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A

SUMMARY CHRONOLOGY --

FEDERAL INFORMATION AND MONITORING PRACTICES

1. July 31, 1973: Whitehead testifies before Representative Moorehead's Government Operations Subcommittee on federal information systems.
2. October 5, 1973: GAO letter to OTP submits questionnaire (at request of House Government Operations Committee) on Federal use of telephone monitoring, psychological stress evaluators, etc.
3. October 18, 1973: OTP responds, notes existence of 3 transmitter cut-off switches in Director's Office.
4. June 3, 1974: Moorehead letter to OTP invites testimony.
5. June 11, 1974: Eger testifies before Moorehead Subcommittee.
6. June 18, 1974: Committee staff submits 9 questions as follow-up to Mr. Eger's testimony. OTP responds.

B

June 3, 1974

Mr. Clay T. Whitehead
Director
Office of Telecommunications Policy
Room 770
1800 G Street, N. W.
Washington, D. C.

Dear Mr. Whitehead:

In late 1973, the Foreign Operations and Government Information Sub-Committee of the House Committee on Government Operations conducted a questionnaire survey to obtain data on the current policies and practices of Federal agencies relative to telephone monitoring and other surveillance practices.

The information developed by that survey indicates a need for an updating by this Sub-Committee of the material published in its report of December 1970, which is enclosed for your information. A series of public hearings is being scheduled to assist the Sub-Committee in its efforts to more fully develop a body of knowledge about the current technology of monitoring equipment and what can be anticipated in the near future.

This is to confirm tentative arrangements discussed by your Assistant Director for Government Communications, Mr. Charles C. Joyce, and this Sub-Committee's Staff Director, Mr. William G. Phillips, about the hearing scheduled for Tuesday, June 11th. It is our understanding, that the witnesses from the Office of Telecommunications Policy will be the Deputy Director, Mr. John Eger, who will be accompanied by Mr. Charles C. Joyce, Jr. The June 11th hearing will begin at 10:00 a. m. in Room 2203 of the Rayburn House Office Building and continue in the afternoon. Your witnesses, who are expected at about 2:00 p. m. on that day, ^① should present to the Sub-Committee information on the extent and nature of the use of such equipment by your office. ^② They also should summarize the results of the study of the adequacy of common law, statutes and Federal regulations to protect individuals regarding the privacy of their electronic communications and the security of communications' systems referred to in your testimony of July 31, 1973, before this Sub-Committee.

^③ Their statement should expand on and update, if necessary, the material you previously furnished to the General Accounting Office in response to the October 5, 1973, questionnaire survey it undertook at the request of the Sub-Committee.

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Witnesses are requested to limit their initial oral statement to 10 minutes, which will be followed by questions from the Sub-Committee members. More detailed written statements will be accepted from witnesses, and those written statements in their entirety will be made part of the hearing record. If you wish additional information, please contact Mr. William G. Phillips, Sub-Committee Staff Director, at 225-3741.

As required under the Committee rules (copy enclosed), it will be necessary for you to provide 50 advanced copies of your prepared statement to Mr Phillips in Room B-371, Rayburn House Office Building, Washington, D. C. by 10:00 a. m. Monday, June 10th. Please do not request extensions of this deadline.

With best regards.

Sincerely,

William S. Moorhead
Chairman

C



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

OCT 5 1973

B-142199

The Honorable Clay T. Whitehead
Director, Office of Telecommunication
Policy

Dear Mr. Whitehead:

The Chairman of the Foreign Operations and Government Information Subcommittee, House Government Operations Committee, has requested the U.S. General Accounting Office to obtain information on the use by Federal agencies of polygraphs and psychological stress evaluators and of telephone monitoring and other surveillance practices. The purpose of this survey is to update previous Subcommittee investigations in this field.

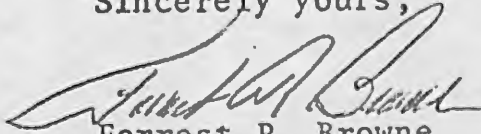
Accordingly, we ask that you furnish full and complete answers to each item in the enclosed two-part questionnaire which is being sent to the heads of executive departments and independent agencies. Responses are to cover all subordinate organizations within each agency. Within some individual and independent agencies more than one major subordinate organization may use polygraphs, psychological stress evaluators, and monitoring devices for different purposes or under different procedures. In that event, please break down the requested data by major subordinate organizations in addition to providing an agency-wide compilation.

If any portion of the questionnaire seems unclear, and further advice or explanation is desired, please contact Mr. Max Stettner, Assistant Director, at 386-3417.

In order that this information can be summarized on a timely basis for use by the Subcommittee, the Chairman asks that we provide the requested information to the Subcommittee by November 12, 1973.

Your cooperation in assisting us in responding to this request is appreciated.

Sincerely yours,


Forrest R. Browne
Director

Enclosure (as stated)

QUESTIONNAIREPart A -- Questionnaire on Polygraphs and Psychological Stress Evaluators

1. Does your agency possess or make use of polygraphs or psychological stress evaluator detection devices? (If major subordinate organizations within your agency engage in such activity, please list all those organizations.)
2. How many polygraphs and psychological stress evaluator detection devices are the property of your agency? Your response should show separate data for each of these two categories of devices, if available.
 - (a) Please list the total acquisition cost of all such devices.
 - (b) Please estimate the total annual maintenance costs of such devices and indicate whether maintenance is performed by agency personnel or by outside sources.
 - (c) If your agency leases such devices, or contracts with other public or private agencies to perform such tests, please provide the total costs for such activity during fiscal 1973.
 - (d) Please estimate all additional expenses attributable to such testing, such as travel expenses for examiners to and from location of tests, internal and external training programs, and all other costs for fiscal 1973.
 - (e) Do you have on loan to or loan from other Federal agencies or any other sources any polygraphs or psychological stress evaluator detection devices? If yes, give the number of such devices and identify the agencies or sources involved.
3. Please provide two copies each of all intra-agency directives, administrative orders, rules, regulations, and/or instructions governing the use of such devices within your agency.
4. Briefly explain your agency's general procedures governing the use of both categories of devices and answer the following specific questions. (Please explain procedures and indicate if they are covered by regulation in connection with each question. If more than one major subordinate organization within the agency is affected, provide separate responses for each.)

- (a) For what specific purposes are these devices used (i.e., employment interviews, security clearance processing, suspected improper conduct of duties, medical measurements, or other purposes. List in order of most frequent use.
- (b) Are the devices used in every instance involving those purposes listed in answer to (a) above?
- (c) What weight is given the data resulting from tests by these devices, or refusals to take such tests in relation to other types of investigative information?
- (d) Who makes the initial determination to use such devices, and is this initial determination subject to review by higher authority in each case?
- (e) Is the physical and mental condition of each person to be tested considered to determine suitability to take such a test?
- (f) What disposition is made of data derived from such tests given to persons connected with your agency (i.e. retained in affected individuals' personnel files, retained separately, entered into a computerized information system data bank, made available to other Government agencies, etc).
- (g) Are the findings of such tests made available to the subjects of such tests?
- (h) Is there a right of appeal in cases of adverse findings?
- (i) Is access to such data restricted and, if so, what classification or other designation is applied to the data?
- (j) If a person connected with your agency refuses to take such a test, is that refusal reflected in any way whatsoever in the individual's personnel records?
- (k) Does your agency maintain special facilities, such as specially designed rooms, for the performance of such tests? Briefly describe such facilities and how they are equipped, stating particularly if they have two-way mirrors and recording devices. Furnish photographs, if available.

