mariana Islands and Vicinity."

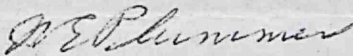
As indicated by the language of the footnote, it was agreed at the time that the matter should be reviewed in 1970 to verify whether or not there is a continuing requirement for this frequency assignment. This review has been completed, and although the meteor burst system was evaluated by the Navy, there is no longer a requirement for it. Other communications capabilities to meet the Navy requirements have been developed since 1964. Accordingly, footnote US-95 may be deleted from the Table of Frequency Allocations and there is no need to withhold further TV Channel 4 from licensing on Guam due to U. S. Government requirements.

- 2 -

The DOD has expressed its appreciation of the efforts of the FCC in providing frequency support for one of its requirements. This Office adds its appreciation to that expressed by the DOD,

By copy of this correspondence, the Interdepartment Radio Advisory Committee (IRAC) is advised that the footnote concerned may be deleted from the Government Table of Frequency Allocations.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. E. Plummer".

W. E. Plummer
Acting

OTP

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

Date: March 30, 1970

Subject: Telecommunication's Reorganization and Budget

To: Dr. Dwight Ink, Assistant Director for Organization
Bureau of the Budget

I am convinced that positive action by the Bureau of the Budget is needed to ensure that approval to establish an Office of Telecommunications Policy (OTP) is accompanied by adequate resources and support. I am specifically concerned by statements by Chairman Evins, House Subcommittee on Appropriations for Independent Offices, during the hearing on our FY-1971 Budget Request relating to the proposed National Electromagnetic Compatibility Analysis Facility and on Reorganization Plan No. 1.

Elements of the problem and relevant considerations are:

Reorganization Plan No. 1 of 1970

- o House Committee on Government Operations Approved (Report No. 91-930 of 19 March).
- o Chairman Evins, House Subcommittee on Appropriations for Independent Offices, suggests legislation instead (Letter of March 9, 1970).

Reorganization, Budget, and NECAF Incorrectly Linked

- o Chairman Evins gives evidence of using authority over appropriations to push for legislation on reorganization.
- o Chairman Evins objected to bypassing Congress and calls for legislation to establish NECAF as well as the OTP.

NECAF Prospects

- o Those officials briefed support NECAF as necessary.
- o Chairman Evins expected to deny FY-1971 funds.

Dr. Dwight Ink

- o Senate may restore NECAF funds but Conference could reject restoration unless Chairman Evins is prevailed upon to change his position.
- o Failing an appropriation, Commerce could be instructed to reprogram to provide funds for NECAF.

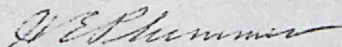
Legislation vice Reorganization for Office


- o Too late to change basic approach -- undesirable in any case.
- o Illogical to use dual approach.
- o No need or advantage in change in course now.

Legislation to Establish NECAF

- o Opposing legislation as unnecessary may be fruitless.
- o Time to influence FY-1971 appropriations is very short, if not too late.
- o Legislation could be necessary to get funds in FY-1972.

Because the NECAF is required regardless of organization, I recommend that the Bureau of the Budget, assisted by the Telecommunications Office where appropriate, exert all legitimate influence upon the Senate Subcommittee on Appropriations and the Conference to provide funds for NECAF. Failing in that effort, I recommend that the Bureau of the Budget direct the Department of Commerce to reprogram funds to provide for NECAF in FY-1971; and to prepare legislation for the 93d Congress.


W.E. Plummer
Acting

cc: Dr. C. T. Whitehead 
Mr. Wilfred H. Rommel
Mr. Howard Schnoor
Mr. Seymour Greenstone
Mr. Donald Gessaman

OTP

ORGANIZING AND STAFFING THE OTP

Background

This paper examines possible organizational structures and staffing arrangements for the OTP. While final structure will be at the discretion of the Director of the OTP, consideration has to be given to the subject at this point in order to reallocate DTM resources to the OTP and the Department of Commerce.

In proposing alternative management arrangements, consideration has been given the "Flanigan" memo of December 6, and the press materials issued by the White House on February 9, 1970, when Reorganization Plan No. 1 of 1970 was submitted to the Congress.

The initial strength of the OTP is to be limited to 30 professionals, including up to 15 at the supergrade levels. Emergency planning functions, final spectrum management, and NCS responsibilities of the DTM are to be transferred to the OTP. The major portion of the Frequency Management Directorate of the DTM should be transferred to the Department of Commerce.

A Telecommunications Research and Analysis Center (TRAC), to be established in the Department of Commerce, will provide a centralized research, engineering, and analysis capability in support of spectrum management and such other areas as may be required. TRAC will provide the Director with those analyses he needs to satisfy his frequency management responsibility.

In his message transmitting the Reorganization Plan, the President noted three roles for the OTP he considered essential.

These are:

- .serving as the President's principle adviser on telecommuni-
cations policy, helping formulate Government policies on
domestic and international telecommunications issues and
helping develop plans and programs to take full advantage
of the nation's technological capabilities.
- .helping formulate policies and coordinate operations for the
Government's communications systems.
- .enabling the executive branch to speak with a clearer voice
and to act as a more effective partner in discussions
of communications policy with both the Congress and the FCC.

In the following list, the functions to be performed by the
OTP have been identified as to whether they pertain to
Government communications, national communications policy, or
matters affecting both Government communications and national
policy.

National Policy Functions

1. Develop policies with respect to US domestic and
international communications industry.
2. Prepare recommendations to the FCC on spectrum allocation
for civilian use.
3. Prepare US positions for international communication
conferences, conventions, and organizations.
4. Develop executive branch position on telecommunication
policy issues and assure that it is effectively presented

to the Congress and to the FCC in the form of legislative proposals, recommendations, and testimony as required, and that there is effective cooperation with the FCC on policy issues.

5. Carry out the responsibilities conferred on the President by the Communications Satellite Act and not delegated elsewhere.
6. Coordinate the development of plans and programs for the mobilization and use of telecommunications resources in an emergency.
7. Prepare to administer national telecommunications resources in the event of war under the overall policy guidance of the Director, OEP.

Government Communications

1. Develop Government-wide standards for equipment and procedures as required in the interest of economy or effectiveness.
2. Evaluate the ability of national communications resources adequately and efficiently to meet established national security and emergency communications requirements.
3. Make recommendations to the BOB concerning the funding of communications systems and research and development programs.
4. Prepare guidelines for the most economical procurement of Federal telecommunications services.
5. Allocate the radio spectrum resource for government use.

Government and non-Government.

1. Work with the FCC to achieve reforms in procedures for allocating portions of the radio spectrum for Government and civilian use.

Organizational Alternatives

To perform the above functions a combination of technical, economic, legal and to some extent sociological skills are needed.

The internal organization could consist of a pool of talented individuals organized into project teams as problems arise or are identified. Under this concept there would in effect not be a formal structure.

Another alternative is a functional grouping of economists, sociologists, lawyers, and technicians. This would most likely result in problems being handled in a manner similar to the way they would be handled on a project basis. A functional organization could result in excessive compartmentalization and either continuous bickering between the people of different disciplines or a complete lack of communication.

A third alternative is a program or product oriented organization. Several variations in program breakdowns are possible though only the most attractive are discussed herein.

The DTM is organized in program areas--international, national, and frequency management. This particular split leads to considerable overlap in some cases and in other cases a lack of ability to take full advantage of available information.

For example, the Frequency Management Directorate allocates frequencies to all Government users. The National Communications Directorate is concerned primarily with Government communications services and systems. There is thus a natural overlap between the two directorates since the frequencies allocated are for stations and systems in support of programs for which the National Communications Directorate is concerned. In those rare cases where two or more agencies are vying for the same assignment, the National Communications Directorate should be in a better position to assess which agency program should receive the assignment. This leads to the conclusion that in the DTM structure the Frequency Management Directorate should be under the National Communications Directorate so that it can coordinate the total communications resource of the Government.

The OTP will be concerned with coordinating the operations and planning of the Federal communications systems including the allocations of frequencies. OTP will be concerned also with developing policy recommendations on matters of national importance which are broader in scope than communications for the Government. Further, the OTP will have to work closely with the FCC to improve the management of the frequency spectrum.

Organizationally, the OTP could consist of three divisions-- Government, non-Government, and Spectrum Planning. Internal communications problems of the Government such as assignment of frequencies, NCS, standards, etc., would be handled by the Government Communications Division. By including in this Division

the Director's frequency management function, the Government Communications Division would be able to review and coordinate the total government telecommunications program with a high degree of assurance that it is fully informed. The non-Government Communications Division would perform analysis of domestic and international policies which would lead to Administration positions to be presented to the FCC and the Congress. The Spectrum Planning Division would analyze, in cooperation with the FCC, methods and policies to improve the total frequency management process. The spectrum planning function could be assigned to one of the other divisions but this problem is of sufficient importance to warrant special attention.

Essentially two structures seem not feasible; the one described above and one similar to the DTM wherein all frequency management functions are grouped in a separate division. With the latter type of organization the development of policies for national frequency management might be given secondary status relative to studies of Government frequency management. Figure 1 details the recommended structure.

Since for all practical purposes the non-Government function is not now being performed, it will be necessary to staff this Division primarily with new Government employees. To a great extent, the Government Division will be composed of persons now on the DTM's payroll.

Staffing the OTP

Due to the emphasis the President has placed on performing analysis of national policy issues, this function should receive as much emphasis and resources in the OTP as the Government communications function. With the recommended three division structure, the following staffing is envisioned: Spectrum Planning-3; Government Communications-13; non-Government Communications-13; and administration-1.

While the DTM's staff is heavily loaded with technical personnel and persons heavy in practical experience and knowledge of Government communications operations, the OTP will need a considerable number of persons trained and experienced in quantitative analytical techniques such as econometrics, operations research, and statistical decision theory to name a few.

Of the 13 positions recommended for the Government Communication Division, it is recommended that 2-3 be filled by persons with quantitative analysis expertise. The lack of these skills in the DTM's office has seriously hampered any efforts to fully understand the capabilities of the Government's communications systems and especially to evaluate the need for improvements to those systems. To perform analysis of all Government communications systems at the OTP would be undesirable; however, the OTP should have the capability to direct agency analyses and evaluate the results.

Reallocation of the DTM Staff

Twenty-five professional staff are presently on the DTM payroll. This is composed of 3 in the Director's Office, 3 in International Communications, 7 in National Communications, and 8 in Frequency Management. In the recommended OTP structure, 1 of the Director's Office staff would be retained as executive officer, 1 would go to Commerce and the legal aid would fit in the non-Government program office. The Directorates of the DTM are addressed in the following paragraphs.

International Communications Directorate--The International Division of this Directorate is directly concerned with items that will be of direct concern to the non-Government Division of the OTP (1 professional). The Advanced Technology Division (1 professional) is concerned with subjects that fall under the general area of interest of the Government Division but these functions could be performed equally well or better by the TRAC. It is recommended that this Division be reallocated to the TRAC. The Director should go to non-Government Communications since this position has been closely associated with non-Government Communications function.

National Communications Directorate--This office is directly concerned with things that will be of interest to the Government Communications Division. The Director of this office will be retiring in the near future and it is thought his position should be reestablished as Director of the Division. The remainder of the National Communications Directorate fits into the Government Communications Division almost function for function. It is

therefore recommended that this Directorate be transferred to the OTP.

Frequency Management Directorate--The majority of the Directorate's personnel are concerned with functions that are to be performed by the TRAC. There will be need for one person, however, in the Government Communications Division to develop policy guidance related to frequency assignments to Government agencies and to assist the Director in resolving agency disagreements over frequency assignments. The Spectrum Planning Division will require probably a lawyer, an economist, and a person familiar with the frequency assignment business. For this position it is recommended that one of the individuals in the DTM's Spectrum Development Division be retained by the OTP. The remainder of the Frequency Management Directorate should be transferred to the Commerce Department. The Director of the OTP will be able to call on the TRAC for whatever assistance is required in analysis of complex frequency management problems and this assistance should prove sufficient to satisfy his specific frequency management responsibilities.

Summary

Distributing DTM professional personnel in the manner described above would provide the OTP with an initial staffing of 13 filled positions and up to 4 unfilled ones. Of the 13 positions, 1 will be retiring in the very near future and another will retire is asked. In 1971, another 10 spaces will become available if approved by Congress bringing the total to 27, slightly less than the 30 authorized. According to this proposal

10

the 13 filled positions would be reestablished in the OTP in the following manner:

Executive Assistant	1
Government Communications	8
Non-Government Communications	3
Spectrum Planning	1

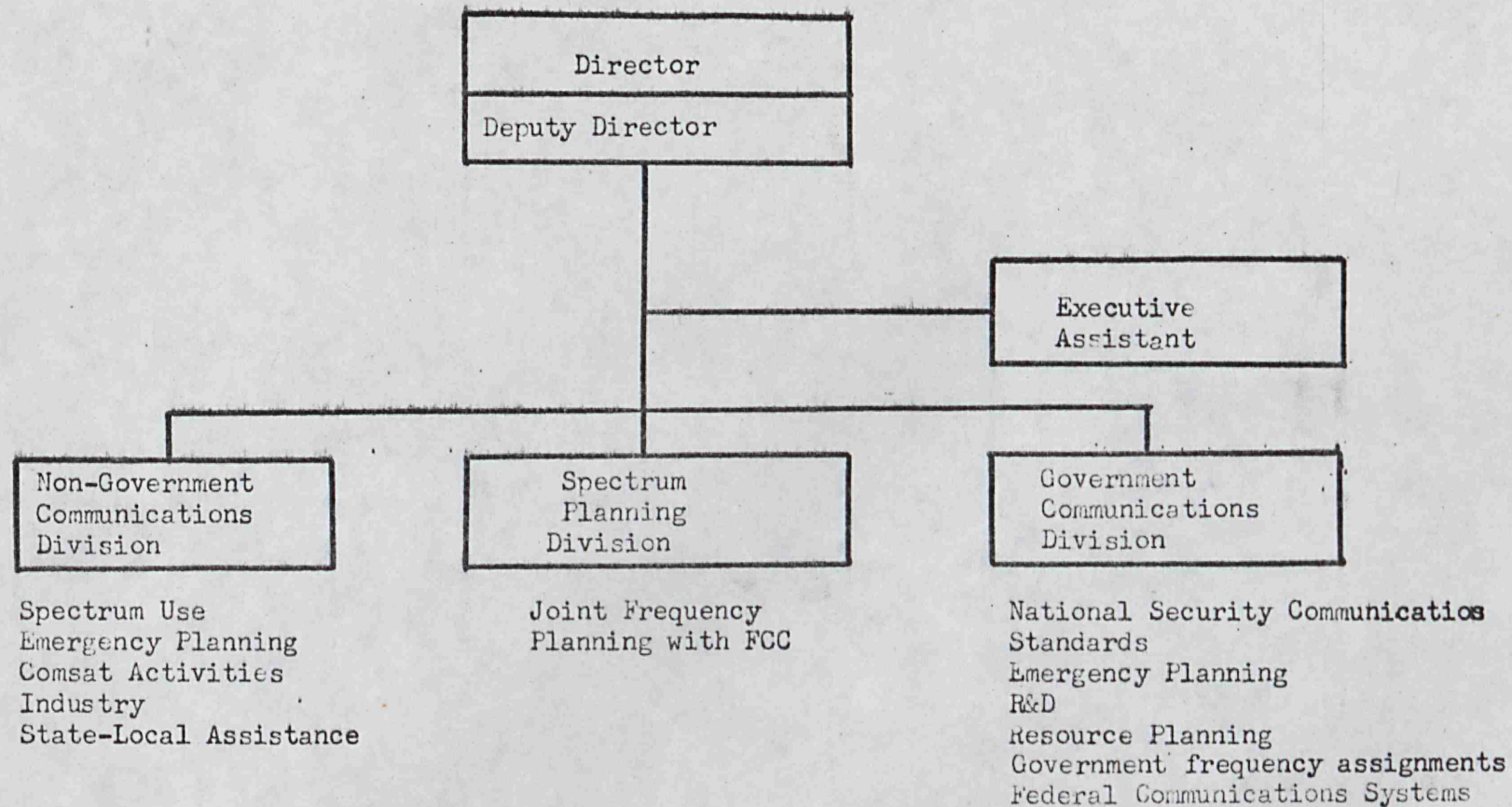


Figure 1 -- Recommended Internal Organization for Office of Telecommunications Policy

0TP
March 26, 1970

MEMORANDUM FOR

Mr. David Packard
Deputy Secretary of Defense

As we discussed on the phone, I am forwarding the names of four people we have considered in one way or another for positions in the new Office of Telecommunications Policy and who you might wish to consider for the position of Assistant to the Secretary of Defense for Telecommunications.

Each is an outstanding individual in his own way, although each represents a different mix of abilities.

Clay T. Whitehead
Special Assistant
to the President

Attachment

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:jm

Assistant to Sec. Def. (Telecomm.)

1. Thomas F. Rogers
Vice President, Mitre Corp.
2. Charles Joyce
NSC staff
3. Gerald P. Dincen
Assoc. Director, MIT Lincoln Lab
4. Paul Visher
Assoc. Head, Space Systems Div., Hughes Aircraft Co.

BIOGRAPHIC DATA - THOMAS F. ROGERS

T. F. Rogers, appointed to the position of Vice President - Urban Affairs at the Mitre Corporation on June 1, 1969, was most recently Director of the Office of Urban Technology and Research in the Office of the Secretary of the Department of Housing and Urban Development. He was born in Providence, R.I., on August 11, 1923. He attended elementary and secondary schools there, and received his B.Sc., cum laude, in Physics, from Providence College in 1945. In 1949 he was awarded the M.A. degree, also in Physics, from Boston University.

During his professional career, Mr. Rogers has held industrial, university and Government positions.