(1) How many polygraph tests and/or psychological stress evaluator device tests were conducted by your agency in fiscal 1973?

(m) How many such tests were conducted by other agencies, public, private or contractor at the request of your agency during fiscal 1973?

5. Please enumerate, by job title and grade, all employees of your agency who are authorized to conduct polygraph or psychological stress evaluator tests and list their salary costs for fiscal 1973. In addition, please answer the following:

(a) How many of these persons have, as their primary duty, the conducting of such tests?

(b) What are the minimum qualifications required of those persons within your agency authorized to conduct such tests?

(c) Describe any training program your agency provides to train its own employees, or employees of other Federal agencies, in conducting such tests.

(d) Does your agency send employees to outside agencies or schools, public or private, for training in such testing? If so, please provide the name and address of the training facility.

QUESTIONNAIRE

Part B -- Questionnaire on Monitoring Practices and Devices

1. Does the agency permit monitoring of (a) incoming, (b) outgoing telephone calls? For the purposes of this study, monitoring is understood to include a secretary or any third person being on the line, either covertly or overtly.
2. Please state the number of transmitter cut-off switches (including push-to-talk) in use on telephones assigned to the agency. Please give the total rental charge or other cost for such switches during fiscal 1973. Also, please state how many listening-in circuits are installed on telephone equipment assigned to the agency and the total rental charge or other cost for fiscal 1973.
3. If telephone recording devices are used to monitor or record telephone calls, how many such devices are in use in your agency? Is a beeper or other warning device required to notify the other party that the call is being recorded by the devices?
4. If telephone recording devices are used, please specify the number of recorders wired into telephone circuits, the number of induction-type attachments that can be used to record telephone conversations on dictation machines without being wired into the circuit, and any other types of instruments that can be used to monitor or record telephone conversations. Please indicate which of these devices, if any, are equipped with a beeper or warning signal.
5. Does the agency ever utilize telephone service observing devices of any kind? If so, of what type and for what purposes?
6. Does the agency ever utilize non-telephonic "bugging" devices? If so, of what type and for what purpose?
7. Please furnish the best available estimate of the total cost of these (a) recorders and attachments, (b) telephone service observing devices, (c) non-telephonic "bugging" devices.
8. Does the agency have any rules or regulations covering telephone monitoring, recording, and surveillance? If so, please provide two copies.

October 18, 1973

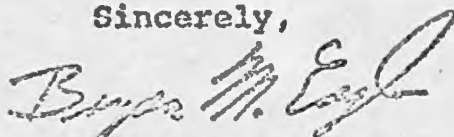
Mr. Forrest R. Browne, Director
Federal Personnel and
Compensation Division
General Accounting Office
Washington, D. C. 20543

Dear Mr. Browne:

We have received your October 5, 1973, letter (reference B-142199) requesting information on this agency's use of polygraphs, psychological stress evaluators, telephone monitoring, and surveillance practices.

Our answers to your questionnaire are set forth in the enclosure. I would be pleased to provide you with any additional information that you may require.

Sincerely,



Bryan M. Eagle
Executive Assistant

Enclosure

cc:

✓ BMEagle
GC Subject
GC Chron
KRobinson/kak/10-17-73

GAO Questionnaire - OTP Answers.

Reference: B-142199

ANSWERS

PART A - Polygraphs, psychological stress tests.

1. OTP does not possess nor utilize polygraphs or psychological stress devices.
2. Agency has no such equipment.
3. No directives or the like have been issued; use of such devices is prohibited.
4. No such procedures.
5. No agency employee authorized to conduct such tests.

PART B - Monitoring practices.

1. OTP does not permit monitoring; secretaries may come on line, but only with knowledge of all parties to a telephone conversation.
2. Three transmitter cut-off switches are installed on secretarial telephone consoles in the Director's office. The total rental for Fiscal Year 1973 was \$90.00.
3. No telephone recording devices used.
4. See answer 3, above.
5. No telephone service observing devices in use.
6. No "non-telephonic 'bugging' devices" used.
7. No such costs incurred.
8. No separate regulations; conform to GSA regulations (41 CFR § 101-35.388-9 (1972)).

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

ON

FEDERAL INFORMATION SYSTEMS

before the

Subcommittee on Foreign Operations
and Government Information
Honorable William S. Moorhead, Chairman
Committee on Government Operations
U.S. House of Representatives

July 31, 1973

Mr. Chairman, I welcome the opportunity to present my views on the use of advanced information and communications technology to improve Federal information services, and to explain the responsibilities of my Office in that regard. I have with me today Mr. Charles Joyce, the Assistant Director for Government Communications in OTP.

The Office of Telecommunications Policy was established in 1970 to provide a focal point for the development of administration policy in the area of electronic communications, and to coordinate the activities of the various Federal Departments and Agencies in this area. The scope of my responsibilities includes electronic communications, and matters arising out of the joint use of computers and communications. I am not responsible for matters involving solely the use of computers, or for matters in the area of information which are totally apart from any use of electronic communications systems. But this latter point is not particularly limiting with respect to the subjects I will be discussing today since most of the issues of public concern in the area of information handling involve electronic communications in one way or another.

I will now try to cover briefly each of the areas listed in your letter, Mr. Chairman.

OTP Role in Federal Information Systems

First, you asked about our role in providing technological services to other agencies, and in planning, operating and coordinating Federal information systems. OTP does not provide technological services to other agencies. Nor do we operate any telecommunications or information systems, except as may be needed for our own internal use.

We are responsible for providing policy guidance to Federal Agencies which do operate such systems, and for coordinating the efforts of these agencies in the interests of Government-wide effectiveness and economy. To accomplish this task in a systematic way, I have initiated a joint planning process in which Federal Agencies with similar operational missions and communications requirements will work together to optimize the communications operations in their respective areas. The five initial mission areas which have been identified for this type of planning are: National Security, Law Enforcement, Transportation, Environment, and General Administrative Communications. In each area, the agencies involved will be responsible for jointly reviewing their telecommunications plans to eliminate duplication and achieve maximum economy and effectiveness. OTP will review

the resulting combined plans to assure overall consistency and adherence to national communications policy.

Sharing and Interconnection

Sharing and interconnection of systems are measures which are pursued within the Government with the objectives of achieving economy and maximizing the usefulness of communications and information systems. These are worthwhile objectives, although I am not convinced that they have been achieved in some of the present programs. In any event, interconnection and sharing are not ends in themselves, and they do entail risks of compromising privacy which must be recognized.

Safeguards

You asked for my views on safeguards needed to protect against misuses of Federal information systems, specifically the invasion of privacy and use for propaganda purposes. In responding to that, let me explain how these concerns present themselves in Government communications planning, and where responsibility lies for action.

While there is no single generally accepted definition of "privacy" or the "right to privacy," it is widely acknowledged that a reasonable freedom from intrusion is essential to normal human growth and stability. The individual should not have information thrust upon

him. The "right to be let alone" implies a degree of protection from unwanted sights and sounds.

The claim to privacy in the information context is based on the dignity and integrity of the individual. These concepts are tied to the assumption that all information about a person is in a fundamental way his own, for him to determine when, how and to what extent it is communicated to others. People also recognize that much of society's business can be conducted only if confidentiality of communications is respected. By protecting this privacy, society ensures its own well-being and development.

Privacy as a fundamental value is essential to a democratic system, which has, as its highest goal, the liberty of the individual. Privacy, however, is not absolute. There is an inherent conflict, for example, between the Government's need for information to pursue justice and an individual's need for personal privacy.

Electronic technology has greatly increased the ability to acquire and disseminate information. Mechanisms to ensure individuals their privacy and the privacy of their communications have not advanced as rapidly. OTP has undertaken to investigate the adequacy of common law, statutes, and Federal regulations to protect individuals regarding the privacy of their electronic communications

and the security of the systems carrying them. This is being done with the view towards identifying what policies, standards, or legislative safeguards are necessary.

Communications, computers and other information technologies lower the cost and increase the speed of large scale information collection and processing operations. These technologies can therefore expand the power of the Government and other large institutions vis-a-vis the individual.

They could, for example, increase the ability of Government agencies to assemble confidential information about persons to the detriment of individual privacy. They also could increase to an undesirable degree the power of Government to influence large numbers of citizens with respect to Government policies, that is, to propagandize the public. But such results are not inevitable. They must be prevented, and they can be prevented if we are aware of the dangers and develop appropriate safeguards. What are those safeguards?

Privacy

To safeguard privacy, it is essential to protect the confidentiality of data which, by law, is to be collected and used for limited purposes, such as census data, tax returns, social security data, and investigative files. The

responsibility for protecting such files in most cases must lie with the agencies charged by law with collecting the data. Any breach of confidentiality must be laid squarely at that agency's door. Clear responsibility and procedures for correction are, as they have always been the best safeguards.

But this simple rule is not enough when Federal systems containing confidential data are to be interconnected, or when confidential files are to be used in shared information systems. Admittedly, there are potential benefits to interconnection and sharing in the form of greater overall economy and wider accessibility within the Government of useful information. However, such steps also contain risks or loss of effective control over confidential data. It is in resolving these conflicting considerations of Government economy and effectiveness and sound public policy that my responsibilities come into the picture.

I have been working with the Federal Agencies who have extensive telecommunications systems to clarify Federal policy on interconnection and sharing. We have not yet come to the point of issuing any all-encompassing policy document -- perhaps we never will. But we have come to an understanding that interconnection and sharing are not ends in themselves. OTP has been insisting on a

clearer understanding of the magnitude of benefits and risks involved in interconnecting or combining Government systems.

Looking to the future, I expect that the planning process I referred to will provide more information, for all parties concerned, about plans for the future of Federal Government information systems. To provide guidance for this planning, we have initiated studies to determine more clearly the desirability of shared systems and the risks involved. We are closely following efforts to assess the current state of the art in technology for controlling access within information systems so that we will be well informed on the risks.

Propaganda

The other area of concern is the possibility of abuses in the dissemination of information by the Federal Government. We must recognize that there are important needs for Federal agencies to provide certain types of information to the public. However, two types of abuses can occur: First, undue efforts to influence public opinion in favor of Federal policies, agencies or individuals, and second, extensive provision of routine information services by the Federal Government which could be provided adequately

by the media or other private organizations. We are concerned here today primarily with the former possibility, an abuse which might be called propaganda. Again, the primary responsibility for controlling excessive propagandizing must be with each Federal Department and Agency.

An area which bears watching is the provision of public service announcements by Federal Agencies. Broadcasters are strongly encouraged by Federal regulators to carry public service announcements. Federal Agencies may use this opportunity to support the presentation of a wide variety of messages regarding their activities and programs. But we should be alert to possible abuse of this opportunity by Federal Agencies -- the number and type of such messages produced and distributed by the Government must not constitute an unwarranted intrusion into the public mind.

It is possible for the Government to increase its "information power" indirectly or even inadvertently, through projects designed for other purposes. Efforts to develop, demonstrate or utilize various types of information systems or technologies could possibly become new avenues for Federal propaganda, even though that is not the intended result.

One example of this concern is posed by the new warning system designed by the Defense Civil Preparedness Agency -

the Decision Information Distribution System, or "DIDS." The system, which is still being evaluated, was designed to serve a worthy purpose, namely, warning of impending attack or natural disaster. However, there is some basis for concern about how such a system, once in existence, might come to be used. In view of the possibility of misuse, however remote, I believed that it would be bad policy to force people to have a DIDS receiving device in their homes. We opposed the idea that legislation should be sought to force manufacturers to incorporate such a receiver in every new TV set. OTP established the policy that any purchase or use of home receivers for warning would be on a voluntary basis. Further, we are watching the project closely to assure that no additional functions are planned for the system which might lead to misuse or to competition with the news media or other private sources.

We have also been concerned for some time with Government sponsorship of broadcasting-type communications projects, including the development of broadcasting capabilities on NASA's ATS series of satellites. NASA is discontinuing such development projects, with OTP's concurrence, after the launch of the ATS-F next year.

Our concern is not directed only, or even primarily, toward high technology projects. Indeed, the use of

very commonplace equipment can be a cause for concern. Through the simple expedient of an automatic telephone answering device, some Federal Agencies have made it very simple - perhaps too simple - for radio stations to record and retransmit announcements about Federal programs which were pre-recorded by Federal spokesmen. The technology involved here is trivial. The impact of such arrangements, however, and the potential for abuse, is great. It is important to be aware of this.

Application of Technology to Information Activities

You asked my views about the development of systems to serve the needs of the public for information of all kinds, and about the agency or agencies which should plan and coordinate the use of technology for such activities. I do not believe that any one agency should be charged with developing information systems for the delivery of all kinds of information to the public. Such an arrangement would in all likelihood lead to the design of a massive delivery system which would then have to be filled with all kinds of data to justify it. This would bring the Federal Government into direct competition with numerous elements in the private sector such as publishers, research organizations, and computer service firms. Furthermore, the control which a central agency could exercise in selecting and editing the information to be contained in

such a system would be an open invitation to use it to manipulate public opinion.

Any proposal for the use of a Government controlled, electronic communications system for this purpose should be carefully reviewed by higher levels within the Executive Branch and by Congress. Such a review should evaluate the dangers involved, and determine why there is no alternative way to get the job done. OTP has a responsibility to conduct such reviews, and we look at projects which come to our attention from this point of view.

Communications for Social Needs

I am aware of the Committee's interest in the report entitled "Communications for Social Needs" which was produced by NASA in connection with certain other agencies in 1971. The report was prepared as one part of an effort to determine whether and how the research and development capabilities of the nation could be directed, through Federal policy and funding, toward meeting specific national needs.

We provided our views to NASA during the preparation of this report, but their report was not in accordance with those views. Among the deficiencies I noted was too great an orientation toward Federally owned and controlled systems rather than toward private ownership and control, with the inherent dangers I have just described. I strongly opposed the adoption of this report, and it was never presented to the Domestic Council or the President. Thus, the report never received any Administration approval.

This does not mean that all of the ideas contained in the report were bad. The Post Office has been studying electronic mail handling for some time. The warning satellite idea had been considered by our own warning study group, but rejected in favor of the DIDS system.