Among those held were the following: research associate, Radio Research Laboratory, Harvard University, Cambridge, Massachusetts, 1944-45; TV project engineer, Bell & Howell Company, Chicago, Illinois, 1945-46; electronic scientist, U.S. Air Force Cambridge Research Center, Bedford, Massachusetts, 1945-54; associate group leader, Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Massachusetts, 1951-53 (on loan to M.I.T. from AFRCRC); head, communications laboratory, U.S. Air Force Cambridge Research Center, Bedford, Massachusetts, 1954-59; head, communications division, and member of the steering committee, Lincoln Laboratory, M.I.T., Lexington, Massachusetts, 1959-64. In this last position, Mr. Rogers was concerned with the development of large defense tropospheric and ionospheric scatter communication circuits and networks, and headed most of the Laboratory's space research and development programs.

Early in 1964, Mr. Rogers took leave of M.I.T. to accept an appointment with the Department of Defense as an Assistant Director (Communications & Electronics) of Defense Research and Engineering in the Office of the Secretary of Defense. In 1965, he was promoted to a Deputy Director

(Electronics and Information Systems). In this capacity, he was responsible for administering large research, development, engineering and systems programs in the areas of electronics, communications, data handling, intelligence, reconnaissance, and command and control programs budgeted at billions of dollars during his tenure. In particular, he was instrumental in bringing D.O.D.'s global satellite communications network into being, and in initiating its tactical satellite communications activities.

In May, 1967, Mr. Rogers was appointed by the (then) Secretary of the Department of Housing and Urban Development, Robert C. Weaver, as the first Director of the Department's newly created Office of Urban Technology and Research. This Office (now headed by an Assistant Secretary) served as the focal point for the stimulation, coordination, analysis and evaluation of all research and development activities related to H. U. D. programs and responsibilities.

During his two years with H. U. D., he organized the first Federal office and program specifically directed, from cabinet level, to a broad scientific and technological attack upon urban problems. He saw the Department become, by Executive Order, a formal member of the Federal Council on Science and Technology (chaired by the President's Science Advisor) and was the Department's member on the Council; helped to form an Urban Institute; actively encouraged the entrance of the Department of Defense into the study of defense-related domestic problems; initiated the country's first major national experimental housing project - the "In-Cities" project; stimulated a growth in general research and development appropriations from 1/2 million to \$11 million, and successfully defended an increase to \$30 million requested of the Congress by the new Administration.

Mr. Rogers has received several special awards, including the Outstanding Civil Service Performance Award in 1957, a Certificate of Commendation from the Secretary of the Navy in 1961, and the Meritorious Civilian Service Award and Medal from the Secretary of Defense in 1967 - the highest civilian award made by the Secretary. Early this year he

received an Engineering News Record Award for "Construction's Man of the Year" - an award shared with Secretary of Transportation John Volpe, Senator John Sparkman, Mayor John Lindsay, Whitney Young and Postmaster General Winton Blount.

His professional publications reflect his work on various aspects of radiowave propagation, communications, electronic memory devices, ultrasonics, housing and molecular physics.

Mr. Rogers has been a member of several inter-Agency Government groups, including the Aeronautics and Astronautics Coordinating Board (the AACB), has served on several Government advisory groups such as the Communications Satellite Panel of the President's Scientific Advisory Committee, and was a member of the United States delegation to the United Nations' Geneva meeting on the Application of Science and Technology for the Benefit of Less Developed Areas. He has testified oftentimes before various Committees of the Congress.

He has recently been made a Senior Associate of the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University.

He is also a Member or Fellow of several national and international scientific and engineering societies. He is a Fellow of the Institute of Electrical and Electronics Engineers, and a past member of its Board of Directors. He is a member of the Cosmos Club, and is listed in American Men of Science and Who's Who in America.

Mr. Rogers is married to the former Estelle Elizabeth Hunt and has three daughters, Clare, Judith and Hope. He is a resident of McLean, Virginia.



HUD NEWS

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
WASHINGTON D.C. 20410

HUD-No. 1687
(Phone 382-4433)

FOR RELEASE
After 10:00 A.M.
Friday
March 31, 1967

Thomas F. Rogers has been appointed to the position of Director, Office of Urban Technology, to be established in the Department of Housing and Urban Development.

The appointment, announced today by HUD Secretary Robert C. Weaver, will become effective on May 1, 1967.

In this new post, Mr. Rogers will be directly responsible to Secretary Weaver and Under Secretary Robert C. Wood. Mr. Rogers' office will be the focal point for the stimulation, coordination, analysis and evaluation of all research and development related to HUD programs.

Commenting on Mr. Rogers' appointment, Secretary Weaver said: "New technologies must be developed if we are to bring the physical environment of our urban areas to the level necessary to serve modern needs and standards. This new office is intended to stimulate the initiative and ideas in HUD to do this. Mr. Rogers brings us the experience and background that will help us accomplish that mission."

Mr. Rogers, a prominent scientist and engineer, is presently a Deputy Director of Defense Research and Engineering in the Office of the Secretary of Defense. He has held industrial, university and Government positions. He has been on leave from the Massachusetts Institute of Technology to the Defense Department since February 1964.

As the Deputy Director for Electronics and Information Systems, Mr. Rogers has been responsible for managing large

- more -

research, development, engineering and systems programs in such areas as electronics, communications, data handling, and command and control - programs budgeted at billions of dollars during his tenure. He has been influential in bringing into being the Department's satellite communications global network, and has particularly encouraged the broadest of systems studies and applications within his area of responsibility.

Before joining the Department of Defense, Mr. Rogers was Head of the Communications Division and Steering Committee Member of MIT's Lincoln Laboratory.

He received a B.S. degree in Physics from Providence College in 1945, and an M.A. degree, also in Physics, from Boston University in 1949.

His publications reflect his research work on various aspects of radiowave propagation, communications, electronic memory devices, ultrasonics and molecular physics. He is a member of several national and international scientific and engineering institutes and societies, a Fellow of the Institute of Electrical and Electronics Engineers and a past member of its Board of Directors.

Mr. Rogers has been a member of several inter-Agency Government groups, including the Aeronautics Coordinating Board. He has served on such Government advisory groups as the Communications Satellite Panel of the President's Scientific Advisory Committee, and was a member of the United States delegation to the United Nation's Geneva meeting on the Application of Science and Technology for the Benefit of Less Developed Areas.

#

BIOGRAPHIC DATA -- Thomas F. Rogers

T. F. Rogers, Director of the Office of Urban Technology and Research in the Office of the Secretary of the Department of Housing and Urban Development, was born in Providence, R. I., on August 11, 1923. He attended elementary and secondary schools there, and received his B.Sc., cum laude, in Physics, from Providence College in 1945. In 1949 he was awarded the M.A. degree, in Physics, from Boston University.

During his professional career, Mr. Rogers has held industrial, university and Government positions.

Among those held were the following: research associate, the Radio Research Laboratory of Harvard, 1944-45; TV project engineer, the Bell & Howell Company, Chicago, 1945-46; electronic scientist with the U. S. Air Force Cambridge Research Center, Bedford, Mass., 1945-54; associate group leader with the Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Mass., 1951-53; laboratory head, U. S. Air Force Cambridge Research Center, Bedford, Mass., 1954-59; head, communications division and member of the steering committee, Lincoln Laboratory, M.I.T., 1959-64.

Early in 1964, Mr. Rogers took leave from M.I.T. to accept an appointment with the Department of Defense as an Assistant Director (Communications & Electronics), of Defense Research and Engineering in the Office of the Secretary of Defense. In 1965 he was promoted to a Deputy Director (Electronics and Information Systems). In this capacity, he was responsible for managing large research, development, engineering and systems programs in such areas as electronics, communications, data handling, reconnaissance, and command and control -- programs budgeted at billions of dollars during his tenure. In particular, he was instrumental in bringing into being D.O.D.'s satellite communications global network.

Mr. Rogers has received several special awards including the Outstanding Civil Service Performance Award in 1957, a Certificate of Commendation from the Office of the Secretary of the Navy in 1961, and the Meritorious Civilian Service Award from the Secretary of Defense in 1967.

In May, 1967, Mr. Rogers was appointed by Secretary Robert C. Weaver as the first Director of the newly created Office of Urban Technology and Research. This Office serves as the focal point for the stimulation, coordination, analysis and evaluation of all research and development activities related to H.U.D. programs and responsibilities.

His scientific and engineering publications reflect his professional work on various aspects of radiowave propagation, communications, electronic memory devices, ultrasonics and molecular physics.

Mr. Rogers has been a member of several inter-Agency Government groups, including the Aeronautics and Astronautics Coordinating Board (i.e., the AACB). He has served on such Government advisory groups as the Communications Satellite Panel of the President's Scientific Advisory Committee, and was a member of the United States delegation to the United Nations' Geneva meeting on the Application of Science and Technology for the Benefit of Less Developed Areas.

He is also a Member or Fellow of several national and international scientific and engineering institutes and societies, a Fellow of the Institute of Electrical and Electronics Engineers, and a past member of its Board of Directors. He is also a member of the Cosmos Club.

Mr. Rogers is married to the former Estelle Elizabeth Hunt, and has three daughters, Clare, Judith, and Hope. He is a resident of Washington, D. C.

March 1968

Charles C. Joyce, Jr.
5205 Flanders Avenue
Kensington, Maryland
Age: 35

Home Telephone: 946-9072
Office Telephone: 395-3370

Current Position:

National Security Council Staff.

Current Responsibilities:

Plan and manage the implementation of new methods and facilities for acquiring, processing and displaying information for the President and the National Security Council.

Education:

Bachelor of Science in Electrical Engineering, M.I.T., 1956
Master of Science in Electrical Engineering, M.I.T., 1958
Master of Science in Industrial Management, M.I.T., 1963

Employment:

1969 to Present National Security Council

(See above.)

1966 to 1969 Office of the Assistant Secretary of
Defense (Systems Analysis)

Director of the Command, Control and Communications Division (1967-69). Responsible for analysis of all Defense Department programs in the C³ area. Specific areas analyzed included: the Defense Communications System; Field Army and Theater Army Communications; Project Mallard; Fleet Communications; Tactical Air C³; Worldwide Navigation; Satellite Communications.

Prior to 1967, performed similar work as a staff member of the Command, Control, Communications and Intelligence Division.

Employment:
(Cont'd)

1963 to 1966 The Mitre Corporation
 NMCS Division
 Washington, D. C.

Sub-Department Head, Advanced Planning (1964-66). Responsible for the initial studies and plans for new Mitre support tasks for the National Military Command System and related areas. Specific tasks included: design of an economic modeling and analysis capability for the Defense Communications System; development of a master plan for a special Presidential Command and Control Facility.

Prior to 1964, as a member of the Technical Staff, performed requirements analyses, system design and cost studies in support of the National Military Command System.

1959 to 1966 The Mitre Corporation
 Advanced Planning Department
 Bedford, Massachusetts

Performed planning studies and cost-effectiveness studies for Air Force Command and Control Systems.

Selected as a Mitre Staff Scholar in 1961 and attended M. I. T. School of Management, 1961-63.

Honorary Societies:

Tau Beta Pi, Eta Kappa Nu, Sigma Xi.

(1) Gerald P. Dinneen

Age: 45 Education: Mathematics, BS from Queen's College, New York; MS and PhD from Univ. Wisconsin. US Army in WW2, and two years industrial experience. With MIT Lincoln Laboratory since 1953. Now Associate Director and formerly head of Communications Division. Did significant work on computers and software, plus modulation schemes and communications satellites. Heavily involved in DOD problems via DDRE and Intelligence advisory groups.

Drive:	A, and a good leader.
Technical:	B-, very bright and sound but not deep in engineering problems.
Economics:	C, probably no experience.
Telecommunications:	B, mostly in military uses.
Policy:	A, very good at bridging and focusing diverse considerations.
Diplomacy:	A, charming, logical, and very articulate.
Summing Up:	An unusually able and attractive man who works easily between policy and science.

(3) Paul S. Visher

Age: 47 Education: Chemistry, with AB from Univ. Indiana, and Law with LLB from Yale in 1949. Practiced patent law for three years in San Francisco, and ranged for four years. Joined Hughes in 1956 and has risen to Associate Head of Space Systems Division where he is responsible for satellite communications. Served one year in DOD directing Civil Defense in 1961. Totally absorbed in telecommunications technical and policy problems for last eight years.

Drive:	A, though something of a loner.
Technical:	B, thoroughly conversant with technology though not an engineer.
Economics:	B, quite a good grasp.
Telecommunications:	A, clearly understands most of the field.
Policy:	A, unusual ability to bridge over and focus diverse considerations.
Diplomacy:	B, impressive and articulate but somewhat full of himself.
Summing Up:	A mighty bright fellow who understands the telecommunications problem in all its ramifications.

07P

March 26, 1970

To: Mr. Flemming

From: Tom Whitehead

We would like to have a political
check on the attached two men
as soon as possible.

Edward E. David, Jr.
William Arthur Niskanen, Jr.

RESUME

William Arthur Niskanen, Jr.

Address

Home 7209 Gordons Road, Falls Church, Virginia
Business 400 Army-Navy Drive, Arlington, Virginia

Personal

Born 13 March 1933 Bend, Oregon
Height 6'4"
Weight 200 pounds
Health Excellent
Married Helen Barr
Children Lia and Pamela

Education

Harvard College	A.B.	1954
University of Chicago	A.M.	1955
University of Chicago	Ph.D.	1962

Research Experience

Bureau of Mines	Economist	Summer 1954
Treasury Department	Statistician	Summer 1956
RAND Corporation	Economist	1957-1962
Office of the Secretary of Defense	Director, Special Studies	1962-1964
Institute for Defense Analyses	Director, Program Analysis Division	1964-present

Part-time Teaching

University of Chicago	Fall 1956
University of California at Los Angeles	Spring 1960, 1961
University of Maryland	Spring 1966-1968

Professional Fields

Defense analysis
Public finance
Public administration
Research management

References

Charles Zwick	Director, Bureau of Budget
Charles Hitch	President, University of California
Alain Enthoven	Assistant Secretary, Department of Defense
Jack Ruina	Vice President, Massachusetts Institute of Technology
Maxwell Taylor	President, Institute for Defense Analyses



WILLIAM A. NISKANEN, JR.
Director

Program Analysis Division
IDA, 1964

Government Organization and Management

EMPLOYMENT

1964-67 IDA, Economic and Political Studies Division, Director
1962-64 Department of Defense, Office of Systems Analysis,
Director of Special Studies
1957-62 The RAND Corporation, Economist

EDUCATION

Harvard University, A.B., 1954
University of Chicago, A.M., 1955; Ph.D., Economics, 1962
University of Michigan, Mathematics, graduate study

PROFESSIONAL ACTIVITIES

American Economic Association
Associate Editor: Journal of Missile Defense Research

OPEN PUBLICATIONS

Dissertation: "The Demand for Alcoholic Beverages"
Contributor, Defense Management, Prentice-Hall, 1967

LIMITED DISTRIBUTION PUBLICATIONS

IDA S-316, "The Productivity of Major Military Forces in Vietnam:
A Statistical Analysis of Three Years of War," June 1968
IDA P-388, "The Peculiar Economics of Bureaucracy," December 1967
IDA P-246, "The Defense Resource Allocation Process," February 1966

228 North LaSalle Street / Chicago, Illinois / (312) 641-2820

ELEKTRA INDUSTRIES
INCORPORATED



Office of the President

March 25, 1970

Mr. Clay T. Whitehead
Special Assistant to the President
The White House
Washington, D.C.

Dear Mr. Whitehead:

Thank you for your response to my letter of February 27, 1970 to Peter Flanigan about the Office of Telecommunications Policy. Our industry is most interested in fair review and representation. By being the "brat" of the computer community, remote access computing may seem precocious at times but we are working very hard at growing to maturity. This segment of the business in its adult stage, will represent probably 80 percent of the total computer industry. It is most important to effect satisfactory guidance and control to reach the pinnacles of what potentially could be between a 6 and 10 billion dollar market by 1975. I feel the OTP will be a major factor in our industry's business future and hope a compatible relationship will be formed and continue to exist.

Very truly yours,

L. D. Purcell

LDP:alk

Meetings re TelecommunicationsTuesday, April 8

11:00 a.m. Ted Westfall, Exec. V.P., ITT
 Joseph Gancie, V.P., ITT World Communications
 John Ryan, Deputy Director, ITT Washington Relations

Wednesday, April 9

2:00 p.m. Ed Crosland, V.P., Federal Relations, AT&T
 Ben Oliver, V.P., Government Operations, Washington

3:00 p.m. Joseph A. Beirne, President,
 Communications Workers of America
 Louis Knecht, Assistant to the President
 John Morgan, Administrative Assistant

4:00 p.m. Vincent Wasilewski, President, National
 Association of Broadcasters
 Grover Cobb, Chairman of the Board

Monday, April 14

11:30 a.m. Howard Hawkins, President
 RCA Global Communications
 Leonard Tuft, V.P., Washington

3:30 p.m. General James McCormack, Chairman, COMSAT
 Joseph Charyk, President

4:30 p.m. Clifford Gorsuch, Regional Director National
 Association of Broadcast Employees & Technicians
 J. F. Donley, Regional V.P. of the Union (Nat. Bdcstg. Co.)
 Albert Recht, V.P. of local union (Am. Bdcstg. Co.)

Wednesday, April 16

2:00 p.m. Al Hardy, Director of Radio, TV & Recording Div.,
 International Brotherhood of Electrical Workers
 Lawrence Rimshaw, Bus. Mgr. for Local Union 1200

Friday, April 18

9:30 a.m. Earl Hilburn, V. P. and Spec. Asst. to the President,
Western Union Telegraph Co.
Richard Callaghan, V. P., Congressional Liaison

Tuesday, April 22

11:30 a.m. Don Rodgers, Mgr., Missile and Space Field
Operation, General Electric Company
Don Atkinson, Mgr., Aerospace Market Development

Wednesday, April 23

4:00 p.m. James Karayn, Washington Bureau Chief
National Educational Television

Friday, April 25

11:45 a.m. McGeorge Bundy, President
Ford Foundation

Tuesday, April 29

3:30 p.m. Robert King, IBM, Government Relations Consultant
Fred Warden, Communications Policy Directorate

Wednesday, April 30

10:00 a.m. Henry Catucci, V. P., Western Union International, Inc.
R. E. Conn, Senior Vice President, Law and
Administration
Tom S. Greenish, Executive Vice President

Friday, May 2

11:00 a.m. Dr. A. D. Wheelon, Vice President, Engineering,
Hughes Aircraft

Thursday, May 8

4:30 p.m. Richard Gifford, General Manager (Communications
Products, Dept., General Electric Company, Lynchburg,

Tuesday, May 27

10:30 a.m. Fred W. Morris, Jr., President, Tele-Sciences Corp.