Such ideas must be considered openly and each evaluated on its own merits. For example, although the "Wired City" proposal as presented in the report was ill-conceived, there is a need for sensible evaluation of the feasibility of providing public services over broadband cable communications systems. Though there is much talk about the potential for the delivery of educational and social services over cable systems, cable today is devoted almost exclusively to entertainment. Cable's full potential for public service is not likely to be developed by

private industry, and I think that some Federal program in this area is appropriate, with adequate safeguards against the dangers I have described.

In summary, Mr. Chairman, I believe that the potential value of information technology for Government, for society, or for the individual is very high. Much of that potential can best be realized by the private sector in the marketplace. Valid Government functions can also be improved. There are dangers of a subtle but pervasive expansion of Federal influences and activity through the use of these technologies, but such adverse results are not inevitable. They can be overcome, if we set ourselves to the task, by adequate law and policy to assure that only the desired functions are performed. Our responsibility for communications policy, and our location in the Executive Office with a broad overview of Federal activities, gives OTP important responsibilities in the area of protection of the rights and freedoms with which your committee is concerned.

This concludes my prepared statement, Mr. Chairman, and Mr. Joyce and I will try to answer any questions which you and the other members of your Committee and staff may wish to ask.

F

*Whitehead testimony,
House Govt. operations Subcommittee
Federal Information Systems
July 31, 1973*

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n the report entitled, "Com-ras produced by NASA in 1971. The report was pre-etermine whether and how s of the Nation could be ding, toward meeting specific

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In summary, Mr. Chairman, I believe that the potential value of information technology for government, for society, or for the individual is very high. Much of that potential can best be realized by the private sector in the marketplace. Valid government functions can also be improve. There are dangers of a subtle but pervasive expansion of Federal influences and activity through the use of these technologies, but such adverse results are not inevitable. They can be overcome, if we set ourselves to the task, by adequate law and policy to assure that only the desired functions are performed. Our responsibility for communications policy, and our location in the Executive Office with a broad overview of Federal activities, gives OTP an important responsibility in the area of protection of the rights and freedom with which your committee is concerned.

This concludes my prepared statement, Mr. Chairman, and Mr. Joyce and I will try to answer any questions which you might have.

Mr. MOORHEAD. First, Mr. Whitehead, I compliment you on your statement. You are right on the target which is of major concern of this subcommittee.

We did obtain and study the report "Communications for Social Needs" that you referred to in your testimony. The shocking thing to me was not so much what it contained, but what wasn't included. There was little or no concern expressed in it for the potential dangers of such vast communications systems. It frightened me that apparently nobody thought this was important enough to even mention it in the report. I suppose that from your testimony was one of the reasons that the report was not in accordance with your views.

Is that correct, sir?

Mr. WHITEHEAD. That's correct. I thought the report had too much emphasis on using Government-owned and controlled systems for Government information distribution purposes, and that makes it very hard to apply any safeguards. When the Government is piping its own information out of its own system there is not the kind of visibility there that I think we would like.

Mr. MOORHEAD. In the past years this subcommittee, other Members and committees of the Congress expressed a concern about what was then called a National Data Bank into which could be fed everybody's social security number, income tax records, personal data, and similar types of information. Because of such concern I think that idea was abandoned.

Am I correct on that statement?

Mr. WHITEHEAD. As far as I know, Mr. Chairman.

Mr. MOORHEAD. However, if you can provide, as you referred on page 3 of your testimony, for sharing and interconnection systems utilizing the technology we now have, you could have the end result of a national data bank, could you not?

Mr. WHITEHEAD. That is quite possible unless the safeguards are very firmly built into the technology and into the operating procedures of the agencies that use these systems. You could in effect have the same result.

Mr. MOORHEAD. This committee, I mean our parent committee particularly and, of course, this subcommittee has been charged with promoting economy and efficiency in government. I am sure that it would be more economical and more efficient for the Census Bureau and the Internal Revenue Service to be interconnected because it would mean probably fewer Census Bureau employees. They wouldn't have to go out and personally count people. They might be able to do a more economical and efficient job.

The Department of Agriculture, with complete access to the data bank of the Internal Revenue Service, might make a much better analysis of the farm economy and maybe produce a better farm program. Could it not?

Mr. WHITEHEAD. Well, I'm not sure, Mr. Chairman.

There are two different aspects of that. I think, both of which I've had some experience in. They are effectiveness and economy in communications. That's one of my principal responsibilities. I have to say that the case is not firmly made that shared systems are more economical. In some cases it adds a complexity which adds cost and it may add up with just as much or more money being spent to do the same job as several specialized systems. So I would not jump to the assumption, as many people frequently do, that sharing automatically entails more efficiency for the Government.

The other aspect of it has to do with analysis of the data. I used to be employed at one of the Nation's "think tanks" and I certainly know that the analyst loves to get all the data he can, put it together and cross reference it in as many ways as possible because he thinks that gives him a richer form of analysis. In many cases that's true, but that benefit to the analyst has to be offset against the possible risks to privacy and to confidentiality, and the analyst is not paid to be aware of those kinds of risks. I think that's why it's very important that you're having these kinds of hearings because that side of it should get the attention too.

Mr. MOORHEAD. Well, the point I want to get across, and I think my views are shared by other members of this subcommittee, is that even if there were better economy and efficiency involved, it should be sacrificed if it meant an invasion of the privacy of the individual citizen. In other words, I hold the liberty of the individual which you referred to in your testimony as a "higher value" than the saving in tax dollars, although of course whenever possible we want to save tax dollars.

Mr. WHITEHEAD. I would certainly agree that at least in my scheme of things it is a higher value. The very difficult decision comes when you face up to the fact that you are paying a substantial amount of money for the safeguards, and those decisions just have to be faced on a case-by-case basis to make sure that the economy does not cause an unsatisfactory or an undesirable risk.

Mr. MOORHEAD. We had previous testimony about the Defense Information Distribution System—DIDS—which has some very good pluses to it. But as a technological matter, is the purchase of a device

or the installation of a device poses? Or do we have the television program, not the broadcast to only those persons and who might be affected where they live?

Mr. WHITEHEAD. Well, operations like that.

Mr. MOORHEAD. Well, department, have that capability?

Mr. WHITEHEAD. Well, I think that's quite possible. I think that's quite possible. I think of the Government being it could be done. That leaves how do we warn the people a substantial number of people late at night.

There is, I think, a lot of kinds of warning indicators people you would like to have.

The study, I think, was very much that this particular approach warnings out to essentially.

Mr. MOORHEAD. So that radios or television sets are not type of gadget in addition to that it?

Mr. WHITEHEAD. I think achieve the warning; yes.

Mr. MOORHEAD. Now, you these gadgets are to be required televisions.

Mr. WHITEHEAD. That's correct.

Mr. MOORHEAD. I don't mind type of individual pushed this.

Mr. WHITEHEAD. Well, I think the feeling among some people designed would not be useful. A large majority of the people a program wouldn't be a Government unless we had devices. And the argument them on a voluntary basis; that built into TV sets in order to was the line of argument.

My judgment was that the people for themselves whether they will get a warning through turned on, and for the Government I think is an undue intrusion making and on their privacy.

Mr. MOORHEAD. Thank you,

unless the safeguards are into the operating procedures you could in effect have the

our parent committee par-tee has been charged with government. I am sure that it is efficient for the Census Bureau interconnected because it would employees. They wouldn't have. They might be able to do a

complete access to the data but make a much better analysis. Hence a better farm program,

Chairman.

I think, both of which I've seen and economy in common responsibilities. I have to say that shared systems are more complex which adds cost and money being spent to do the So I would not jump to the conclusion, that, arising automatically

analysis of the data. I used to think tanks" and I certainly the data he can, put it together as possible because he thinks so. In many cases that's true, offset against the possible risks the analyst is not paid to be why it's very important that because that side of it should

not to get across, and I think of this subcommittee, is that efficiency involved, it should be the privacy of the individual of the individual which you value more than the saving in the other possible we want to save

free that at least in my scheme difficult decision comes when saving a substantial amount of money just have to be faced on the economy does not cause an

testimony about the Defense In-which has some very good is the purchase of a device

or the installation of a device necessary for disaster warning purposes? Or do we have the technology to, let's say, interrupt a television program, not the broadcaster himself but, say, your office to broadcast to only those persons who have their television sets turned on and who might be affected by some impending disaster in the area where they live?

Mr. WHITEHEAD. Well, our office wouldn't get involved in any operations like that.

Mr. MOORHEAD. Well, does any agency, including the Defense Department, have that capability?

Mr. WHITEHEAD. Well, certainly we have that kind of technology. I think that's quite possible technologically. It would entail interposing of the Government between the broadcaster and his transmitter. It could be done. That leaves, of course, the unsettling question about how do we warn the people who don't have their sets on. There is a substantial number of people who aren't watching television particularly late at night.

There is, I think, a lot of analysis to show that sirens and other kinds of warning indicators also don't reach the largest majority of the people you would like to reach for this very important program.

The study, I think, was very careful and very thorough in suggesting that this particular approach was the best approach to getting warnings out to essentially all of the people on a very rapid basis.

Mr. MOORHEAD. So that if we want to reach the people whose radios or television sets are not turned on we have to have some other type of gadget in addition to existing radios and television sets. Is that it?

Mr. WHITEHEAD. I think something like that is the best way to achieve the warning; yes.

Mr. MOORHEAD. Now, you stated that you oppose the idea that these gadgets are to be required to be incorporated into radios and televisions.

Mr. WHITEHEAD. That's correct.

Mr. MOORHEAD. I don't mean any particular individual, but what type of individual pushed this idea?

Mr. WHITEHEAD. Well, I come back to my old friends, the analysts. The feeling among some people was that this system that had been designed would not be useful on a broad basis nationally unless a large majority of the people actually had these devices. The warning program wouldn't be a worthwhile investment for the Federal Government unless we had some assurance that people had these devices. And the argument went that people are not likely to buy them on a voluntary basis; therefore, we have to require that they be built into TV sets in order to make sure that people have them. That was the line of argument.

My judgment was that that was an undue intrusion. People can decide for themselves whether they need that extra warning device. They will get a warning through TV, radio if they have those devices turned on, and for the Government to require that they purchase it I think is an undue intrusion both on their own economic decision-making and on their privacy. They can decide whether they want to have this kind of warning or not.

Mr. MOORHEAD. Thank you, Mr. Whitehead.

Mr. Erlernborn?

Mr. ERLERNBORN. Thank you, Mr. Chairman.

Mr. Whitehead, I want to thank you for your statement. I think it shows the kind of sensitivity that we on this committee hope would be shown in each of the agencies that are making decisions in the area of telecommunications and particularly data retention and processing.

I have just a couple of questions.

First of all, I noted in reading your statement you left out one paragraph on page 11. I just wanted to inquire if that was inadvertent or if you intended to delete that. The paragraph was, "rather than any centralization of operations in this area I feel that each Federal agency should determine its own information mission and how to accomplish it as fully as possible through privately controlled information channels."

Mr. WHITEHEAD. The statement you have there, Mr. Erlernborn, is the penultimate draft. The version that we did submit formally did not have that paragraph in it. It just raised a lot of very unresolved and unresolvable questions.

Mr. ERLERNBORN. So you purposely did that?

Mr. WHITEHEAD. I purposely did that.

Mr. ERLERNBORN. I thought you inadvertently skipped it.

Mr. WHITEHEAD. No.

Mr. ERLERNBORN. I made a note on page 4 of your statement that you said that your "office has undertaken to investigate the adequacy of present laws and regulations to protect individuals regarding their privacy."

Could you tell me how far along that study is and what the end result will be? Will you be issuing a report or will you make individual recommendations to the various segments involved?

Mr. WHITEHEAD. The effort is hardly more than a month or two old at this point. That is not to say we weren't doing some looking into the area before, but I finally determined that there was just so much uncertainty about what the law, the policies, the safeguards actually were that we needed a comprehensive pulling together of everything, and then an analysis of it to see where the gaps are, if any.

I don't know when it will be completed. There will definitely be a report, I would think, and if we determine from that review that there are some gaps, I think it is our responsibility to make some proposals and some recommendations for Federal policies, for legislation, or what have you.

Mr. ERLERNBORN. Well, my real question is, I guess, will this all be put together in a report or would you, say, contact the Congress separately relative to legislative changes and contact the different agencies individually as to changes in their regulations? Or will it all be put together in one formal report?

Mr. WHITEHEAD. I don't think it will be put together in one formal report. The results of the study probably will be put together as a report, but the specific recommendations would probably go to the appropriate place: legislation through the President, to the Congress; FCC matters directed to the FCC; policy matters for Federal agencies could be implemented by us directly through the internal executive branch policy process.

Mr. ERLERNBORN. What was the authorization of this report? Does it have his authorization before it is issued with authority without clearing it?

Mr. WHITEHEAD. Well, that is a factual statement. Such a statement, although it might well be of some use, is not important enough to be done both ways.

Policies pertaining to the telecommunications activities of executive agencies come directly to the President. We think there is some reason to think that something is important enough to be done both ways.

Mr. ERLERNBORN. Legislation through the President?

Mr. WHITEHEAD. Yes, the President.

Mr. ERLERNBORN. Through the President?

Mr. WHITEHEAD. Through the President.

Mr. ERLERNBORN. To get to your office opposed the requirement for receivers in their TV sets as a chase or use of home receivers.

At what point in time was this because I recall last fall some statements relative to that I even heard them on the radio. I'm curious as to whether you are the chairman's comments.

Mr. JOYCE. The date of the report.

Mr. ERLERNBORN. So that point.

Mr. JOYCE. About a year before.

Mr. ERLERNBORN. About a year before.

Mr. WHITEHEAD. I do think that.

Mr. Moorhead's comments, that the NASA report or some other report described that gave us cause for concern and he was available publicly and he was the same kind of concern and I think that.

Mr. Moorhead. If the gentleman gave no consideration to the potential abuses of propagation of privacy, et cetera. I think that for that reason.

Mr. ERLERNBORN. Well, I think this concern. It was particularly testimony now that you established was given by the chairman. November 1972, I might have suspected the chairman's comments. I'm not sure of the chairman's comments.

Mr. WHITEHEAD. I might say that while for the chairman.

Mr. ERLNBORN. What would be the procedure in the final authorization of this report? Does this need to go to the President and have his authorization before it becomes policy or do you have some policy authority without clearing through the President?

Mr. WHITEHEAD. Well, the report I have in mind would be just a factual statement. Such a thing would not need to go to the President although it might well be of interest to him.

Policies pertaining to the executive branch itself and to the communications activities of executive branch agencies may or may not come directly to the President's personal attention. We try to implement those and resolve them without his personal involvement unless we think there is some reason that he would have an interest or something is important enough that we think ought to have his attention. It can be done both ways.