Wednesday, June 11

4:00 p.m. Frederick W. Ford, President
National Cable Television Association, Incorporated

THE WHITE HOUSE

WASHINGTON

March 25, 1970

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It is now anticipated that the Executive Order establishing the new office will be signed by the President with an effective date of April 25, 1970.

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Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Enclosure

Honorable Robert E. Hampton
Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

*Federal
Communications
Org.*

March 25, 1970

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Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Enclosure

Honorable Robert E. Hampton
Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

cc: Mr. Flanigan
Mr. Mayo
Mr. Plummer
Mr. Whitehead
Central Files

CTWhitehead:jm

LETTER OF TRANSMITTAL

REORGANIZATION PLAN NO. 1 OF 1970

The White House, February 9, 1970.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

REORGANIZATION PLAN NO. 1 OF 1970



FEBRUARY 9, 1970.—The message and accompanying papers referred to the Committee on Government Operations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

37-011

WASHINGTON : 1970

THE PRESIDENT OF THE UNITED STATES
AND VICE PRESIDENT
BY
THE SECRETARY OF THE ARMY
AND THE SECRETARY OF THE NAVY
IN RESPONSE TO A RESOLUTION OF THE SENATE
PASSED MAY 1, 1876



Printed and Published by the Government Printer, Washington, D.C.

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1876

LETTER OF TRANSMITTAL

THE WHITE HOUSE, February 9, 1970.

To the Congress of the United States:

We live in a time when the technology of telecommunications is undergoing rapid change which will dramatically affect the whole of our society. It has long been recognized that the executive branch of the Federal government should be better equipped to deal with the issues which arise from telecommunications growth. As the largest single user of the nation's telecommunications facilities, the Federal government must also manage its internal communications operations in the most effective manner possible.

Accordingly, I am today transmitting to the Congress Reorganization Plan No. 1 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code.

That plan would establish a new Office of Telecommunications Policy in the Executive Office of the President. The new unit would be headed by a Director and a Deputy Director who would be appointed by the President with the advice and consent of the Senate. The existing office held by the Director of Telecommunications Management in the Office of Emergency Preparedness would be abolished.

In addition to the functions which are transferred to it by the reorganization plan, the new Office would perform certain other duties which I intend to assign to it by Executive order as soon as the reorganization plan takes effect. That order would delegate to the new Office essentially those functions which are now assigned to the Director of Telecommunications Management. The Office of Telecommunications Policy would be assisted in its research and analysis responsibilities by the agencies and departments of the Executive Branch including another new office, located in the Department of Commerce.

The new Office of Telecommunications Policy would play three essential roles:

1. It would serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities. The speed of economic and technological advance in our time means that new questions concerning communications are constantly arising, questions on which the government must be well informed and well advised. The new Office will enable the President and all government officials to share more fully in the experience, the insights, and the forecasts of government and non-government experts.

2. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the Federal government's own vast communications systems. It would, for example, set guidelines for the various departments and agencies concerning their communications equipment and services. It would regularly review the ability of government communications systems to meet the security needs of the nation and to perform effectively in time of emergency. The Office would direct the assignment of those portions of the radio spectrum which are reserved for government use, carry out responsibilities conferred on the President by the Communications Satellite Act, advise State and local governments, and provide policy direction for the National Communications System.

3. Finally, the new Office would enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress. It is my hope, however, that the new Office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy, especially in their procedures for allocating portions of the radio spectrum for government and civilian use. Our current procedures must be more flexible if they are to deal adequately with problems such as the worsening spectrum shortage.

Each reorganization included in the plan which accompanies this message is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the government to the fullest extent practicable."

The reorganizations provided for in this plan make necessary the appointment and compensation of new officers, as specified in sections 3(a) and 3(b) of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

This plan should result in the more efficient operation of the government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

The public interest requires that government policies concerning telecommunications be formulated with as much sophistication and vision as possible. This reorganization plan—and the executive order which would follow it—are necessary instruments if the government is to respond adequately to the challenges and opportunities presented by the rapid pace of change in communications. I urge that the Congress allow this plan to become effective so that these necessary reforms can be accomplished.

RICHARD NIXON.

REORGANIZATION PLAN NO. 1 OF 1970

(Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code)

OFFICE OF TELECOMMUNICATIONS POLICY

SECTION 1. *Transfer of functions.* The functions relating to assigning frequencies to radio stations belonging to and operated by the United States, or to classes thereof, conferred upon the President by the provisions of section 305(a) of the Communications Act of 1934, 47 U.S.C. 305(a), are hereby transferred to the Director of the Office of Telecommunications Policy hereinafter provided for.

SEC. 2. *Establishment of Office.* There is hereby established in the Executive Office of the President the Office of Telecommunications Policy, hereinafter referred to as the Office.

SEC. 3. *Director and deputy.* (a) There shall be at the head of the Office the Director of the Office of Telecommunications Policy, hereinafter referred to as the Director. The Director shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(b) There shall be in the Office a Deputy Director of the Office of Telecommunications Policy who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Director shall perform such functions as the Director may from time to time prescribe and, unless the President shall designate another person to so act, shall act as Director during the absence or disability of the Director or in the event of vacancy in the office of Director.

(c) No person shall while holding office as Director or Deputy Director engage in any other business, vocation, or employment.

SEC. 4. *Performance of functions of Director.* (a) The Director may appoint employees necessary for the work of the Office under the classified civil service and fix their compensation in accordance with the classification laws.

(b) The Director may from time to time make such provisions as he shall deem appropriate authorizing the performance of any function transferred to him hereunder by any other officer, or by any organizational entity or employee, of the Office.

SEC. 5. *Abolition of office.* That office of Assistant Director of the Office of Emergency Preparedness held by the Director of Telecommunications Management under Executive Order No. 10995 of February 16, 1962, as amended, is abolished. The Director of the

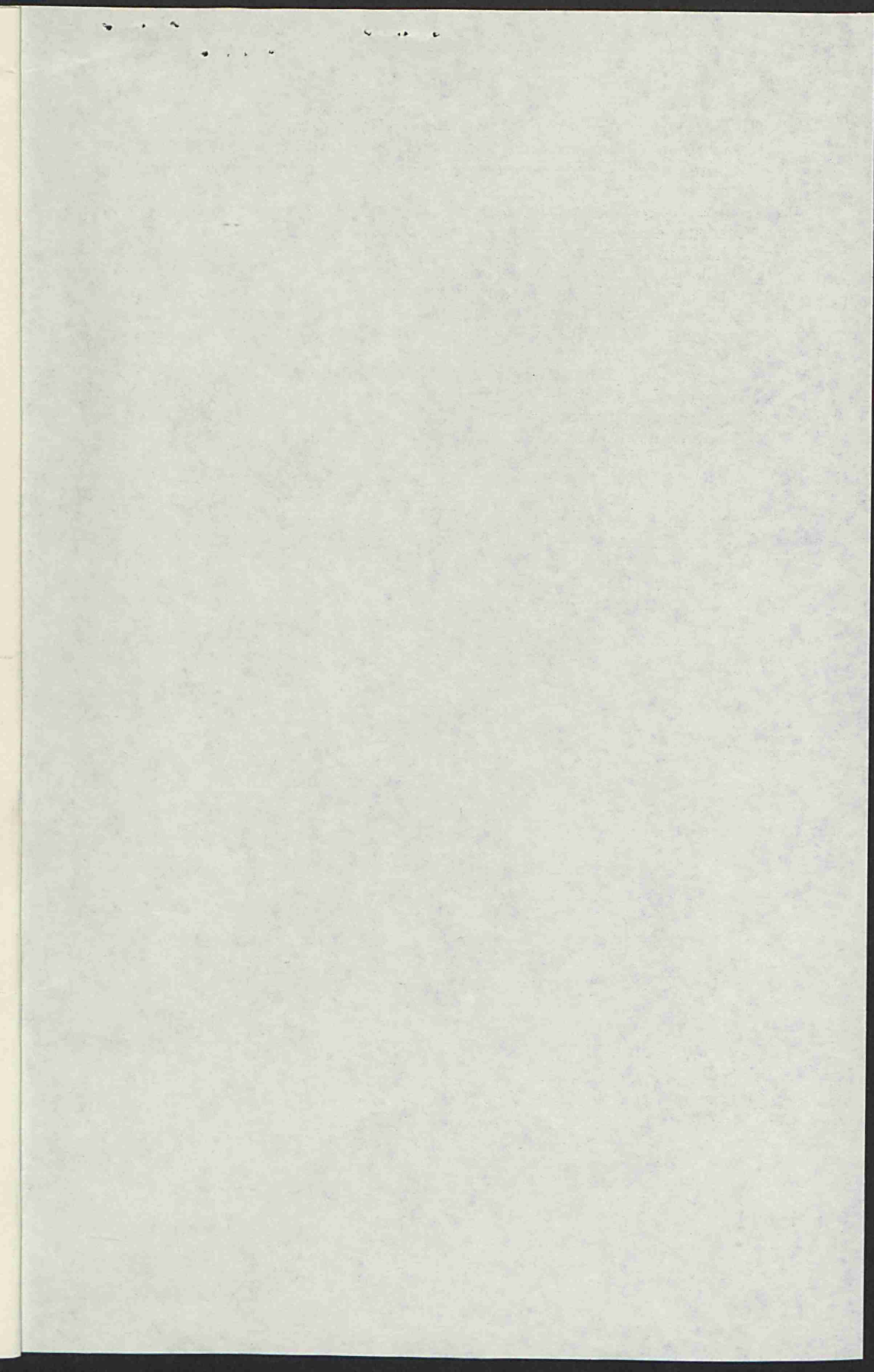
Office of Emergency Preparedness shall make such provisions as he may deem to be necessary with respect to winding up any outstanding affairs of the office abolished by the foregoing provisions of this section.

SEC. 6. *Incidental transfers.* (a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, or used by, or available or to be made available to, the Office of Emergency Preparedness in connection with functions affected by the provisions of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Telecommunications Policy at such time or times as he shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. *Interim Director.* The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Telecommunications Policy until the office of Director is for the first time filled pursuant to the provisions of section 3 of this reorganization plan or by recess appointment, as the case may be. The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office of Director. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

○



OTP^x

March 25, 1970

Dear Mr. Chairman:

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Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Enclosure

Honorable Robert E. Hampton
Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

cc: Mr. Flanigan
Mr. Mayo
Mr. Plummer
Mr. Whitehead
Central Files

CTWhitehead:jm

OTM

March 25, 1970

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Special Assistant
to the President

Enclosure

Honorable Robert E. Hampton
Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

cc: Mr. Flanigan
Mr. Mayo
Mr. Plummer
Mr. Whitehead
Central Files

CTWhitehead:jm

FROM: DIRECTOR OF TELECOMMUNICATIONS MANAGEMENT

TO: Dr. Whitehead
Eva

DATE: March 24th

Enclosures are not attached to the letter to the FCC, as we have only one copy and it is so voluminous. And, since it is technical in nature rather than policy, felt it wasn't absolutely necessary to attach.

However, if you think it is necessary to have the enclosures, please give us a call.

W. E. Plummer
W. E. Plummer *W*
Acting

OTM

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OFFICE OF THE DIRECTOR

March 24, 1970

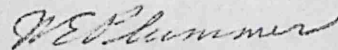
Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Chairman:

Enclosed please find information received from the Department of the Navy bearing on the case of "The State Committee to Stop Sanguine and Charles H. Stoddard v. Melvin R. Laird, et al, U.S.D.C. W.D. Wisconsin, Civil Action No. 70-C-5." This material is forwarded for information as agreed at a meeting between Navy, FCC and OTM interests on February 9, 1970. The Commission's letter, Serial 3400, of February 16, 1970, to the Department of Justice also pertains.

In view of the current status of Project SANGUINE, it is recommended that contacts received by the FCC for information thereon be brought to the attention of Francis J. Fitzpatrick, Rear Admiral, USN, Assistant Chief of Naval Operations (Communications and Cryptology).

Sincerely,


W. E. Plummer
Acting

Enclosure

X
OTP

March 24, 1970

Dear Bill:

The President has asked that I reply to your letter of March 23rd regarding the quasi-laser link system and its consideration by the Federal Communications Commission.

I enjoyed reading through the materials you enclosed. I am sure you recognize, however, that it would be inappropriate for the White House to express any interest to the Commission or to the Chairman personally as to how this matter should be handled. You might call it directly to Dean Burch's attention.

We appreciate your keeping us informed. We expect our new Office of Telecommunications Policy to come into existence on April 25, and I am sure they would also be interested in your proposals.

Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Mr. William J. Casey
Hall, Casey, Dickler & Howley
460 Park Avenue
New York, New York 10022

cc: Mr. Whitehead
Central Files

CTWhitehead:ed

See "Domest" file
for Background

Compromise failure blocks Intelsat windup

The international conference on the future organization of the International Telecommunications Satellite Consortium, expected to wind up its month-long deliberations in Washington last Friday (March 20) but which failed to agree, plans to hold another full-fledged session some time after Labor Day.

Refusal of some delegates to accept a compromise package put forth by the Australian and Japanese delegates (BROADCASTING, March 16) forced the conference to accept a suggestion that an "intersessional working group" be established to try to work out a satisfactory document in time for the next meeting.

Various amendments offered from the floor last week attempted to change the weight of votes to be held by nations who are members of the proposed board of governors of the international body. Also in conflict was the composition of the parent body, the assembly, and its right to counter actions taken by the board and/or the director general.

The U.S. delegation announced at last Thursday's session that the proposal submitted by Australia and Japan is acceptable, but that various amendments offered by other nations in conflict with the basic recommendations are unacceptable.

The Intelsat conference began a year ago and recessed to permit committees to prepare documents on various elements of the permanent Intelsat organization. The full conference resumed last month and was expected to complete its work last week. The Australian and Japanese proposals provided among other things that the U.S.'s Communications Satellite Corp. would continue to

manage the space satellite system for six years pending transfer of the administration to a board and a director general that would represent a more international character.

Cosat has been managing Intelsat since 1964.

4/10/70

Copies
were
sent
to
Riskanen

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON, D.C. 20503

DATE: MAR 21 1970

REPLY TO

ATTN OF: NSPD (Gessaman)

SUBJECT: Distribution of DTM Personnel to the OTP and the Department of Commerce

TO: Mr. Tom Whitehead

As indicated in my letter of March 16, the DTM currently has a 1970 ceiling of 63 positions, including the Director, of which 59 are now filled. This letter discusses the functions now being performed in the DTM and whether those functions should be performed by the OTP or the Commerce Department.

Tab A shows the current staffing within the DTM's office. Tab B is a listing of the functions of the various Directorates of the DTM.

Our analysis of current DTM activities led us to the following conclusions on which functions should be transferred to Commerce. Within the Office of the Director we see no need to transfer the function of the Assistant Director Program Planning to the OTP. However, the Commerce Department might have some use for this type of activity. All other functions identified for transfer to Commerce are currently in the Frequency Management Directorate. Within the IRAC Secretariat all of the staff except the Executive Secretary and one support type can go to Commerce. In order for the OTP to maintain sufficient control of the frequency assignment process to actually exercise final authority, the IRAC Executive Secretary should be a part of the OTP. The Frequency Engineering function fits under the responsibilities of the TRAC and it therefore should go to Commerce. Within Frequency Usage, the Computer Systems Analyst would properly fit into the Commerce function since Commerce will be managing the ADP efforts.

	<u>Current DTM</u>	<u>OTP</u>	<u>Commerce</u>
<u>Professional Staff</u>			
Office of the Director	3	2	1
International Communications	3	3	-
National Communications	7	7	-
Frequency Management	<u>12</u>	<u>8</u>	<u>4</u>
	25	20	5
 <u>Support Staff</u>			
Office of the Director	4	4	-
International Communications	2	2	-

<u>Support Staff (cont'd)</u>	<u>Current DTM</u>	<u>OTP</u>	<u>Commerce</u>
National Communications	5	5	-
Frequency Management	$\frac{23}{34}$	$\frac{7}{18}$	$\frac{16}{16}$
Vacancies	$\frac{3^{1/}}{3}$	$\frac{3}{3}$	$\frac{-}{-}$
Total	62	41	21

1/ Vacancy for DTM not included since reorganization plan abolishes position.

Additional Frequency Management functions that could be considered for transfer to the Commerce Department are:

1. Spectrum Development. As can be seen from the functional statement these two professionals concern themselves with things that come under both the OTP and Commerce functions. It can be argued that one of the two professionals and one of the two secretaries are more concerned with TRAC functions than OTP functions and therefore should go to Commerce.

2. Frequency Usage. This is similar to the spectrum development case in that some of the functions are of an OTP type or ones best performed at the OTP level while others can be performed by Commerce. We suspect that in addition to the computer system analyst included in our proposal, two more professionals and one support type could be transferred to Commerce with a slight redefinition of function.

The additional transfer would decrease DTM slots going to the OTP as shown in the following table.


	<u>OTP</u>	<u>Commerce</u>
<u>Professional Staff</u>		
Previous positions	20	5
Additional functional transfers	$\frac{-3}{17}$	$\frac{+3}{8}$
<u>Support Staff</u>		
Previous positions	18	16
Additional functional transfers	$\frac{-2}{16}$	$\frac{+2}{18}$
Vacancies	$\frac{3}{3}$	$\frac{-}{-}$
Total	36	26

To reduce the size of the OTP still further would require reducing Frequency Management further than we can recommend. A judgment that the Advanced Technology function can be performed in TRAC would reduce the OTP professional staff by one supergrade.

Bill

William A. Morrill

Enclosures



TAB A

Distribution of Current DTM Personnel Between
Professional and Support

	<u>Professional</u> <u>(GS-12 & up)</u>	<u>Support</u> <u>(GS-11 & lower)</u>	<u>Total</u>
Office of the Director	3	4	7
International Communications	3	2	5
National Communications	7	5	12
Frequency Management	$\frac{12}{25}$	$\frac{23}{34}$	$\frac{35}{59}$
Vacancies			$\frac{4}{63}$

OFFICE OF THE DIRECTOR

Legal Counsel

- . Provides normal legal assistance and opinions to the DTM

Legal Counsel O'Malley GS-15

Executive Assistant

- . Provides for administrative support of the DTM including budget and personnel planning.

Executive Assistant O'Connell GS-15

Assistant Director Program Planning

- . Performs speechwriting and general public relations function.

Assistant Director Program Planning Fishkin GS-15

Support Staff for the Director's Office

Secretaries and Clerks 4

International Telecommunications Directorate

Associate Director Clark GS-18

a. International Telecommunications

- . Support the Director in providing assistance and advice to the Department of State in the formulation of policy concerning U.S. activities in the International Telecommunications Satellite Consortium (INTELSAT).

- . Maintain liaison with, and cognizance over, the activities of the Communications Satellite Corporation.

- . Prepare and coordinate for the President the Annual Report to the Congress on Activities and Accomplishments under the Communications Satellite Act of 1962.

- . Develop policies of the Executive Branch for domestic and international satellite communications.

- . Develop Executive Branch policies for use of satellites for unique purposes such as aeronautical and maritime communications and navigation, meteorological forecasting and earth resources, etc.

- . Maintain cognizance of and participate in the formulation of policy regarding NATO telecommunications.

Chief Col. Olson, Military Detail

Electronic Engineer Cole GS-15

b. Advanced Technology

. Maintain cognizance of trends in telecommunications technology.

. Collect and analyze data on telecommunications research and development activities.

. Maintain a data base on telecommunications research efforts. Advise on the coordination of such activities and develop policies to reduce duplication and minimize gaps.

. Identify and analyze technical, economic and operational trends of telecommunications technology.

. Identify areas pertaining to the promotion and regulation of telecommunications which may require new legislation, or amendments to existing legislation.

. Recommend and encourage technological improvements in domestic and international Government and civil telecommunications systems.

. Participate in the work of the International Radio Consultative Committee and the International Telegraph and Telephone Consultative Committee related to international telecommunications.

Electronic Engineer Gould GS-16

Support staff for International Communications

Secretaries 2

National Telecommunications Directorate

Associate Director & Acting DTM Plummer GS-18

a. National Communications System

- . Provide policy guidance for the development and operation of the NCS.
- . Develop coordination and review procedures among the DTM, the Executive Agent, and the Agencies.
- . Assure that appropriate advances in technology are incorporated into the NCS.
- . In coordination with BOB, GSA, and the Manager, NCS, develop financial planning and program review procedures for the NCS.
- . Provide guidance and priorities with respect to communication requirements to be satisfied by the NCS.
- . Determine the adequacy of systems designs developed by the Executive Agent for the NCS.
- . Review program goals and future plans and concepts for the development of the NCS.

b. Domestic Telecommunications

- . Guide and support development of an effective national telecommunications capability.

- . Develop and recommend evolutionary changes in Government organization and philosophy to stimulate technological progress in telecommunications.

- . Guide and coordinate integration of advanced technology and management concepts into Federal telecommunications systems to increase quality, efficiency and economy.

- . Provide policy and guidance on the efficient use, growth and viability of Government-owned communication satellite systems and their use in meeting national requirements.

- . Create an effective Federal-State partnership to guide telecommunications policy formulation for both peacetime and emergency requirements.

- . Provide policy guidance and assistance for telecommunications in support of normal needs of Federal-State-local Government agencies.

- . Identify and evaluate the trends and requirements for telecommunications in support of law enforcement, medicine, social security, education, business and other public and private activities.

- . As appropriate, adjudicate and resolve telecommunication problems and issues.

Staff looking at both Domestic and National is the same

GSA detail	Hall	GS-15
Communications Specialist	Jones	GS-14
Military detail	Col. Yoder	
Systems Analyst	Urbany	GS-15

c. Telecommunications Readiness

- . Coordinate the development and preparation of plans and programs for the mobilization and use of national telecommunication resources in an emergency.
- . Provide advice and assistance to government agencies and industry on emergency telecommunications preparedness planning activities.
- . Develop criteria for reliability, availability, performance, and operational readiness for Government telecommunication facilities.
- . Evaluate national telecommunications emergency capabilities.
- . Guide and administer national telecommunication resources upon proclamation of war.
- . Develop and maintain a standby wartime organization for administration of the President's war emergency authority for telecommunications.

Telecommunications Specialist	Iathey	GS-16
Communications Specialist	Ward	GS-15
Military Detail	Capt. Babcock	

d. Standards

- . Develop telecommunication standards policies for the Executive Branch.
- . Direct, review and evaluate government standardization actions toward developing performance and user acceptability criteria and provide guidance in implementation.
- . Design and assign projects to Executive Branch agencies to eliminate obsolete and redundant standards and identify new standardization requirements.
- . Review existing and planned standardization actions and provide guidance necessary to achieve technical compatibility of all NCS elements, connected networks or facilities.
- . Monitor and evaluate telecommunication standards activities in government and private industry and provide for liaison between government and industry standardization activities.

- . Recommend appropriate changes to legislation or other authorizations relative to telecommunication standardization activities.

Communications Specialist Cooke GS-15

e. Teleprocessing Systems

- . Develop and provide policy guidance for teleprocessing activities of the Executive Branch.
- . Develop procedures to insure that Federal agency teleprocessing policies are in consonance with overall policies in this field.
- . Promote adoption of uniform policies and practices by agencies operating teleprocessing systems.
- . Develop and maintain information concerning Federal teleprocessing requirements, objectives, and priorities of implementation.
- . Foster research and development activities which assist in attainment of Federal teleprocessing objectives.
- . Improve the coordination of Federal, State and local teleprocessing activities in areas of mutual benefit.

Computer Systems Officer Culpepper GS-15

National Communications Directorate Support Staff

Secretaries 5

Frequency Management Directorate

Associate Director	Dean	GS-17
Military Detail	LC Buss	

a. Spectrum Development

- . Develop and recommend national objectives and policies for allocation of the spectrum.
- . Develop and implement a National Electromagnetic Compatibility (EMC) Program.
- . Collect and analyze data on current and projected spectrum needs so as to determine frequency requirements with respect to the division between Government and non-Government allocations.
- . Participate in and review the work of the International Radio Consultative Committee (CCIR), both nationally and internationally, pertaining to radio frequency matters.
- . Participate in and implement the results of regional and international conferences pertaining to the allocation and use of the radio spectrum.
- . Develop and monitor study programs concerned with more effective use of the radio spectrum.
- . Maintain and review the National Table of Frequency Allocations to ensure that the division of the radio frequency spectrum between Government and non-Government users serves the national interest; carry on joint planning with the FCC of the spectrum on the short-term and long-term user basis; recommend, in light of the national security, interest, economy, and foreign relations, allocations for Government use.

Chief	Jansky	GS-15
Engineer	Gamble	GS-13

b. Frequency Engineering

- . Review and stimulate timely application of improved techniques and methods of radio frequency management within the Executive Branch.

- . Direct enforcement programs concerned with U.S. Government compliance with the technical performance criteria necessary for effective spectrum management.

- . Keep abreast of Government agency frequency management activities, radiocommunication problems, and radio and electronic operations.

- . Define engineering standards for Government agencies to promote efficient use of radio spectrum.

- . Stipulate and enforce technical performance requirements.

- . Participate in international and national efforts on technical standards and design objectives.

- . Prepare proposals for international radio technical regulations.

- . Conduct a station inspection program.

- . Analyze spectrum monitoring results.

- . Evaluate equipment tests results.

Engineer Stelzenmuller GS-15

c. Frequency Usage

- . Recommend frequency utilization objectives, policies, regulations and procedures.

- . Assist in the assignment of frequencies to Government radio stations and amendment, modification, or revocation of such assignments, as appropriate.

- . Ascertain Government frequency requirements and assist in ensuring that its frequency requirements are satisfied in an efficient and expeditious manner.

- . Make technical determinations and allocate frequencies required by foreign governments to construct and operate radio stations in the fixed service at the United States seat of government.

- . Review the actual use of frequencies assigned to Government agencies to determine whether they are still required and are being used effectively.

- . Direct and support the affairs of the Frequency Assignment Subcommittee.
- . Develop and extend the ADP system for frequency management.
- . Maintain the Manual of Regulations and Procedures for Radio Frequency Management.
- . Supervise the international notification and registrations of Government frequency assignments.
- . Assist in preparing for, participating in, and implementing the results of international radio conferences.
- . Supervise the notification to the International Frequency Registration Board (IFRB) of Government frequency assignments, and the supply to the IFRB, as appropriate, of data pertaining thereto.

Chief	Hailey	GS-15
Engineer	Corrado	GS-14
ADP Programmer	Garber	GS-13
Communications Specialist	Higgins	GS-13
Communications Specialist	Dinkle	GS-12

d. IRAC Secretariat Division

- . Maintain records of assignments and authorizations and print lists of assignments as appropriate.
- . Administer activities of IRAC, including the Frequency Assignment and Technical Subcommittees.
- . Direct computer support activity for radio frequency management.
- . Maintain the emergency readiness plan for the use of the spectrum.
- . Supervise, record, analyze and review all computer inputs and outputs.
- . Maintain plans and facilities for relocation of DTM staff.

. Coordinate with telecommunication officials of Canada and other countries and organizations, as approved by the Department of State, on radio frequency and related matters.

Executive Secretary	Kirkevold	GS-15
Asst. Executive Secretary	Filipski	GS-14
Supervisor of Frostburg Operation	Rexrode	GS-12

IRAC Secretariat Support Staff
18 people of various grades and titles

Frequency Management Directorate Support Staff
Secretaries 5

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON, D.C. 20503

DATE: March 16, 1970

REPLY TO
ATTN OF: NSPD

SUBJECT: DTM and OTP Manning

TO: Mr. Tom Whitehead

You asked several questions the other day about personnel in the DTM and the OTP. These questions were: (1) number of slots going to the OTP, (2) mechanics of transferring people, (3) use of military details, and (4) assignment of interim director.

Number of slots to OTP

The FY 1970 ceiling for DTM personnel is 63. There are currently 59 on board. Included in the 63 are the DTM and 9 supergrade positions. Of the 9 supergrades, 5 are currently filled. Pending actions are to promote Will Dean from a GS-17 to GS-18: upgrading Dave Hall, who is now a GS-15 detail from GSA, to a GS-16 on DTM payroll. In addition, there is an action to promote Ray O'Connell from GS-15 to GS-16 in process--this was started by Jim O'Connell. Of the 63 positions, we are considering transferring 42 to the OTP and 21 to Commerce. The 42 includes the position of DTM. The 21 positions going to Commerce are from the Frequency Management Directorate (20) and the position of Assistant Director for Program Planning. Provided Congress appropriates the funds requested, an additional 10 positions will be available for OTP in 1971.

too many.

Prof?

Mechanics of transfer

Since the Commerce Department will not have a going TRAC prior to July 1, it is necessary to decide whether to transfer the DTM people to Commerce on April 25 (effective date of reorganization plan) or to hold off until 1 July. Holding off until 1 July might offer several advantages. For one, it would give the new Director, provided there is one, an opportunity to review the staff and make some transfers which might not be made if the transfer is handled on a more or less functional basis. We suspect the accounting process could also be easier transferred at the beginning of a fiscal year. If the transfer is made on 25 April, we presume the new Director could still have some leeway in the transfer of additional people to Commerce. With the Bureau as a catalyst, the Department of Commerce and DTM are working on the transfer.

Military personnel

DTM currently has 4 military personnel detailed to his office. This is fewer than normal since a concerted effort has been made not to take on additional ones until a new Director is appointed. There is

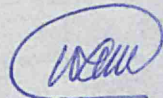
apparently no problem in obtaining additional details. The DTM merely requests the Secretary of Defense for specific people, if known, and works out the details with the military department's personnel office.

Assignment of interim Director

The assignment of an interim Director appears to be rather straight forward. We understand all that is required is a memorandum to the President from William Hopkins' office in the White House with an attached memo for the President to sign. The only decision to be made in the assignment is whether an existing employee gets paid at his existing level or at the level 3 salary as provided for in the reorganization plan.

Summary

There is apparently some possibility of bringing 2 to 3 new people on board immediately. If specific persons are known, Ray O'Connell, the DTM's Executive Assistant, can work out the details of bringing them on board. Likewise, he can arrange for additional military details.



William A. Morrill

91ST CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

REPORT
No. 91-930

APPROVING REORGANIZATION PLAN NO. 1 OF 1970 (TELECOMMUNICATIONS)

MARCH 19, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany H. Res. 841]

The Committee on Government Operations, to whom was referred the resolution (H. Res. 841) to disapprove Reorganization Plan No. 1 of 1970, having considered the same, report unfavorably thereon and recommend that the resolution do not pass.

SUMMARY AND PURPOSE OF REORGANIZATION PLAN NO. 1 OF 1970

The plan would establish an Office of Telecommunications Policy in the Executive Office of the President. It will be headed by a Director (Executive level III) and a Deputy Director (Executive level IV), both to be appointed with the advice and consent of the Senate. The new Office would perform telecommunications functions vested in the President by the Communications Act of 1934 and other statutes now delegated to the existing Office of Telecommunications Management, which is part of the Office of Emergency Preparedness. The Office of Telecommunications Management in the Office of Emergency Preparedness will be abolished.

The only function to be carried out by the new Office that is designated in the plan itself is that relating to the assignment of frequencies of radio stations belonging to and operated by the U.S. Government. Other functions will be assigned by the President to the new Office by Executive order as soon as the pending reorganization plan takes effect. These expected additional functions are set forth in a letter from the Director of the Bureau of the Budget to the chairman of this committee, dated February 27, 1970, a copy of which is printed in this report. The newly created Office of Telecommunications Policy

will, therefore, have essentially the same range of duties as those now performed by the expiring Office of Telecommunications Management in the Office of Emergency Preparedness.

President Nixon said the plan "should result in the more efficient operation of the Government" and is needed "if the Government is to respond adequately to the challenges and opportunities presented by the rapid pace and change in communications."

ESSENTIAL ROLES OF THE NEW OFFICE OF TELECOMMUNICATIONS POLICY

President Nixon stated the essential roles to be played by the new Office in these terms:

1. It would serve as the President's principal adviser on telecommunications policy, helping to formulate Government policies concerning a wide range of domestic and international telecommunications issues, and helping to develop plans and programs which take full advantage of the Nation's technological capabilities. The speed of economic and technological advance in our time means that new questions concerning communications are constantly arising, questions on which the Government must be well informed and well advised. The new Office will enable the President and all Government officials to share more fully in the experience, the insights, and the forecasts of Government and non-Government experts.

2. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the Federal Government's own vast communications systems. It would, for example, set guidelines for the various departments and agencies concerning their communications equipment and services. It would regularly review the ability of Government communications systems to meet the security needs of the Nation and to perform effectively in time of emergency. The office would direct the assignment of those portions of the radio spectrum which are reserved for Government use, carry out responsibilities conferred on the President by the Communications Satellite Act, advise State and local governments, and provide policy direction for the national communications system.

3. Finally, the new office would enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress. It is my hope, however, that the new office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy, especially in their procedures for allocating portions of the radio spectrum for Government and civilian use. Our current procedures must be more flexible if they are to deal adequately with problems such as the worsening spectrum shortage.

SECTION-BY-SECTION ANALYSIS OF REORGANIZATION PLAN NO. 1 OF 1970

Section 1. Transfers the function of assigning frequencies of U.S. Government owned and operated radio stations to the Director of the Office of Telecommunications Policy.

Section 2. Establishes the Office of Telecommunications Policy in the Executive Office of the President.

Section 3. Puts at the head of the Office a Director at executive level 3 and in the Office a Deputy Director at executive level 4, both to be appointed by the President with the advice and consent of the Senate.

Section 4. The Director may appoint and fix the compensation of employees in accordance with the civil service laws and delegate to them such of his functions as he deems appropriate.

Section 5. The Office of Assistant Director of the Office of Emergency Preparedness—Director of Telecommunications Management—is abolished.

Section 6. Such personnel and property of the Office of Telecommunications Management as the Director of the Bureau of the Budget shall direct will be transferred to the new Office or otherwise disposed of.

Section 7. The President may appoint an interim Director of the new Office.

HEARINGS

Hearings on the plan and disapproval resolution were held by the Subcommittee on Executive and Legislative Reorganization.¹ The hearings were announced to the press and in the Congressional Record. Representatives of the Bureau of the Budget, the Office of Telecommunications Management, the Department of Defense, the General Services Administration, and the Department of Commerce testified in behalf of the plan and explained how it would affect the operations of their agencies. The Chairman of the Federal Communications Commission, speaking for the Commission, also endorsed the plan. Representatives of the General Accounting Office appeared and stated that the plan was in accord with the recommendations of that Office. Congressman Cornelius Gallagher, who filed the disapproval resolution (H. Res. 841), also testified and informed the subcommittee on his reasons for opposing the plan.

BACKGROUND

Regulation of our Nation's commercial telecommunications service lies primarily with the Federal Communications Commission, but the responsibility for meeting the Government's own requirements in this field have been placed largely in the hands of the President. This includes the formulation of policy and standards and the operation of a vast internal network of communications used by the executive departments and agencies called the National Communications System. The President has delegated this responsibility to the presently existing Office of Telecommunications Policy in the Office of Emergency

¹ Hearings on Reorganization Plan No. 1 of 1970 (Office of Telecommunications Policy) by the Executive and Legislative Reorganization Subcommittee of the House Committee on Government Operations, Mar. 9 and 10, 1970.