Mr. ERLNBORN. Legislative proposals. Would they be cleared through the President?

Mr. WHITEHEAD. Yes, the normal executive branch clearance process.

Mr. ERLNBORN. Through OMB?

Mr. WHITEHEAD. Through OMB, that's right.

Mr. ERLNBORN. To get to the DID system, I know that you said your office opposed the requirement for manufacturers to incorporate receivers in their TV sets and preferred a policy of voluntary purchase or use of home receivers.

At what point in time was that policy established? I ask that question because I recall last fall the chairman of our subcommittee made some statements relative to this. They got such widespread publicity that I even heard them on the radio in my own congressional district. I'm curious as to whether your policy was established before or after the chairman's comments.

Mr. JOYCE. The date of the warning policy is November 11, 1971.

Mr. ERLNBORN. So that policy decision was made—

Mr. JOYCE. About a year before.

Mr. ERLNBORN. About a year before the chairman's comments?

Mr. WHITEHEAD. I do think, Mr. Erlenborn, I recall vaguely hearing Mr. Moorhead's comments, too. As I recall those were based on the NASA report or some other reports from agencies lower down that I described that gave us cause for concern, and I think those just became available publicly and he was probably reacting to that. It caused us the same kind of concern and led to the policy.

Mr. MOORHEAD. If the gentleman will yield, my concern was that it gave no consideration to the potential dangers involved in such systems, about which Mr. Whitehead has testified—no consideration for the potential abuses of propaganda, no attention to the possible invasion of privacy, et cetera. I thought it was really a shocking document for that reason.

Mr. ERLNBORN. Well, I think it is quite interesting that you share this concern. It was particularly gratifying to me to find out from your testimony now that you established this policy prior to the publicity it was given by the chairman. Now, if you had told me it was November 11, 1972, I might have suspected that your policy was a result of the chairman's comments. I'm happy to see that you agreed even before the chairman's comments.

Mr. WHITEHEAD. I might say, Mr. Erlenborn, that I still think it's worthwhile for the chairman and people like him to criticize these

things when they see them because the executive branch isn't perfect, and we do need these kinds of things called to our attention. We don't always anticipate them.

Mr. ERLNBORN. Well, I think we all agree with you, particularly when you say the executive branch isn't perfect, and I want it understood in the record that my inquiry about the time relative to the chairman's comments was in no way meant to criticize the chairman's comments.

Apparently at that time he was not aware of the policy decision that had been made in OTP. But again, I was very pleased to discover that that policy decision was made before the broad publicity given to the chairman's comments.

Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. Stanton?

Mr. STANTON. Mr. Whitehead, what organization did you work for before you came to the White House?

Mr. WHITEHEAD. I was with the Rand Corp.

Mr. STANTON. How long did you work there?

Mr. WHITEHEAD. Off and on a total of about 3 years.

Mr. STANTON. Three years. And where did you work before that?

Mr. WHITEHEAD. I was in the Army and then I was in school.

Mr. STANTON. Does your function at the White House have any relationship to Herb Klein's function and office?

Mr. WHITEHEAD. No, it does not.

Mr. STANTON. You have no relationship?

Mr. WHITEHEAD. No, sir.

Mr. STANTON. Thank you. I have no further questions.

Mr. MOORHEAD. Mr. McCloskey?

Mr. McCLOSKEY. Thank you, Mr. Chairman.

Mr. Whitehead, I was impressed by page 8 of your statement on which you indicate a quote that "We should be alert to possible abuse of this opportunity by Federal agencies; the number and type of such messages produced and distributed by the Government must not constitute an unwarranted intrusion into the public mind."

You are referring there, I take it, to public service announcements by Federal agencies, that you encourage private broadcasting networks to use from time to time or the Government encourages. Is that correct?

Mr. WHITEHEAD. That's correct.

Mr. McCLOSKEY. You don't mention public television in this statement. Is that intentional or did you not feel public television was not worthy of inclusion in this statement?

Mr. WHITEHEAD. The principal reason I didn't mention it was because the FCC tends to regulate and license public television stations in a somewhat different way. I think there's an implicit assumption that almost everything they do falls in the public service category as opposed to the licensing of commercial stations where it is presumed that the Federal Government has to require a certain amount of public service or it wouldn't get done. That was the reason for focusing on commercial broadcasting.

Mr. McCLOSKEY. Let me go to the public television question. When we created the Corporation for Public Broadcasting in 1967 we sought to insulate it from governmental intrusion.

You would concur in that intention of the act?

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. Back to the similarity between statements of vision and statements that are on public television. I have from the desk of Lyn Nofziger of the Republican National publican National Committee (Congressmen dated January

I urge you to take the time Clarence "Bud" Brown of Ohio Congressman Brown, who was a member of the Commerce Committee, come a victim of fiscal responsibility practices and program.

Were you concerned at our Office of Telecommunications Service had become antigovernment and content?

Mr. WHITEHEAD. I think was—

Mr. McCLOSKEY. You understand.

Mr. WHITEHEAD. I think difficult questions of policy regarding what might be considered of programing. It has to do with propagandizing the Government to disseminate information.

Certainly insulation was a public television and that was a position that in the very sensitive programing that there was enough insulation and the budget funds for those purposes. We

We also had concern—

Mr. McCLOSKEY. May I interrupt?

Mr. WHITEHEAD. Certainly.

Mr. McCLOSKEY. I want to say.

You did have concern about affairs programs over public

Mr. WHITEHEAD. That's correct.

Mr. McCLOSKEY. And your statement here that there was a concern in the Public Broadcasting Service was being

Is that correct?

Mr. WHITEHEAD. No, that's not correct. We were concerned about being used directly for a journal

Mr. McCLOSKEY. That concern about propaganda coming out of it?

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. Back in 1972 I was impressed by the apparent similarity between statements that you were making on public television and statements that were being made by the Republican Party on public television. I have a memorandum here, Mr. Whitehead, from the desk of Lyn Nofziger, deputy chairman for communications of the Republican National Committee on the letterhead of the Republican National Committee addressed apparently to all Republican Congressmen dated January 24, 1972. It states as follows:

I urge you to take the time to read the enclosed remarks of Congressman Clarence "Bud" Brown of Ohio concerning public television broadcasting. Congressman Brown, who was a member of the Subcommittee on Communications and Power of the Commerce Committee, points out that public television has become a victim of fiscal responsibility and partisan non-objectivity in its hiring practices and program.

Were you concerned at or about that time in January of 1972 in the Office of Telecommunications Policy that the Public Broadcasting Service had become antigovernment, antiestablishment in its program and content?

Mr. WHITEHEAD. I think our principal concern, Mr. McCloskey, was—

Mr. McCLOSKEY. You understand my question? Please proceed.

Mr. WHITEHEAD. I think so. Our concern was that there were very difficult questions of policy raised by tax money flowing into the funding of what might be considered public affairs or journalistic kinds of programming. It has to do with some of the concerns here today about propagandizing the Government, using its power or its money to disseminate information.

Certainly insulation was envisaged for the funneling of money into public television and that was correct. We simply came to the conclusion that in the very sensitive areas of journalism and public affairs programming that there was really no adequate way of building in enough insulation and the best policy simply was not to use Federal funds for those purposes. We did have that type of concern.