Preparedness. Recognizing the great importance of this function the director of that office (though currently vacant) has served as a Special Assistant to the President and as Assistant Director of the Office of Emergency Preparedness. He develops the executive branch position on national telecommunications policy, coordinates the planning and operation of the telecommunications systems of the Federal Government, discharges responsibilities assigned to the President in the areas of spectrum management and satellite communications, and performs emergency planning and control functions for telecommunications. He also assures that there is effective cooperation with the FCC on policy issues.

INADEQUACY OF THE PRESENT OFFICE

For various reasons this arrangement has been neither satisfactory nor effective and the Office has not carried out these functions as well as expected, particularly in the area of coordination and the unification of intragovernmental telecommunications. This weakness in administration has resulted in a number of studies in recent years. President Johnson set up a task force on communications policy, headed by Eugene V. Rostow, which made a report to him on December 7, 1968. He also ordered a study of Federal communications organization by the Bureau of the Budget, which report was likewise submitted in December of 1968. President Nixon instituted a review of telecommunications policy and organizational problems, and a report was submitted by Peter Flanigan, Assistant to the President, and Clay T. Whitehead of the White House staff, in December 1969. The Flanigan-Whitehead report apparently led to the submission of the plan.

COMPTROLLER GENERAL'S STUDY

The Comptroller General also made a study and submitted to Congress in July 1969 a report entitled "Review of Status of Development Toward Establishment of a Unified National Communications System." He found that " * * * there is little, if any, centralized direction and control over the development and improvement of the agency networks. * * * Also, there is no assurance that the broader national objectives of (1) reliable and effective communications capability and (2) economy of operation from a Government-wide standpoint are being effectively considered." The Comptroller recommended a major realignment and "removing the Office of the Director of Telecommunications Management as a component part of the Office of Emergency Preparedness and reconstituting this office as a new organization or entity * * *."

HOLIFIELD SUBCOMMITTEE RECOMMENDATION

The Committee on Government Operations, through our Military Operations Subcommittee chaired by Hon. Chet Holifield, gave close attention to this problem. In hearings during 1964 the subcommittee reviewed 6 years of Government effort in the development of satellite communications. The Holifield Subcommittee examined, among other things, the role and structure of the Office of Telecommunications Management. In its report approved by the full Committee on

Government Operations and submitted to the Congress on March 17, 1965 (H. Rept. 89-178), Recommendation 6 provided as follows (p. 111):

At the earliest practicable date, the President should submit to the Congress a reorganization plan to reconstitute the functions and responsibilities of the Director of Telecommunications Management in a separate office in the Executive Office of the President, and take steps to insure that the office is adequately staffed.

That recommendation was repeated in a Committee Report of October 19, 1966 (H. Rept. 89-2318, p. 9), and adverted to again in a report of August 28, 1967 (H. Rept. 90-613, p. 12), noting in the latter report that the Bureau of the Budget had undertaken, at President Johnson's request, a study of organizational alternatives for telecommunications management in the Federal Government.

CONSENSUS FOR REORGANIZATION

Thus, there appears to be a remarkable consensus between the present and past administrations, the Comptroller General and our own committee that a reorganization of telecommunications functions is needed and should be made.

Reorganization Plan No. 1 of 1970 is fully in accord with the recommendation made by this committee 5 years ago and renewed in succeeding reports, and recognized as valid both by the Comptroller General and the present administration. This does not necessarily commit this committee to any policy positions that the President or the Director of this new office may put forth. What we are agreed upon, however, is that telecommunications is a vitally important subject and the Government has large responsibilities in the field. By this plan a better organizational base is created for telecommunications policy development and management.

VIEWS OF OTHER LEGISLATIVE COMMITTEES

As is our custom, when we consider reorganization plans that in some way may affect the interests of other committees of the House, we wrote to the chairman of the Interstate and Foreign Commerce Committee, the chairman of the Armed Services Committee, and the chairman of the Independent Offices Subcommittee of the Committee on Appropriations asking them to give us their reactions to the plan and to appear before us during the hearings, if they cared to do so. Their responses are printed in this report. It will be noted that none of them opposed approval of the plan.

RELATIONS BETWEEN THE NEW OFFICE OF TELECOMMUNICATIONS POLICY AND THE FEDERAL COMMUNICATIONS COMMISSION

During our consideration of Reorganization Plan No. 1, this committee has been very conscious of the special status of the independent regulatory agencies and the Federal Communications Commission in particular. We closely analyzed the plan to make certain that it would produce neither expressly nor by implication

any change in the proper relation that should exist between the Executive and the FCC.

This problem was highlighted when, during the hearings, Clay T. Whitehead, a White House staff member, was quoted as saying he had no qualms about seeking to influence the FCC or other so-called independent agencies. Mr. Whitehead dispatched a letter dated March 10, 1970, to Acting Chairman Chet Holifield denying that this was his view and informing us that " * * * there have been strict instructions to the entire White House staff not to attempt to influence independent regulatory commissions in their quasi-judicial functions, or even give the appearance of attempting to do so * * * " He enclosed a copy of a memorandum dated May 21, 1969, circulated to the staff in that regard and referred to the testimony previously given to the subcommittee by administration witnesses which he said "made clear this administration's policy that the independence and the authority of the Federal Communications Commission is in no way impaired by Reorganization Plan No. 1 * * * . No powers of the FCC are affected and the authority of the Congress remains unchanged." The full text of his letter and the memorandum are printed in this report.

Chairman Dean Burch of the Federal Communications Commission, who strongly supported the plan in his testimony, was questioned by members of the subcommittee on possible White House influence on his agency. He stated:

I have absolutely no fear of either an actual or possible undue influence by the White House on the Commission by virtue of this office. I just don't think there is any fear there.

CONGRESSMAN GALLAGHER'S OBJECTIONS TO THE PLAN

H. Res. 841, a resolution to disapprove Reorganization Plan No. 1 of 1970, was filed by Congressman Cornelius E. Gallagher of New Jersey. In his testimony before the committee Congressman Gallagher indicated that his interest was in focusing on the problem of computer privacy and the integrity of the data flow along communication lines. His principal desire was for positive assurance that computer privacy concerns will be a part of the new office.

During the hearings the following statement was made by Dwright Ink, Assistant Director of the Bureau of the Budget on this matter:

Mr. Chairman, Congressman Gallagher raised two separate questions in introducing his resolution of disapproval. One deal with the use of services under the Federal Telecommunications System by Congress. On this point, GSA corresponded with Mr. Gallagher on February 25 and pointed out that an offer of service comparable to that being provided the agencies had been made to the clerk of the House. We understand that this proposal is currently pending in the Committee on House Administration. The representative of GSA can provide further details on this matter.

The other matter raised by Mr. Gallagher deals with computer privacy. I can assure you, Mr. Chairman, that we are acutely aware of the importance of this issue, and we can reassure you that the Office of Telecommunications Policy

will focus on the issue in dealing with any executive branch proposals related to computers and communications to assure that privacy is not violated. Mr. Gallagher's concern may be related in part to a proposal for a National Data Bank which was considered during the previous administration. This proposal is not under consideration at this time and I know of no plans to reactivate it.

We note that the President's letter of transmittal stated that the new Office of Telecommunications Policy will have the responsibility of formulating Government policies designed to develop plans and programs which take full advantage of the Nation's technological capabilities in the area of telecommunications. It must be kept in mind, however, that evolving technologies in the area of telecommunications and data processing will result in making increasingly uncertain the borders separating the communications industry from the data processing industry. Therefore, the office must be prepared to develop plans and programs dealing with possible conflicts between these two industries. The problem of protecting the rights of privacy of individuals which may be jeopardized through the use of computers for data banks is one of many problems which will have to be considered in formulating appropriate Government policies.

This committee most certainly does not intend that the organizational step made by this plan will lead to a gigantic ogre where the intimate details of the lives and properties of the American people are laid bare. We expect that the expressed commitment of concern for privacy will be adhered to and we will exercise our responsibility to follow closely such moves as may be made.

CONCLUSION

We view the plan as a forward step of significant proportions toward the efficient organization of the important and necessary telecommunications services of the Government. It is axiomatic that in these times messages must be relayed with dispatch among the farflung offices and stations throughout the United States and the world if our Government's business is to be properly conducted. This plan gives status and importance to this new Office and, hopefully, it will be able to resolve the many complex and technical problems involved in establishing and maintaining this sensitive mechanism.

will focus on the issue in dealing with any executive branch proposals related to computers and communications to ensure that privacy is not violated. Mr. Gallagher's concern may be related in part to a proposal for a National Data Bank which was considered during the previous administration. This proposal is not under consideration at this time and I know of no plans to reevaluate it.

We also believe the President's letter of transmittal stated that the new Office of Telecommunications Policy will have the responsibility of formulating Government policies designed to develop plans and programs which take full advantage of the National technological capabilities in the area of telecommunications. It must be kept in mind, however, that involving technology in the area of telecommunications and data processing will result in making increasingly sensitive the policies regarding the telecommunications industry from the data processing industry. Therefore, the office must be prepared to develop plans and programs dealing with possible conflicts between these two industries. The problem of protecting the rights of privacy of individuals which may be jeopardized through the use of computers for this purpose is one of many problems which will have to be considered in formulating appropriate Government policies.

The committee most recently does not intend that the organizational step made by this plan will lead to a gigantic new where the intimate details of the lives and properties of the American people are laid bare. We expect that the expressed commitment of concern for privacy will be shared to and we will exercise our responsibility to follow closely such moves as may be made.

Conclusion

We view the plan as a first step of significant proportion toward the efficient organization of the important and necessary telecommunications services of the Government. It is essential that in these times of stress, such as we are facing, the telecommunications services of the Government be maintained and the world's other offices and stations throughout the United States and the world's other Government's business is to be properly conducted. The plan gives status and importance to this new Office and, hopefully, it will be able to resolve the many complex and technical problems involved in establishing and maintaining this sensitive mechanism.

The plan also provides for the establishment of a new Office of Telecommunications Policy, which will be responsible for the development and implementation of telecommunications policy. This Office will be responsible for the development and implementation of telecommunications policy, which will be responsible for the development and implementation of telecommunications policy.

APPENDIX

91st Congress, 2d Session

House Document No. 222

REORGANIZATION PLAN NO. 1 OF 1970

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

REORGANIZATION PLAN NO. 1 OF 1970



FEBRUARY 9, 1970.—The message and accompanying papers referred to the Committee on Government Operations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1970

LETTER OF TRANSMITTAL

THE WHITE HOUSE, February 9, 1970.

To the Congress of the United States:

We live in a time when the technology of telecommunications is undergoing rapid change which will dramatically affect the whole of our society. It has long been recognized that the executive branch of the Federal government should be better equipped to deal with the issues which arise from telecommunications growth. As the largest single user of the nation's telecommunications facilities, the Federal government must also manage its internal communications operations in the most effective manner possible.

Accordingly, I am today transmitting to the Congress Reorganization Plan No. 1 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code.

That plan would establish a new Office of Telecommunications Policy in the Executive Office of the President. The new unit would be headed by a Director and a Deputy Director who would be appointed by the President with the advice and consent of the Senate. The existing office held by the Director of Telecommunications Management in the Office of Emergency Preparedness would be abolished.

In addition to the functions which are transferred to it by the reorganization plan, the new Office would perform certain other duties which I intend to assign to it by Executive order as soon as the reorganization plan takes effect. That order would delegate to the new Office essentially those functions which are now assigned to the Director of Telecommunications Management. The Office of Telecommunications Policy would be assisted in its research and analysis responsibilities by the agencies and departments of the Executive Branch including another new office, located in the Department of Commerce.

The new Office of Telecommunications Policy would play three essential roles:

1. It would serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities. The speed of economic and technological advance in our time means that new questions concerning communications are constantly arising, questions on which the government must be well informed and well advised. The new Office will enable the President and all government officials to share more fully in the experience, the insights, and the forecasts of government and non-government experts.

2. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the Federal government's own vast communications systems. It would, for example, set guidelines for the various departments and agencies concerning their communications equipment and services. It would regularly review the ability of government communications systems to meet the security needs of the nation and to perform effectively in time of emergency. The Office would direct the assignment of those portions of the radio spectrum which are reserved for government use, carry out responsibilities conferred on the President by the Communications Satellite Act, advise State and local governments, and provide policy direction for the National Communications System.

3. Finally, the new Office would enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress. It is my hope, however, that the new Office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy, especially in their procedures for allocating portions of the radio spectrum for government and civilian use. Our current procedures must be more flexible if they are to deal adequately with problems such as the worsening spectrum shortage.

Each reorganization included in the plan which accompanies this message is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the government to the fullest extent practicable."

The reorganizations provided for in this plan make necessary the appointment and compensation of new officers, as specified in sections 3(a) and 3(b) of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

This plan should result in the more efficient operation of the government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

The public interest requires that government policies concerning telecommunications be formulated with as much sophistication and vision as possible. This reorganization plan—and the executive order which would follow it—are necessary instruments if the government is to respond adequately to the challenges and opportunities presented by the rapid pace of change in communications. I urge that the Congress allow this plan to become effective so that these necessary reforms can be accomplished.

RICHARD NIXON.

REORGANIZATION PLAN NO. 1 OF 1970

(Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code)

OFFICE OF TELECOMMUNICATIONS POLICY

SECTION 1. *Transfer of functions.* The functions relating to assigning frequencies to radio stations belonging to and operated by the United States, or to classes thereof, conferred upon the President by the provisions of section 305(a) of the Communications Act of 1934, 47 U.S.C. 305(a), are hereby transferred to the Director of the Office of Telecommunications Policy hereinafter provided for.

SEC. 2. *Establishment of Office.* There is hereby established in the Executive Office of the President the Office of Telecommunications Policy, hereinafter referred to as the Office.

SEC. 3. *Director and deputy.* (a) There shall be at the head of the Office the Director of the Office of Telecommunications Policy, hereinafter referred to as the Director. The Director shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(b) There shall be in the Office a Deputy Director of the Office of Telecommunications Policy who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Director shall perform such functions as the Director may from time to time prescribe and, unless the President shall designate another person to so act, shall act as Director during the absence or disability of the Director or in the event of vacancy in the office of Director.

(c) No person shall while holding office as Director or Deputy Director engage in any other business, vocation, or employment.

SEC. 4. *Performance of functions of Director.* (a) The Director may appoint employees necessary for the work of the Office under the classified civil service and fix their compensation in accordance with the classification laws.

(b) The Director may from time to time make such provisions as he shall deem appropriate authorizing the performance of any function transferred to him hereunder by any other officer, or by any organizational entity or employee, of the Office.

SEC. 5. *Abolition of office.* That office of Assistant Director of the Office of Emergency Preparedness held by the Director of Telecommunications Management under Executive Order No. 10995 of February 16, 1962, as amended, is abolished. The Director of the

Office of Emergency Preparedness shall make such provisions as he may deem to be necessary with respect to winding up any outstanding affairs of the office abolished by the foregoing provisions of this section.

SEC. 6. *Incidental transfers.* (a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, or used by, or available or to be made available to, the Office of Emergency Preparedness in connection with functions affected by the provisions of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Telecommunications Policy at such time or times as he shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. *Interim Director.* The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Telecommunications Policy until the office of Director is for the first time filled pursuant to the provisions of section 3 of this reorganization plan or by recess appointment, as the case may be. The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office of Director. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 27, 1970.

Hon. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In his message to the Congress of February 1970, transmitting Reorganization Plan No. 1 of 1970, the President stated that he intended to assign additional duties to the proposed Office of Telecommunications Policy in the Executive Office of the President as soon as the reorganization plan takes effect. Since most of the functions to be assigned are of a nonstatutory nature their inclusion in the reorganization plan would be inappropriate.

When staff of the Bureau of the Budget discussed the proposed telecommunications reorganization with staff of the committee it was their recommendation that additional materials describing the type of functions to be performed by the new Office should be provided to the committee so that the reorganization plan could be considered in its proper context. The enclosed listing of functions to be assigned by Executive order was provided informally to committee staff. We would like to submit it formally at this time.

Sincerely,

ROBERT P. MAYO, *Director.*

TELECOMMUNICATIONS MANAGEMENT REORGANIZATION

ASSIGNMENT OF FUNCTIONS BY EXECUTIVE ORDER TO THE PROPOSED
DIRECTOR OF TELECOMMUNICATIONS POLICY

The following listed functions assigned currently to the Director of Telecommunications Management in the Office of Emergency Preparedness would be redelegated or reassigned to the Director of Telecommunications Policy upon the establishment of the Office of Telecommunications Policy as a separate unit in the Executive Office of the President.

A. *Executive Order No. 10995 of February 16, 1962, as amended by Executive Order No. 11084 of February 15, 1963—"Assignment of Telecommunications Management Functions"*

1. Coordinate telecommunications activities of the executive branch and be responsible for the formulation, after consultation with appropriate agencies, of overall policies and standards therefor.
2. Promote and encourage the adoption of uniform policies and standards by agencies authorized to operate telecommunications systems.

3. Develop data with regard to U.S. Government frequency requirements.

4. Encourage research and development activities deemed necessary and desirable to attain the following objectives:

- (a) Full and efficient employment of telecommunications resources in carrying out national policies;

- (b) Development of telecommunications plans, policies, and programs to take full advantage of technological development; serve the national security; sustain and contribute to the develop-

ment of world trade and commerce; strengthen the U.S. position in international negotiations; and encourage better frequency management;

(c) Utilization of the radio spectrum by the Federal Government in the public interest; and

(d) Implementation of the national policy on the development and use of space satellites for international telecommunications services.

5. Assist and give policy advice to the Department of State in international telecommunications matters (in conjunction with the FCC).

6. Authorize a foreign government to construct and operate a radio station at the seat of government (vested in the President by subsection 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305(d))).

7. Exercise the war powers vested in the President by subsections 606(a), (c), and (d) of the Communications Act of 1934, as amended (47 U.S.C. 606(a), (c), and (d)) (delegated to the Director, OEP by Executive Order No. 10705 of April 17, 1957, as amended).

8. Contract for studies and reports related to any aspect of his responsibilities.

B. Executive Order No. 11051 of September 27, 1962—"Prescribing Responsibilities of the Office of Emergency Planning in the Executive Office of the President"

Planning for the emergency mobilization of telecommunications resources (sections 301, 306, and 406 of Executive Order No. 11051).

C. Executive Order No. 11191 of January 4, 1965—"Providing for carrying out of certain provisions of the Communications Satellite Act of 1962"

1. Advise and assist the President in connection with the functions conferred upon the President by section 201(a) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)).

2. Aid in planning and development of a national program for establishing a commercial communications satellite system.

3. Review the development of the operation of a commercial communications satellite system, including the activities of the Communications Satellite Corporation.

4. Coordinate telecommunications activities of governmental agencies to assure compliance with the act.

5. Make recommendations to the President on steps needed to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes.

6. Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities.

7. Serve as chief point of liaison between the President and the Communications Satellite Corporation.

D. President's Memorandum of August 21, 1963—"Establishment of the National Communications System" (28 F.R. 9413)

1. Responsibility for policy direction of the development and operation of a National Communications System (NCS).

2. Advise with respect to (a) communications requirements to be supplied through the NCS; (b) the responsibilities of the agencies

in implementing and utilizing the NCS; (c) the guidance to be given to the Secretary of Defense as executive agent for the NCS with respect to the design and operation of the NCS.

3. Identify those requirements unique to the needs of the Presidency.
4. Formulate and issue to the Executive Agent guidance as to the relative priorities of requirements.
5. Insure that there is adequate planning to meet future needs of the NCS.
6. Assist the President with respect to his coordinating and other functions under the Communications Satellite Act of 1962.
7. Exercise review and surveillance of actions to insure compliance with policy determinations and guidance.
8. Arrange for the assignment of communications and other specialists from any agency by detail or temporary assignment.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., March 9, 1970.

Hon. JOHN A. BLATNIK,
*Chairman, Executive and Legislative Reorganization Subcommittee, House
Committee on Government Operations, Washington, D.C.*

DEAR MR. CHAIRMAN: I write in response to your request for my views with respect to the President's Reorganization Plan No. 1 of 1970. That plan would, of course, establish a new office, the Office of Telecommunications Policy in the Executive Office of the President under the direction of a Director and Deputy Director to be appointed by the President by and with the consent of the Senate. The existing Office of Telecommunications Management would be abolished.

The telecommunications industry is one of the Nation's largest, and telecommunications are essential to our security, welfare, and commerce—interstate, intrastate, and foreign. Therefore, I regard the formulation of Government policy with respect to telecommunications as being of the greatest importance. The fact that in 1967 President Lyndon Johnson found it necessary to establish a Task Force on Communications Policy, and that in the first year of President Nixon's administration a White House working group was established to formulate policy with respect to domestic communications satellites persuades me that the executive branch of our Government requires greater policymaking capability in the field of telecommunications. To the extent that the Office of Telecommunications Policy under the proposed reorganization plan would make available such capability to the President, I support the plan.

However, I note that in his letter transmitting the reorganization plan, the President states: “* * * the new Office would enable the executive branch to speak with a clear voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission.” He goes on to assure that none of the prerogatives or functions assigned to the FCC by the Congress would be taken away. The FCC is, of course, an arm of the Congress which comes within the legislative jurisdiction of the House Committee on Interstate and Foreign Commerce, of

which I have the honor to be chairman. So long as I am chairman of the committee, it will be my purpose to prevent any of the prerogatives or functions of the FCC from being taken away by Executive action.

Because of other commitments it will be impossible for me to appear and testify before your subcommittee on this important matter. Nevertheless I wish to thank you for your invitation and extend to you best wishes in your deliberations.

Sincerely yours,

HARLEY O. STAGGERS, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., March 5, 1970.

HON. JOHN A. BLATNIK,
*Chairman, Executive and Legislative Reorganization Subcommittee,
Committee on Government Operations, House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of March 3 for my views on Reorganization Plan No. 1 of 1970, which would establish an Office of Telecommunications Policy in the Executive Office of the President.

As you know, the interest of this committee has been limited to the telecommunications systems of the Department of Defense. We have not directed our attention to the existing office of the Director of Telecommunications Management, nor to the telecommunications systems of the executive branch which do not support the Defense Department. Our investigation is in its early stages and has not yet reached any conclusions concerning the impact that reorganization of the existing office might have upon Defense communications. However, if the proposed reorganization would provided clear policy direction for the Department of Defense, it should enable that Department to make more effective use of its telecommunications assets.

Sincerely,

L. MENDEL RIVERS, *Chairman.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., March 9, 1970.

HON. JOHN A. BLATNIK,
*Chairman, Executive and Legislative Reorganization Subcommittee,
Committee on Government Operations, House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: I appreciate your kind consideration in advising of your hearings on Reorganization Plan No. 1 of 1970, relating to management of governmental telecommunications.

In our appropriation hearings on the 1971 budget we recently discussed the reorganization plan with the Office of Emergency Preparedness. Some of us felt that telecommunications today is of sufficient magnitude and importance to warrant a more comprehensive review by the Congress than is afforded through a reorganization plan.

The proposed organization seems to us to achieve little that could not be done by an Executive order, but primarily rearranges functions previously assigned by prior Executive orders. It was suggested to OEP that consideration should therefore be given to establishing the office by legislation. This would provide a firmer statutory basis for these vital activities.

We do not object to the reorganization plan, but in response to your kind invitation I am submitting these other considerations that had occurred to us.

With every good wish, I am

Sincerely yours,

JOE L. EVINS,
*Chairman, Independent Offices,
HUD Subcommittee.*

THE WHITE HOUSE,
Washington, March 10, 1970.

HON. CHET HOLIFIELD,
*Committee on Government Operations,
House of Representatives,
Washington, D.C.*

DEAR MR. HOLIFIELD: I understand that at a hearing, which you chaired, of the Subcommittee on Executive and Legislative Reorganization of the House Committee on Government Operations on March 9, 1970, concerning Reorganization Plan No. 1, questions arose about White House relationships with the Federal Communications Commission. Specifically, questions were raised about an article appearing in Broadcasting magazine which attributed to me the view that "the White House has no qualms about seeking to influence the commission or other so-called independent agencies." I would like to clarify both the record and our position in this matter.

First, I have made no statements to the press from which they could properly conclude that the White House intended any undesirable or improper influence on the FCC; that is not my view, and it is not the view of this administration. Indeed, there have been strict instructions to the entire White House staff not to attempt to influence independent regulatory commissions in their quasi-judicial functions, or even give the appearance of attempting to do so; I attach a memorandum circulated to the staff in that regard.

Second, it is appropriate to draw a distinction between general policy issues which may be before regulator commissions and particular cases in which those commissions are exercising their quasi-judicial responsibilities. In the latter category, any attempt to influence a commission would obviously be improper for the White House or any executive branch agency. In the former category, however, the President has both statutory and general leadership responsibilities which, from time to time, make necessary or desirable an expression of the administration viewpoint to the regulatory commissions. Previous administrations, as well as this one, have done so in fulfilling those responsibilities.

It is our conviction that such open expressions of viewpoint are not "influence" in the negative connotation sometimes used, but

rather a proper part of general policymaking dialog among the FCC, the Congress, and the executive branch.

Finally, I would underscore the testimony of administration witnesses before the committee on March 9 which made clear this administration's policy that the independence and authority of the Federal Communications Commission is in no way to be impaired by the Reorganization Plan No. 1 now before the committee. No powers of the FCC are affected, and the authority of the Congress remains unchanged. It is, in fact, the administration's hope that the new Office of Telecommunications Policy will enable the executive branch to act as a more responsible and responsive partner to the Congress and the FCC in the telecommunications policy area.

Sincerely,

CLAY T. WHITEHEAD,
Special Assistant to the President.

MEMORANDUM FOR THE WHITE HOUSE STAFF

Subject: Contacts between the White House and the independent regulatory agencies.

The independent regulatory agencies include:

- Civil Aeronautics Board.
- Federal Communications Commission.
- Federal Maritime Commission.
- Federal Power Commission.
- Federal Trade Commission.
- Interstate Commerce Commission.
- Securities and Exchange Commission.

This memorandum discusses some important points you should bear in mind with regard to these agencies.

Contacts between the White House and the regulatory agencies are very sensitive on two grounds: (1) The Congress has a special relationship with these agencies, viewing them in part as instruments of the Congress in its constitutional power to regulate interstate and foreign commerce; (2) the Commissioners of these agencies have quasi-judicial responsibilities for individual cases coming before their agencies on rates, license renewals, route awards, and so forth. Obviously, any executive interference in this quasi-judicial function would be highly improper.

In spite of these sensitivities, matters often arise which do require official or informal contacts with the Commissioners or the staffs of these agencies. The following guidelines are provided for any exposure you may have to these agencies or problems pending before them. They also apply in those cases where other agencies of the executive branch act in a regulatory or quasi-judicial role.

1. Any expression of interest or any attempt to influence the outcome of any case pending is illegal. These cases are typically extremely complicated, and it is very dangerous to make judgments on the basis of limited information as to how the White House should like to see any case resolved. You should in no way express interest to these agencies in the outcome of pending cases and in no way attempt to influence the Commissioners or hearing examiners in their decisions on any case pending before their agencies.

2. It is important to remember that the cases that come before these agencies are often extremely important to the parties concerned and involve large amounts of money. They are, therefore, very closely watched for any evidence of improper procedure or influence. It is important to avoid even the mere *appearance* of interest or influence.

3. You may, of course, listen to comments and views on such cases when they are volunteered to you. However, such visits or the submission of written briefs should not be encouraged—better still, they should be sidestepped and avoided wherever possible.

4. Inquiries about the status of cases pending before these agencies should not be made. Instead, the inquirer should be advised to contact the agency directly.

5. The policies and findings of these agencies often interact heavily with the policies of the executive branch of Government. Transportation policy, for instance, is affected heavily by the policies of the ICC and the CAB. There is, therefore, occasion for White House staff contact with these agencies. However, for the reasons cited above, you should keep my office informed of any contact you may have with these agencies. Please call Dan Hofgren or Tom Whitehead *in advance* to assure appropriateness of such contacts.

PETER M. FLANIGAN,
Assistant to the President.

○

Friday 3/13/70

3:10 Jean Kasendorf called earlier to talk with you. (213) 654-8907

In the meantime she has called Alan Woods to discuss what the future plans of OTM are -- in terms of what kinds of people will be hired, etc. Mr. Woods suggested she call the PIO officer in OTM. Tom said to tell her that everything is very much in the formulative stage -- we'll send her copies of the releases and, if she has any specific questions, suggest she write us.

We have sent copies of the releases to:

Miss Jean Kasendorf
Entertainment World
6548 Sunset Boulevard
Hollywood, California 90028

March 12, 1970

*ded Conn
org.*

To: Ron Abler

From: Tom Whitehead

As requested in your letter of March 4th, we are attaching copies of the White House releases regarding the domestic satellite program and the President's proposal for the Telecommunications Reorganization.

Attachments

Mr. Ron Abler
Assistant Professor of Geography
The Pennsylvania State University
403 Deike Building
University Park, Pennsylvania 16802

EDaughtrey

THE PENNSYLVANIA STATE UNIVERSITY

403 DEIKE BUILDING

UNIVERSITY PARK, PENNSYLVANIA 16802

College of Earth and Mineral Sciences
Department of Geography

Area Code 814
865-3433

March 4, 1970

Dr. Clay T. Whitehead
White House
Washington, D. C.

Dear Dr. Whitehead:

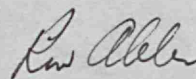
I noted in the latest issue of Science that you are President Nixon's staff specialist in telecommunications policy.

I'm a geographer with a research and general interest in communications systems, particularly the postal and telephone systems, and the relationships between the two. I teach a course here at Penn State on the Geography of Communications Systems which deals largely with the way such systems are organized in space, and with the effects such systems have on perceived space and distance.

I wonder if you would have time to let me know what your general thoughts are on the role of telecommunications in society in the future, and what role you see the government playing in the evolution of telecommunications facilities. I'd also be happy to have any other thoughts you might have on matters which you think might be of interest to me.

Thanks very much.

Sincerely,



Ron Abler
Assistant Professor of Geography

RA/mb

*Gwa: see draft
short reply enclosing relevant
press releases.*

Telecommunications

Monday 3/16/70

MEETING
3/18/70
11 a.m.

10:35 Jean Roberts in Jeb Magruder's office called to say Mr. Magruder had a call from Tom Evans' office in New York asking if someone could see Tom Brislin while he is in Washington this week.

Mr. Brislin is a second-year law student at Yale and will be working in Mr. Evans' law office this summer. In addition, he is working on two model bills for Senators McIntyre, Nelson, and Hart -- model satellite bill and model Cable TV bill. He would like to talk with someone on these subjects and Mr. Magruder thought you might be able to see him.

Called Judy Breck in Mr. Evans' office and scheduled the appointment for 11 a.m. on Wednesday (3/18).

(212) 422-6767

Advised Magruder's office that the appointment has been set.

Wednesday 3/18/70

meeting
3/18
11 am

12:40 Gave Tom Brislin the papers, plus
Dr. Lyons and Alan Novak's phone numbers and
addresses.

I called Dr. Lyons to let him know that you had
had a meeting with Mr. Brislin and suggested he
get in touch with you. Gave him a little background.

Do you want me also to advise Alan Novak's office
that Mr. Brislin will be calling?

OTP

Morris, Fred

March 16, 1970

Dear Mr. Davis:

The President has asked that I reply to your letter of February 25th regarding our telecommunications reorganization proposals.

We are pleased to have your support in this important undertaking. We also appreciate your calling to our attention Mr. Fred W. Morris, Jr. We are giving him the fullest consideration for appointment to the new office.

Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Mr. Thomas J. Davis, Jr.
Vice President
Blyth & Co., Inc.
750 Welch Road
Palo Alto, California 94304

cc: Mr. Flanigan
Mr. Whitehead ✓
Central Files

CTWhitehead:ed

15
BLYTH & Co., Inc.
750 WELCH ROAD
PALO ALTO, CALIF. 94304

THOMAS J. DAVIS, JR.
VICE PRESIDENT

February 25, 1970

The President
The White House
Washington, D.C.

CW
My dear Mr. President:

Please permit me respectfully to congratulate you on your message to Congress dated February 9, 1970, concerning telecommunications reorganization. My work brings me in touch with some of the leading technical men in the area of activity with which your message was concerned.

I have learned from them the need for the attitudes and the measures you have advocated in your message, and I am well aware of the importance of an improved set of systems to handle the avalanche of data transmission and other communications in this decade.

One of the principal points I noted in your message is the creation of an Office of Telecommunications Policy in the Executive Office of the President.

Since everything in the final analysis depends upon the activities of human beings, it is clear that the person selected to direct this office will probably be the critical factor in the success of the program you have outlined. May I respectfully request that you consider for that office Mr. Fred W. Morris, Jr. He has the technical background without which the Director of this office would be lost; and, in addition, he has the friendly and cheerful ability to work with people which must certainly be involved in this activity. In addition, he has had considerable experience in the past several years in various important committees concerning communications policies and practices.

Very respectfully yours,

Thomas J. Davis, Jr.
Thomas J. Davis, Jr.

TJD:jp

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OTM

OFFICE OF THE DIRECTOR

March 10, 1970

Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Chairman:


In November 1965 there was an exchange of letters among the AEC, the Commission, and this Office in which it was agreed to permit the continued use of certain non-Government UHF and 6 GHz frequencies by the AEC in the Nuclear Test Readiness Program until January 1972. It was understood that should the AEC foresee a requirement for continuing the operations beyond that date, planning would be undertaken in sufficient time to reaccommodate such needs in Government bands.

At the conclusion of an AEC study indicating that the cost of such reaccommodation would vary between \$9.2 and \$49.8 million, the views of the Commission were requested in July 1968 regarding an AEC proposal to extend the sharing agreement until at least January 1975.

The AEC has now informed this Office of additional steps taken to enhance the electromagnetic compatibility between its operations and those of non-Government licensees, including the relocation of aircraft antennas, a reduction in the number of frequencies used within the conterminous United States, and an anticipated reduction in the hours of operation after 1971. As a consequence, the AEC has requested an extension of the agreement for its use of non-Government frequencies in this program until at least 1975. A copy of the AEC letter is enclosed for your information.

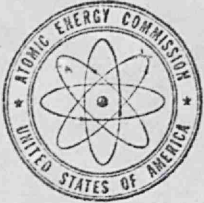
The views of the Commission in this matter would be appreciated.

Sincerely,


W. E. Plummer
Acting

Enclosure

Copy to Dr. Clay T. Whitehead ✓



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

MAR 3 1970

Mr. William E. Plummer, Acting Director
Office of the Director of Telecommunications
Management
Executive Office of the President
Office of Emergency Preparedness
1800 G Street, N.W.
Washington, D. C. 20504

Dear Mr. Plummer:

The FCC has not acted on Mr. J. D. O'Connell's letter of July 29, 1968, which enclosed a copy of my letter of July 19, 1968, requesting assistance to permit AEC to continue use of certain non-Government frequencies in the Nuclear Test Readiness Program until at least January 1, 1975.

In discussions with staff personnel of the FCC, we understand that the Common Carrier Bureau of the FCC has been reluctant to concur in the continued use of the 6 GHz common carrier band because of a letter received from the Manager of Southern Bell and another from the New Mexico Chief Engineer of Mountain States Telephone Company opposing the extension.