We also had concern—

Mr. McCLOSKEY. May I interrupt just a minute?

Mr. WHITEHEAD. Certainly.

Mr. McCLOSKEY. I want to understand precisely what you are saying.

You did have concern about the use of Federal dollars for public affairs programs over public broadcasting. Is that correct?

Mr. WHITEHEAD. That's correct.

Mr. McCLOSKEY. And your concern was not what you have expressed in your statement here that there was overpropagandizing by Government in the Public Broadcasting Service, but concern that the Public Broadcasting Service was being used for antigovernment propaganda.

Is that correct?

Mr. WHITEHEAD. No, that's not what I was saying. What I was saying was we were concerned about the precedent of taxpayers' dollars being used directly for a journalistic function.

Mr. McCLOSKEY. That concern was not, then, over excessive governmental propaganda coming out over the Public Broadcasting System; was it?

Mr. WHITEHEAD. We feel there is a fine line when the Government is involved in funding it directly. There is a potential for abuse.

Mr. McCLOSKEY. By Government—

Mr. WHITEHEAD. By the Government and by the public broadcasting people. When a large segment of your money comes from one source, particularly the Government, there is a tendency to want to please the people who are giving you the money. So there can be an implicit biasing of information in order to please the people who are giving you the money.

Mr. McCLOSKEY. I commend you for that worthy concern over the Public Broadcasting Service trying to please Congress, for example, in its pronouncements to the public. But the statements that you were making in the winter of 1971 and 1972 were directed to precisely the opposite concern, were they not?

Mr. WHITEHEAD. I'm not sure I understand.

Mr. McCLOSKEY. Your concern then was a danger of tax dollars being funneled into the Public Broadcasting System and being used for anti-Government propaganda or antiestablishment broadcasting.

Isn't that correct?

Mr. WHITEHEAD. I think there is a potential for abuse in the funneling of Federal money into this kind of activity. It can take both forms. It can take the form of distributing information that is favoring what is felt by the administration or the Congress in power at a particular point in time. It can be abuse of the opposite form.

Mr. McCLOSKEY. Well, let me quote it to you from a speech that you made on October 18, 1971, where you use the term "Northeast liberal media establishment control of public television." You were there concerned about anti-Government use of the Public Broadcasting System, were you not?

Mr. WHITEHEAD. I don't recall that specific comment. I'm sorry.

Mr. McCLOSKEY. Well, I am referring to a booklet on the Office of Telecommunications Policy put out in 1973 by the Network Project. Have you seen this?

Mr. WHITEHEAD. Yes, I have.

Mr. McCLOSKEY. They refer on page 17 to a speech that you made entitled "A Speech to the National Association of Educational Broadcasters in Miami on October 18, 1971."

Mr. WHITEHEAD. I did give such a speech, yes.

Mr. McCLOSKEY. Did you use the term "Northeast liberal media establishment"?

Mr. WHITEHEAD. I don't recall using that phrase in that speech. There are some inadequacies in the document you are looking at, Mr. McCloskey.

Mr. McCLOSKEY. This is why I am surprised, with the comments you have made on public television and its abuses, that there is nothing in this statement to the subcommittee today that would indicate this concern on your part.

Let me go to a second point. At any time, Mr. Whitehead, in your position on the White House staff as the Director of the Office of Telecommunications Policy, did you maintain liaison with the Republican National Committee to attempt to coordinate White House policy and Republican National Committee policy in this field of telecommunications?

Mr. WHITEHEAD. No, we did not.

Mr. McCLOSKEY. How would you describe your involvement in the controversy in his capacity as liaison with the Republican National Committee?

Mr. WHITEHEAD. Well, I think I was involved in the communications area, but I honestly don't know how he became involved.

Mr. McCLOSKEY. Was there any liaison between you and the Republican National Committee during your tenure?

Mr. WHITEHEAD. Not that I know of.

The Office of Telecommunications Policy was within the Executive Office of the President as such with the Republican National Committee.

Mr. McCLOSKEY. What about the President?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. No liaison with the President?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. No attempt to coordinate policy determinations that you made with the President?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. I have no further questions.

Mr. MOORHEAD. Ms. Abzug.

Ms. ABZUG. Thank you, Mr. McCloskey.

I would like to ask you a question where my colleague, Mr. McCloskey, Do you have any recollection of renewals in 1972?

Mr. WHITEHEAD. Yes, I do.

Ms. ABZUG. Do you have any comments of your remarks which were "plugola" and "elitist gossip?"

Mr. WHITEHEAD. Yes.

Ms. ABZUG. Is it your impression that the standards for the terms of content?

Mr. WHITEHEAD. No, it is not.

Ms. ABZUG. Then what did you say, Mr. Whitehead. I did not agree with it.

Ms. ABZUG. Oh, what did you say, Mr. Whitehead. I was, in the Government licenses commercial television.

Ms. ABZUG. I see.

Mr. WHITEHEAD. I was making the bill that I announced in the Congress. I said that it would prohibit the Federal standards as to what program is good programming. I was saying that to the extent that

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Mr. Whitehead, in your
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Mr. WHITEHEAD. No, we did not.

Mr. McCLOSKEY. How would Mr. Nofziger be aware of this
controversy in his capacity as deputy chairman for communications
in the Republican National Committee?

Mr. WHITEHEAD. Well, I think Mr. Nofziger has had an interest
in the communications area and broadcasting generally, and I
honestly don't know how he became aware of it.

Mr. McCLOSKEY. Was there no liaison between the White House and
the Republican National Committee, on the telecommunications pol-
icy during your tenure?

Mr. WHITEHEAD. Not that I'm aware of.

The Office of Telecommunications Policy is a separate agency
within the Executive Office of the President. We have never had any
liaison as such with the Republican National Committee.

Mr. McCLOSKEY. What about the Committee to Re-elect the
President?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. No liaison whatever?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. No attempt to coordinate policy by either the
National Committee or the Committee to Re-elect the President with
the policy determinations that your office was making?

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. I have no further questions.

Mr. MOORHEAD. Ms. Abzug.

Ms. ABZUG. Thank you, Mr. Chairman.

I would like to ask you a question which starts out somewhere
where my colleague, Mr. McCloskey, ended, but in the same vein.

Do you have any recollection of your remarks concerning license
renewals in 1972?

Mr. WHITEHEAD. Yes, I do.

Ms. ABZUG. Do you have any recollection with respect to the con-
tents of your remarks which included such words as "ideological
plugola" and "elitist gossip?"

Mr. WHITEHEAD. Yes.

Ms. ABZUG. Is it your impression that it is the role of OTP to de-
termine what the standards for public broadcasting should be in
terms of content?

Mr. WHITEHEAD. No, it is not.

Ms. ABZUG. Then what did you mean by those remarks?

Mr. WHITEHEAD. I did not apply those remarks to public broad-
casting.

Ms. ABZUG. Oh, what did you apply them to?

Mr. WHITEHEAD. I was, in that speech, discussing how the Federal
Government licenses commercial television stations.

Ms. ABZUG. I see.

Mr. WHITEHEAD. I was making the point, regarding one aspect
of the bill that I announced in that speech, that we subsequently in-
troduced in the Congress. I said that there was a provision in that bill
that would prohibit the Federal Government from setting its own
standards as to what program and content should be or what con-
tented good programming. I was explaining that provision of the bill
by saying that to the extent there are abuses, for example, to the

extent there is elitist gossip it should be corrected within the television industry and not by the Government.