In the interest of reducing use of the common carrier frequencies to an absolute minimum, we have again reviewed the Nuclear Test Readiness Air Drop Program and have determined that:

1. Frequency authorizations for 5945, 6123, 6256, 6404, 6550, and 6700 MHz could be dropped by January 1, 1972, at all CONUS locations (Eglin, Tonopah, Los Alamos, Albuquerque, WSMR, and NTS). They will continue to be required in the Pacific test and staging areas where presently authorized.
2. Frequencies 6040, 6155, and 6310 MHz will be required for use in CONUS. These three frequencies are for 1 watt beacons used to align the electronic and optical tracking. The beacon antennas are on top of the aircraft with the aircraft acting as a ground plane which shields downward radiation during flight.
3. The trailing probe frequencies 6900 and 7100 MHz will be required at Albuquerque, WSMR, Tonopah, and NTS.

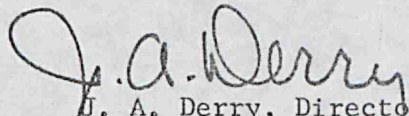
MAR 3 1970

The above cutbacks are possible because the simulated and actual testing of high resolution telemetry (HRT) from drop vehicles can now be confined to areas in the Pacific. Thus, only the three 1 watt beacons (one frequency on each of the three NC-135 aircraft) will be used in the Southern Bell area. As a result of tests with Bell engineers several years ago, representatives of AT&T stated that if the beacon nondirectional stub antennas were placed on top of the aircraft (which was subsequently done), they would have no objection to use of these frequencies anywhere in the United States.

Last September AEC Sandia Laboratory representatives met with the Mountain States Telephone Company officials and agreed to conduct any tests requested to prove that the AEC operations would not interfere with any of Mountain States proposed expanding operations. In subsequent discussion based on data submitted by Sandia, the Mountain States Telephone Company concluded they had no technical objections to the AEC operations and their only objection now was from a policy standpoint.

As you may know, due to the DOD and AEC budget constraints, operations associated with the National Nuclear Test Readiness Program have been markedly reduced. Use of the 6 GHz frequencies in the United States and Pacific has averaged about 200 hours per year. Beyond 1971 we expect this to be reduced to 40 hours per year.

We would appreciate your continued assistance in obtaining FCC concurrence for the extension of the agreement for AEC's use of non-Government frequencies in this program until at least 1975.


J. A. Derry, Director
Division of Construction

CONSC:GED

cc: S. M. Myers, FCC
H. Beury, FCC
R. E. Miller, NV
H. C. Donnelly, AL

*2nd Comm.
Reorg-*

THE WHITE HOUSE

WASHINGTON

March 10, 1970

Dear Mr. Holifield:

I understand that at a hearing, which you chaired, of the Subcommittee on Executive and Legislative Reorganization of the House Committee on Government Operations on March 9, 1970, concerning Reorganization Plan No. 1, questions arose about White House relationships with the Federal Communications Commission. Specifically, questions were raised about an article appearing in Broadcasting Magazine which attributed to me the view that "the White House has no qualms about seeking to influence the Commission or other so-called independent agencies." I would like to clarify both the record and our position in this matter.

First, I have made no statements to the press from which they could properly conclude that the White House intended any undesirable or improper influence on the FCC; that is not my view, and it is not the view of this Administration. Indeed, there have been strict instructions to the entire White House staff not to attempt to influence independent regulatory commissions in their quasi-judicial functions, or even give the appearance of attempting to do so; I attach a memorandum circulated to the staff in that regard.

Second, it is appropriate to draw a distinction between general policy issues which may be before regulatory commissions and particular cases in which those commissions are exercising their quasi-judicial responsibilities. In the latter category, any attempt to influence a commission would obviously be improper for the White House or any executive branch agency. In the former category, however, the President has both statutory and general leadership responsibilities which, from time to time, make necessary or desirable an expression of the Administration viewpoint to the regulatory commissions. Previous administrations, as well as this one, have done so in fulfilling those responsibilities.

It is our conviction that such open expressions of viewpoint are not "influence" in the negative connotation sometimes used, but rather a proper part of general policy-making dialogue among the FCC, the Congress, and the executive branch.

Finally, I would underscore the testimony of Administration witnesses before the Committee on March 9 which made clear this Administration's policy that the independence and authority of the Federal Communications Commission is in no way to be impaired by the Reorganization Plan No. 1 now before the Committee. No powers of the FCC are affected, and the authority of the Congress remains unchanged. It is, in fact, the Administration's hope that the new Office of Telecommunications Policy will enable the executive branch to act as a more responsible and responsive partner to the Congress and the FCC in the telecommunications policy area.

Sincerely,

Clay T. Whitehead
Special Assistant
to the President

Attachment

Honorable Chet Hollifield
Committee on
Government Operations
House of Representatives
Washington, D. C.

cc: Mr. Flanigan
Mr. Whitehead
Central Files

Dean Burch

CTWhitehead:ed

THE WHITE HOUSE

WASHINGTON

May 21, 1969

MEMORANDUM FOR THE WHITE HOUSE STAFF

Subject: Contacts between the White House and
the Independent Regulatory Agencies

The independent regulatory agencies include:

- Civil Aeronautics Board
- Federal Communications Commission
- Federal Maritime Commission
- Federal Power Commission
- Federal Trade Commission
- Interstate Commerce Commission
- Securities and Exchange Commission

This memorandum discusses some important points you should bear in mind with regard to these agencies.

Contacts between the White House and the regulatory agencies are very sensitive on two grounds: (1) The Congress has a special relationship with these agencies, viewing them in part as instruments of the Congress in its constitutional power to regulate interstate and foreign commerce; (2) the Commissioners of these agencies have quasi-judicial responsibilities for individual cases coming before their agencies on rates, license renewals, route awards, and so forth. Obviously, any executive interference in this quasi-judicial function would be highly improper.

In spite of these sensitivities, matters often arise which do require official or informal contacts with the Commissioners or the staffs of these agencies. The following guidelines are provided for any exposure you may have to these agencies or problems pending before them. They also apply in those cases where other agencies of the executive branch act in a regulatory or quasi-judicial role.

1. Any expression of interest or any attempt to influence the outcome of any case pending is illegal. These cases are typically extremely complicated, and it is very dangerous to make judgments on the basis of limited information as to how the White House should like to see any case resolved. You should in no way express interest to these agencies in the outcome of pending cases and in no way attempt to influence the Commissioners or hearing examiners in their decisions on any case pending before their agencies.

2. It is important to remember that the cases that come before these agencies are often extremely important to the parties concerned and involve large amounts of money. They are, therefore, very closely watched for any evidence of improper procedure or influence. It is important to avoid even the mere appearance of interest or influence.

3. You may, of course, listen to comments and views on such cases when they are volunteered to you. However, such visits or the submission of written briefs should not be encouraged -- better still, they should be sidestepped and avoided wherever possible.

4. Inquiries about the status of cases pending before these agencies should not be made. Instead, the inquirer should be advised to contact the agency directly.

5. The policies and findings of these agencies often interact heavily with the policies of the executive branch of Government. Transportation policy, for instance, is affected heavily by the policies of the ICC and the CAB. There is, therefore, occasion for White House staff contact with these agencies. However, for the reasons cited above, you should keep my office informed of any contact you may have with these agencies. Please call Dan Hofgren or Tom Whitehead in advance to assure appropriateness of such contacts.



Peter M. Flanigan
Assistant to the President

57P

Statement of Dean Burch, Chairman,
Federal Communications Commission,
before the
Executive and Legislative Reorganization Subcommittee
of the
Committee on Government Operations
of the
House of Representatives

March 10, 1970

The Commission appreciates this opportunity to comment on the President's Reorganization Plan No. 1 of 1970. The plan proposes to establish a new Office of Telecommunications Policy in the Executive Office of the President and to abolish the office held by the Director of Telecommunications Management (DTM) in the Office of Emergency Preparedness. The Reorganization Plan would transfer to the Director of the new Office the functions conferred on the President by the provisions of section 305(a) of the Communications Act of 1934, namely, the assignment of frequencies to radio stations belonging to the Federal government. In his letter of transmittal, the President stated also that as soon as the plan takes effect, he will delegate to the new Office essentially those functions now assigned to the DTM.

The new Office of Telecommunications Policy is intended to serve three essential roles: It would

- (1) serve, as the President's principal adviser on Telecommunications Policy, helping to formulate government policies on a wide range of domestic and international telecommunications issues;
- (2) help formulate policies and coordinate operations for the Federal government's own vast communications systems; and
- (3) enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission.

The President, in his letter transmitting the Reorganization Plan to the Congress, specifically explained that "This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress."

The Commission supports the Reorganization Plan. We have consistently favored a strong, centralized entity to deal with telecommunications issues within the Executive. Thus, we

believe that there should be a continuing close scrutiny as to the government's use of spectrum, so as to insure optimum utilization of this precious resource in the national interest.

In that connection, we welcome the President's statement:

" The new Office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy, especially in their procedures for allocating portions of the radio spectrum for government and civilian use. Our current procedures must be more flexible if they are to deal adequately with problems such as the worsening spectrum shortage."

Finally, we believe that it will be helpful to receive the views of the Executive on significant matters of communications policy. We have found in the past that the submission of such views assists the Commission in rendering an informed decision.

To be able to participate effectively in the discussions of communications policy, the new Office will need adequate staffing and resources. Because of the contributions it makes in the areas noted by the President, the new Office should, of course, be given such staffing and resources. While we may be belaboring the obvious, the resources given the new Office, particularly to discharge function 3, above, should not be at

the expense of those allocated the Commission, which after all has the ultimate responsibility of evaluating the material coming before it from all sources and reaching a decision best serving the public interest on these important telecommunications matters.

This concludes my statement.

#

Statement of Dean Burch, Chairman,
Federal Communications Commission,
before the
Executive and Legislative Reorganization Subcommittee
of the
Committee on Government Operations
of the
House of Representatives

March 10, 1970

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This concludes my statement.

#

JOHN A. BLATNIK, MINN., CHAIRMAN
ROBERT E. JONES, ALA.
BENJAMIN S. ROSENTHAL, N.Y.
CHET HOLIFIELD, CALIF.

NINETY-FIRST CONGRESS

Congress of the United States
House of Representatives

EXECUTIVE AND LEGISLATIVE REORGANIZATION SUBCOMMITTEE
OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM 2158
WASHINGTON, D.C. 20515

OTF
JOHN N. ERLBORN, ILL.
CLARENCE J. BROWN, OHIO
PAUL FINDLEY, ILL.

225-2738
3/9-10/78

OPENING STATEMENT OF HON. CHET HOLIFIELD

The Subcommittee on Executive and Legislative Reorganization will come to order.

This meeting of the subcommittee has been called to hear testimony on President Nixon's Reorganization Plan No. 1 of 1970 involving telecommunications. Essentially, the Plan would establish an Office of Telecommunications Policy in the Executive Office of the President, with a Director (Level III) and a Deputy Director (Level IV), to be appointed with the advice and consent of the Senate. The new Office would perform telecommunications functions vested in the President by various statutes and now delegated to the existing Office of Telecommunications Management, which is part of the Office of Emergency Preparedness. The position of Assistant Director--Director of Telecommunications Management in the Office of Emergency Preparedness--will be abolished.

The only function to be carried out by the new Office that is designated in the Plan is that relating to the assignment of frequencies of radio stations belonging to and operated by the United States, which now resides in the President. Other functions will be assigned by the President to the new Office by executive order as soon as the pending Reorganization Plan

takes effect. These are contained in a letter from the Director of the Bureau of the Budget addressed to the chairman, dated February 27, a copy of which is in the folder of each subcommittee member.

Telecommunications functions within the Federal Government have been studied extensively in recent years. President Johnson set up a Task Force on Communications Policy, headed by Eugene V. Rostow, which made a report to him on December 7, 1968. He also ordered a study of Federal communications organization by the Bureau of the Budget, which report was likewise submitted in December of 1968. President Nixon instituted a review of telecommunications policy and organizational problems, and several reports were submitted by Peter Flanigan, Assistant to the President, in December 1969. I understand that these reports were developed by Dr. Clay T. Whitehead, formerly of the RAND Corporation.

For background purposes, I would like the record to show that the Military Operations Subcommittee, of which I am chairman, made a recommendation precisely five years ago on the subject of our hearing today. In hearings during 1964 our subcommittee reviewed six years of Government effort in the development of satellite communications. We examined, among other things, the role and structure of the Office of Telecommunications Management. In our report approved by the full Committee on Government Operations and submitted to the Congress on March 17, 1965 (House Report 89-178), Recommendation 6 provided as follows (page 111):

At the earliest practicable date, the President should submit to the Congress a reorganization plan to reconstitute the functions and responsibilities of the Director of Telecommunications Management in a separate office in the Executive Office of the President, and take steps to insure that the office is adequately staffed.

That recommendation was repeated in a Committee Report of October 19, 1966 (House Report 89-2318, page 9), and we adverted to it again in a report of August 28, 1967 (House Report 90-613, page 12), noting in the latter report that the Bureau of the Budget had undertaken, at President Johnson's request, a study of organizational alternatives for telecommunications management in the Federal Government.

In July 1969 the Comptroller General submitted a report to the Congress entitled "Review of Status of Development Toward Establishment of a Unified National Communications System" (B-166655). This report took note of our committee recommendations and made additional ones along the same lines.

In summary, Reorganization Plan No. 1 of 1970 is fully in accord with the recommendation made by this committee five years ago and renewed in succeeding reports, and recognized as valid both by the Comptroller General and the present Administration. In saying this of course I do not necessarily commit myself or any other members of this committee to any policy positions that the President or the Director of this new office may have or put forth. I for one would want to reserve judgment and evaluate any forthcoming policies or activities.

What I believe we are all agreed upon, however, is that telecommunications is a vitally important subject and the Government has large responsibilities in the field. By this plan a better organizational base is created for telecommunications policy development and management. That is all that the plan does. By no means does it mean that the organizational alternatives are exhausted.

Experience undoubtedly will suggest further organizational changes. I understand that the Bureau of the Budget report to which I referred would have transferred telecommunications functions from the Executive Office to one of the Government departments. It might be well in this connection to place the budget study, which the staff has examined, in an appendix to the record along with other pertinent documents, which will provide convenient source references.

We have asked representatives of the agencies most directly involved in telecommunications policy and management to appear before us and present their views on the reasoning behind this Plan and the necessity for its adoption. We have also asked the Chairman of the Federal Communications Commission to appear and advise us of the views of that body and its possible relationship to the new Office. We recognize, of course, that the principal role of the FCC is in the field of privately-operated communications systems, but these can hardly be considered in isolation from the growing needs and uses of Government on its several levels.

A disapproval resolution on the Plan was filed by our colleague on the Committee on Government Operations, Congressman Cornelius Gallagher. He also will testify and inform us on why he feels this Plan should not be allowed to go into effect.

As is our custom, when we consider reorganization plans that in some way may affect the jurisdiction of other committees of the House, we have written to the chairman of the Interstate and Foreign Commerce Committee, the chairman of the Armed Services Committee, and the chairman of the Independent Offices Subcommittee of the Committee on Appropriations asking them to give us their reactions to the Plan and to appear before us during these hearings, if they care to do so.

Our first witness will be Mr. Dwight Ink, Assistant Director of the Bureau of the Budget. In addition to Mr. Ink's remarks, we would like to have brief statements from the other representatives on the duties of their agencies in this field and how those duties will be affected by the Reorganization Plan. All of the witnesses will be available to answer such questions as the subcommittee may choose to ask.

At this point we will insert in the record the President's Message and Plan and a copy of the Budget Director's letter of February 27.

Mr. Ink.

EXECUTIVE AND LEGISLATIVE REORGANIZATION SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

HEARINGS ON
REORGANIZATION PLAN NO. 1 OF 1970 (OFFICE OF TELECOMMUNICATIONS POLICY)

WITNESS LIST

Monday, March 9, 1970

1. Honorable Dwight A. Ink
Assistant Director
Bureau of the Budget
2. Mr. William Plummer
Acting Director of Telecommunications Management
Office of Emergency Preparedness
3. Mr. David L. Solomon
Technical Adviser, National Communications
Office of the Assistant Secretary of Defense (for Administration)
4. Mr. Robert M. O'Mahoney
Commissioner, Transportation and Communications Service
General Services Administration
5. Dr. Myron Tribus
Assistant Secretary for Science and Technology
Department of Commerce
accompanied by:
Dr. John Richardson, Acting Director, Office of Telecommunications
Mr. Robert Ellert
Assistant General Counsel for Science and Technology
6. Mr. Charles M. Bailey
Director, Defense Division
General Accounting Office
accompanied by:
Mr. Hassell B. Bell, Associate Director
Mr. Edwin C. Eads, Assistant Director

Tuesday, March 10, 1970

1. Honorable Dean Burch, Chairman
Federal Communications Commission
2. Honorable Cornelius E. Gallagher
Representative from the State of New Jersey

EXECUTIVE SESSION

OTP

March 9, 1970

MEMORANDUM FOR GENERAL JAMES D. HUGHES

As you note in your memorandum of February 18th, the Office of Telecommunications Policy is expected to come into existence in mid-April. I have looked at your suggested memorandum from the President regarding relationship of OTP with the White House Communications Agency. I think it is basically the type of document we are looking for, and suggest the attached revision.

Clay T. Whitehead
Special Assistant to the President

cc: Mr. Kissinger
Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:jm

MEMORANDUM FOR

DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY
MILITARY ASSISTANT TO THE PRESIDENT

SUBJECT: White House and Presidential Communications Facilities

In my memorandum of April 29 to the Secretary of Defense I indicated that the Military Assistant to the President would be the point of contact in the White House for providing requirements and policy direction to the White House Communications Agency (WHCA). The establishment of the Office of Telecommunications Policy does not change these responsibilities of the Military Assistant; in particular, he is to have full responsibility for actual operation of Presidential communications activities.

However, I recognize that the Director, Office of Telecommunications Policy, will also require some familiarity with White House and Presidential communications systems and plans in order to discharge his responsibilities as my principal telecommunications adviser and coordinator of all Executive Branch telecommunications. Accordingly the Director is authorized to coordinate with the Military Assistant any matters concerning Presidential communications when it is determined that such matters are of mutual concern.

THE WHITE HOUSE
WASHINGTON

February 18, 1970

MEMORANDUM FOR MR. CLAY T. WHITEHEAD

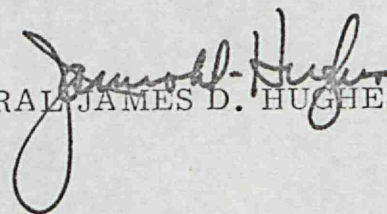
SUBJECT: Office of Telecommunications Policy (OTP)

Reference: (a) Your memo, same subject, dtd Dec 5, 1969
(b) My memo, same subject, dtd Dec 15, 1969

In your memorandum, you suggested that a memorandum from the President be written which would outline the relationship of the OTP with the White House Communications Agency. In my memorandum, I agreed with this approach and suggested that it would be appropriate that such a memorandum be signed prior to, or concurrently with, the publication of the OTP charter.

Based on the transcript of a recent White House Press Conference on the subject, it appears that the OTP could become a reality within the next sixty days. With this in mind, I would like to propose the attached draft of a Presidential memorandum for your consideration. After you have had a chance to look it over, I would like to get together with you and work out the details of the final memorandum.

BRIGADIER GENERAL JAMES D. HUGHES

A handwritten signature in dark ink, appearing to read "James D. Hughes", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

D R A F T

17 February 1970

SUBJECT: White House Communications Agency (WHCA)

In my memorandum to the Secretary of Defense on April 29, 1969, the Military Assistant to the President was designated as my representative for a point of contact for requirements and giving policy direction to DCA/WHCA concerning Presidential communications.

The establishment of the Office of Telecommunications Policy does not change the above responsibilities of the Military Assistant. However, the Director of Telecommunications Policy is authorized to coordinate with the Military Assistant any DCA/WHCA matters affecting Presidential communications when it is determined that such matters are of mutual concern.

MEMORANDUM FOR THE PRESIDENT

FROM: Peter A. Flanigan

SUBJECT: White House and Presidential Communications Facilities

On February 9, the reorganization plan establishing a new Office of Telecommunications Policy (OTP) in the Executive Office of the President was sent to Congress. In late March or early April you will be appointing a Director for the Office and signing an Executive Order establishing the full scope of the authority and functions of this office.

One important matter will not be resolved in these public documents. That is the role of the Director and the new office with respect to White House and other Presidential communications.

The Director will have broad responsibilities for coordinating and integrating the communications of the Executive Branch of the government. To perform this role effectively, the Director must be aware of the communications requirements of the Presidency, and of the technical characteristics, procedures and plans for Presidential facilities. This is necessary for two reasons.

1. So that the Presidency is supplied with all of the required links to the Executive Branch.
2. To clearly establish in the minds of departmental and other Executive Branch officials that the Director is the President's principal adviser on telecommunications matters.

It is not necessary that the OTP become involved in the day to day operations of the White House Communications Agency, nor that he assume any responsibilities previously delegated to elements of the White House staff. However, it is necessary to clarify:

1. The "need to know" of the Director, OTP with respect to White House and other Presidential communications.

2. The channels for processing recommended changes to White House/Presidential communications facilities or procedures.

The memorandum at Tab A recognizes that the Director, OTP has a valid "need to know" about some aspects of Presidential communications, and requires him to coordinate with the Military Assistant in matters concerning Presidential communications.

Recommendation

That you sign the memorandum at Tab A.

Pse draft & return

MEMORANDUM FOR

DIRECTOR, OFFICE OF TELECOMMUNICATION
POLICY
MILITARY ASSISTANT TO THE PRESIDENT

SUBJECT: White House and Presidential Communications Facilities

In my memorandum of April 29 to Mr. Laird I indicated that the Military Assistant to the President would be the point of contact in the White House for providing requirements and policy direction to the White House Communications Agency (WHCA). *However,* I recognize that the Director, Office of Telecommunications Policy, will also require some familiarity with White House and Presidential communications systems and plans in order to discharge his responsibilities as my principal telecommunications adviser and as coordinator of all

Executive Branch telecommunications.

noP The establishment of the Office of Telecomm. Policy does not change
noP Accordingly the Director should ^{is authorized to} coordinate with the Military
any matters concerning Presidential
Assistant to the President his needs for information about, and any
recommendations for improving, communications provided by the
White House Communications Agency when it is determined
that such matters are of mutual concern.

there are these responsibilities of the Military Assistant, in particular, he is to have full responsibility for actual operations of Presidential communications activities.

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SUBJECT: White House and Presidential Communications Facilities

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The Director will have broad responsibilities for coordinating and integrating the communications of the Executive Branch of the government. To perform this role effectively, the Director must be aware of the communications requirements of the Presidency, and of the technical characteristics, procedures and plans for Presidential facilities. This is necessary for two reasons.

1. So that the Presidency is supplied with all of the required links to the Executive Branch.

2. To clearly establish in the minds of departmental and other Executive Branch officials that the Director is the President's principal adviser on telecommunications matters.

- 2 -

It is not necessary that the OTP become involved in the day to day operations of the White House Communications Agency, nor that he assume any responsibilities previously delegated to Dr. Kissinger, Colonel Hughes, or other elements of the White House staff. However, it is necessary to clarify:

1. The "need to know" of the Director, OTP with respect to White House and other Presidential communications.

2. The channels for processing recommended changes to White House/Presidential communications facilities or procedures.

It would be appropriate at the same time to recognize that Dr. Kissinger and Mr. Erlichman also have coordination and information handling responsibilities which require them to be concerned with the capabilities and performance of White House and Presidential communications facilities.

I recommend that you issue a memorandum establishing a broad policy concerning need to know and ask that specific privacy requirements be identified and submitted for your approval.

The broad policy guidance should be that:

1. The Assistant to the President for National Security Affairs, the Assistant to the President for Domestic Affairs, and the Director, Office of Telecommunications Policy, should have sufficient information about White House and Presidential communications facilities, procedures and plans, to be able to discharge their respective responsibilities.

2. That the above named officials need not be concerned with the day to day operations of the White House Communications Agency (WHCA).

3. That Colonel Hughes continues to be the single channel for providing requirements and direction to the WHCA.

4. That the need for privacy with respect of the use of communications should be respected.

Recommendation

That you sign the memorandum at Tab A establishing your general policy and requesting that specific guidelines be developed for your approval.

Attachment

MEMORANDUM FOR JOHN D. ERLICHMAN
HENRY A. KISSINGER
(DIRECTOR, OTP)
JAMES D. HUGHES
WILLIAM J. HOPKINS

SUBJECT: White House and Presidential Communications Facilities

Communications facilities at the White House, and other communications facilities operated by the White House Communications Agency, perform in several roles. They serve me, they serve several staffs, and they serve all Executive Departments and Agencies in their need to communicate with the White House. I know that all of you are concerned about the design or performance of present and future communications facilities. This is an area in which full and effective coordination is required, with due respect for the privacy each of us should enjoy with respect to our use of the communications facilities.

I have directed that the Military Assistant to the President be the single channel within the White House for providing requirements and day to day operational direction to the White House Communications Agency. In addition, I want each of you to have sufficient information about the White House and other Presidential communications facilities, procedures and plans, to be able to perform your respective responsibilities. I would like Colonel Hughes to develop specific guidelines for achieving this end, to obtain the views of the other addressees on these guidelines, and to submit them for my approval within one month.

Recommendations you may have for improving White House or Presidential communications should be coordinated among yourselves and implemented through the Military Assistant to the President. Any matters which cannot be resolved in this way should be brought to my attention.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 15, 1969

MEMORANDUM FOR MR. CLAY T. WHITEHEAD

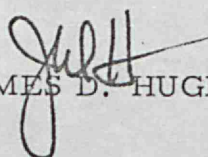
SUBJECT: Office of Telecommunications Policy (OTP)

In your 8 December memorandum to me, on the subject, you indicated that you believed that it would be more appropriate to handle the matter of the White House Communications Agency (WHCA) in a memorandum from the President. I agree to your proposed method of handling the relationship between WHCA and OTP. Also, I agree with your thoughts that neither the Director of OTP nor his staff should be involved in WHCA operations in any way. Further, I do not question the statement that the Director be the President's principal advisor on telecommunications matters. I do, however, have some reservations on the degree to which he needs to know about the "needs, capabilities, and activities of WHCA." For example, communications support provided by WHCA to the President basically falls into three categories, as follows:

- a. Personal communications.
- b. Communications in support of the President as the head of the Republican Party.
- c. Those communications in support of the President as the head of state and the Commander in Chief of the Armed Forces.

In viewing the above categories, I believe it is apparent that only the latter of these three categories should be of any direct interest to the Director of OTP. I do not believe that it would serve any useful purpose to have the Director of OTP nor his staff involved in any way with the WHCA needs, capabilities or activities associated with the first two categories.

I would like to suggest that we get together soon to draft a Presidential memorandum to clarify these relationships. Further, I believe it would be appropriate that this memorandum be signed prior to, or concurrently with, the publication of the OTP charter.


COLONEL JAMES D. HUGHES

Fed Comm
Org.

December 8, 1969

MEMORANDUM FOR COLONEL HUGHES

Attached for your information is a copy of the final version of our Recommendation on Executive Branch Organization for Telecommunications Matters. You will note that I have adopted many of your suggestions. I have, however, omitted any reference to the White House Communications Agency since I feel that this is not a matter appropriate for discussion and comment throughout the Administration.

I agree only in part with your view that WHCA should be totally outside the purview of the new Office of Telecommunications Policy. Neither the Director of Telecommunications Policy nor his staff should be involved in WHCA operations in any way. However, it is important that the Director be the President's principal adviser on telecommunications matters. It is essential, therefore, that he personally be fully informed about the needs, capabilities, and activities of WHCA.

I believe that the appropriate way to handle this very confidential matter is through an understanding between the President, his immediate staff, his Military Aide, and the Director of Telecommunications Policy. This is more appropriately handled through a memorandum from the President outlining how that matter is to be handled than in an Executive Order establishing organizational responsibilities throughout the executive branch. Such a procedure would provide more flexibility and more confidentiality.

I would welcome any further views you have on this document, since it is now being circulated for comment among the various Federal departments and agencies.

Clay T. Whitehead
Staff Assistant

Attachment

cc: Mr. Flanigan
Mr. Kriegsman
Mr. Whitehead
Central Files

CTWhitehead:jm/ed

4/29/69

Memo
to
Secy of Defense
from
President

(?)

Telecommunications

March 4, 1970

To: Bill Morrill

From: Tom Whitehead

I have some suggested
changes and feel most strongly
about the ones on page 3.

(See 2/26 note from Don Gessaman re
"telecommunications questions and
answers per your request of Mr. Morrill"

Bureau of the Budget
ROUTE SLIP
 TO Mr. Whitehead

Take necessary action ☐
 Approval or signature ☐
 Comment ☐
 Prepare reply ☐
 Discuss with me ☐
 For your information ☐
 See remarks below ☐

FROM Don Gessaman DATE 2-26-70

REMARKS _____

Telecommunications questions & answers
 per your request of Mr. Morrill.

2. Will something be done to correct the NCS responsibilities in the JDD?

This reorganization will do nothing to current internal DOD action with respect to NCS. Other actions currently in progress within the DOD might have some effect on the executive agent manager responsibilities.

3. Who is going to review agency requirements - OSD or GPP?

The Secretary of Defense as a member of the NSC is a member of the NSC staff and is responsible for reviewing agency requirements. In effect, there is little review since the Secretary of Defense is placed in an awkward position under this arrangement. Also, the NSC is one which the

Definition of telecommunications

As agreed to by the National Telecommunications Convention in 1965, telecommunications was defined as: Any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems. In order not to limit a government agency such as the OTP to a rigid definition in an area of technology which undergoes considerable change over time, it seems best to not tie it to a definition such as that agreed to by the ITU. It would appear that the whole area known as teleprocessing, which is going to be a major area of communications and ADP, would be outside any purview of the OTP if the ITU definition were levied on it.

National Communications System

1. What effect will the reorganization have on the NCS?

It will have no effect on the organization of the NCS, but the organization of the NCS is an area which will most likely have to be reviewed by the OTP in conjunction with an overall review of the NCS.

2. Will something be done to correct the NCS responsibilities within the DOD?
2. Will the OTP review the substance of materials by

This reorganization will do nothing to current internal DOD organization with respect to NCS. Other actions currently in progress within the DOD might have some effect on the executive agent and manager responsibilities.

3. How can the FCC be motivated to change some of it?
3. Who is going to review agency requirements---OSD or OTP?

The Secretary of Defense as executive agent of the NCS is responsible under the 1963 memo establishing the NCS for reviewing agency requirements. In effect, there is little review conducted since the Secretary of Defense is placed in an awkward position under this arrangement. Again, this area is one which the OTP will have to study.

4. What will be the relationship between the DOB and the OTP?

The same as between other agencies within the Executive Offices.

5. Is there really a need for an NCS?

This will be studied by the OTP.

6. How much does the NCS cost? Investment? Operations?

Investment -- \$2.5 to \$3B of which most is in the Defense Department.
Operations -- \$771M in 1970; \$783M in 1971.

7. What are demonstrated accomplishments of the NCS?

Interconnection of Autodin and ARS, circuit sharing, establishment of restoration priorities, and some standardization of operating procedures.

8. How have satellite communications been integrated into the NCS?

Through use of the Initial Defense Communication Satellite Project, NASCOM satellite circuits and satellite circuits leased from the common carriers, especially in the Far East area.

9. Is the OTP going to undertake a review of the NCS?

Yes, as an initial order of business.

OTP-FCC Relations

1. Is it envisioned that the OTP will someday take over all responsibilities for frequency allocation?

Not at the present time. It is felt that through cooperative action between the FCC and the OTP that the frequency allocation process can be improved. If cooperative action should not work, then at a later point in time a consolidation could be proposed.

2. Will the OTP review the substance of materials broadcast by commercial concerns?
assigned to the OTP?

No.

The type of people needed.

3. How can the FCC be motivated to change some of its archaic rules and methods of doing business?

the Commerce Department

2. The 1971 budget provides for a pilot project to determine the feasibility of assigning frequencies on a local need basis rather than on a national block allocation system. A new chairman was recently appointed to the FCC and he has indicated he intends to improve the FCC operations.

4. Will the OTP take GSA's place in representing the Government as a user of telecommunications services before the FCC?

There is no intent for the OTP to take over GSA's representation responsibility. It is fully anticipated, however, that the OTP will work closely with GSA.

5. Will more Presidential recommendations on FCC policy matters such as the recent domestic satellite policy be sent to the FCC?

Yes.

6. Can the OTP, who oversees in a general fashion Government Telecommunications matters, be expected to present objective cases before the FCC on matters of public concern? In other words, will the OTP be able to differentiate between what's best for the Government and what's best for the public in those cases where the two are not the same?

Hopefully, with the proper staff it would appear that the OTP can differentiate between these two areas. ~~The principle function of the OTP, however, is that of a staff advisor to the President.~~

7. Can one reasonably expect the Government to use the latest and most advanced techniques available to determine its frequency management problems without having the FCC do likewise?
- On major policy issues where these two areas might conflict, the President could be expected to be personally involved.*

The FCC, through projects like the pilot discussed above, is improving its technique for handling frequency management matters. Planning efforts between the ~~DTM~~ ^{Executive} and the FCC are improving.

8. Does the Communications Act of 1934 need to be rewritten in light of years of experience and technological change? What about the Satellite Act of 1962?

This area will have to be studied by the OTP.

OTP Internal Affairs

1. How can thirty professional people possibly perform all the tasks assigned to the OTP?
2. The type of people needed to staff the OTP are a rare resource. It is doubtful that a very large group of this type could be assembled with even unlimited resources. To supplement the staff, the Commerce Department will perform technical services and sufficient contractual research money will be provided so that the OTP can get needed specialized services when required.

2. Will DTM personnel move to the OTP?
- Some will move to the OTP, while others will move to Commerce and other agencies. Yes. The bulk of the OTP will be staffed by DTM personnel.*

3. How large a budget is envisioned for the OTP?

It is difficult to pinpoint a number as a target before experience is gained in tackling some of the complex problems, but it is entirely possible that the annual budget could approach \$3M.

4. Will the OTP make budget decisions on telecommunications projects?

The OTP will make recommendations to the Bureau similar to the way that OST does.

5. Who will decide which people go to the OTP and which go to Commerce?

This will be handled on a functional rather than personal basis between the affected agencies and the Bureau.

6. Has a Director been chosen?

No.

7. When will a Director be chosen?

Do not know.

8. What type of background is being sought for a Director?

Broad experience ideally in technical, economic and legal areas. Finding a person of this exact background may be impossible, but this background is of the type needed.

9. What type of people will be hired for the OTP?

Similar to the Director, *some specialists.*

Commerce Department

1. What kind of authority will the Secretary of Commerce exercise over agency requests for frequencies?

No authority to assign frequencies but the Commerce Department will perform a variety of technical services and support.

2. How large of an operation will be established in the Commerce Department?

At this point the magnitude of the Commerce effort is under study.

3. What is going to happen to the Laboratories at Boulder?

They will probably be integrated with other telecommunications related activities of the department.

4. What frequency management affairs other than bookkeeping are to be performed by the Commerce Department?

Technical studies and analyses.

5. Why not continue the frequency management bookkeeping in the OTP?

It is not necessary to bog down the Director with routine operational matters. The Director's role will be more limited to resolution of conflict, and long-range planning.

development of criteria, &

6. Why was the Commerce Department picked rather than the Transportation Department?

The Commerce Department is already in the telecommunications business and offers a base of competence on which to build. Further, the Commerce Department, other than the Weather Bureau activities, is not a major user of telecommunications services.