Ms. ABZUG. You have no recollection at all about your discussion in that same speech of what kind of substantive content would be considered appropriate?

Mr. WHITEHEAD. That's not my function, Ms. Abzug. Indeed, I have great reservations which I made clear in that speech about the Government having anything at all to say about the content of television programming.

Ms. ABZUG. Well, let me ask you this.

Do you recall this statement: "station managers or network officials who have failed to act to correct imbalance or consistent bias from the networks or acquiesce by silence can hardly be considered willing participants to be held fully accountable by the broadcasters community at license renewal time."

Mr. WHITEHEAD. I do recall that. That was in that speech.

Ms. ABZUG. Yes, and do you recall that before that speech you said "television station owners and managers must have full responsibility for what goes out over the public's airways no matter what the origin of the program, stations' licenses have the final responsibility for news balance. Who else but management can or could correct so-called professionals who confuse sensationalism with elitist gossip in the guise of news analysis?"

Mr. WHITEHEAD. That's what I said.

Ms. ABZUG. Now you choose, I suppose, to interpret that as meaning something entirely different. Is that correct?

Mr. WHITEHEAD. I think I stand by what I said, Ms. Abzug.

Ms. ABZUG. Fine.

Why do you think that the role of the Office of Telecommunications Policy is to determine this basis for license renewals? Don't we have a Federal Communications—

Mr. WHITEHEAD. Federal Communications Commission?

Ms. ABZUG. Yes, sir.

Mr. WHITEHEAD. Yes, indeed. However, one of the principal problems in the broadcast area of telecommunications policy is the way television stations are licensed. What are the criteria? How are they applied? And it is impossible to address broadcast communications policy without asking yourself how the license renewal process should work.

I have had concerns for some time that the Federal Communications Commission has been intruding itself into the area of program content in considering license renewals and we do not think that is appropriate for any segment of the Government.

Ms. ABZUG. I see. So you thought perhaps your office should do that?

Mr. WHITEHEAD. No. What I was saying was that legislation should be introduced and should be adopted to prohibit that practice, and that was what I was saying.

Ms. ABZUG. Are you aware of the fact that in 1968 the Bureau of the Budget, I believe, issued a statement or recommendation to the President of the United States on Federal communications organizations? While their report, like others, I think, that have gone on here for some time, recommended a centralized office program for Federal communi-

cations activities, they felt that within the Executive Office of

Mr. WHITEHEAD. Yes; I do.

Ms. ABZUG. Do you think that Chief Executive creates anyments, such as the ones that committee, might be considered Office? There may be an im exists nevertheless—that the that there may be an undue i cause communication is such larly in this technological ag that in a minute.

Do you think that that's an

Mr. WHITEHEAD. Yes; very

Ms. ABZUG. Would you give staff?

Mr. WHITEHEAD. For the p full-time employees. For fisca dent's desire to decrease the s for approval for only 52 full-t

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cations activities, they felt that such an office should not be established within the Executive Office of the President.

Mr. WHITEHEAD. Yes; I do recall that statement.

Ms. ABZUG. Do you think that the fact that OTP is in the Office of the Chief Executive creates any cramp on your activity? That your comments, such as the ones that I and others have referred to here in the committee, might be considered to be emanating, from the Executive Office? There may be an impression—perhaps an unfair one, but it exists nevertheless—that they should not be coming from that office, that there may be an undue influence. Let's put it that way. That's because communication is such a delicate and sensitive subject particularly in this technological age, and we'll get into a few questions on that in a minute.

Do you think that that's an inhibition? Do your efforts—

Mr. WHITEHEAD. Yes; very definitely.

Ms. ABZUG. Would you give me an indication as to the size of your staff?

Mr. WHITEHEAD. For the previous fiscal year we were authorized 65 full-time employees. For fiscal year 1974, in accordance with the President's desire to decrease the size of the Executive office, we have asked for approval for only 52 full-time employees.

Ms. ABZUG. That's a pretty big staff.

Mr. WHITEHEAD. Well, as Federal agencies go it's got to be one of the smallest.

Ms. ABZUG. Well, you're not an agency, you're an office in the Executive Office of the President.

Mr. WHITEHEAD. We come up for a separate appropriation. We are an agency in the meaning of the term.

Ms. ABZUG. Do you think that is desirable?

Mr. WHITEHEAD. We happen to be located within the Executive Office of the President.

Ms. ABZUG. Do you think this is desirable?

Mr. WHITEHEAD. Yes; I think it is. I think this is, as you suggested, such an important and sensitive area.

Ms. ABZUG. But you do think being in the office of the Executive, the President, could create some problems?

Mr. WHITEHEAD. It creates some problems; yes.

Ms. ABZUG. Let me ask you another question while we're discussing this. I don't have the time to get at what your 55 or 65 people do but perhaps that would be an important area of inquiry.

I am concerned about the issue of privacy, and we have heard testimony here before from the various other agencies under your supervision. We understood from the previous testimony that policy with respect to what will be done to protect the rights of privacy of individuals who may be the recipients of communications has not really been worked out. That is, we have heard about the computer communications systems and their uses which are quite broad. For example there is a relationship between the OTP and the Department of Defense's emergency warning system, which would enable one to actually tune in directly into a person's home, and so on. And it became clear, as the testimony developed, that although a report by this Office of Telecommunications Policy that a survey was made in 1973 of the security issues relevant to shared communications systems—such as the main-

tenance of personal privacy and the preservation of the confidentiality of personal information—the witnesses didn't know what it said. I just wondered whether or not that survey has been prepared, and is there an interim conclusion or recommendation thus far on those issues by your Office of Telecommunications Policy?

Mr. WHITEHEAD. That study is partially completed and the preliminary parts are completed. I don't think there has been a report out of the Office on the preliminary findings. We are still working on it.

Ms. ABZUG. Well, do you have any idea when that report will be ready?

Mr. WHITEHEAD. The estimate is that to complete that as stated there it would probably take another year.

Ms. ABZUG. Well, it says here, during 1973 an initial survey will be made. Is that in process?

Mr. JOYCE. Yes.

Ms. ABZUG. The survey deals with issues relevant to shared communications systems such as the maintenance of personal privacy and the preservation of confidentiality and personal information. And you believe that will be finished when?

Mr. JOYCE. I think in about a year, Ms. Abzug.

There is a lot going on in the Government and out of the Government in this area.

Ms. ABZUG. That's true. I couldn't disagree with that.

Mr. JOYCE. And we want very much to take advantage of this and not simply a quick little study which is not plugged into the other things that are going on in the Government. And by some outside—

Ms. ABZUG. Well, do you have any other policy recommendations or guidelines for a Federal communications system since you are coordinating research in this area and since you have delegated only the technical assistance, namely, the research into systems, the data machines themselves, to the Commerce Department? You yourself, however, have reserved the right to 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.

Those are the words of President Nixon and therefore I just want to know where I can get an idea as to what are the policy guidelines with respect to the rights of privacy of Members of Congress and of members of the public. With respect to the development of this vast, enormous network of communications, which goes beyond the business of FCC license renewals and goes into the whole question of data banks and computerized systems, and tuning into people's lives through the television and the radio and so on. I want to know from you where I can find the guidelines of your policy in your directions to the various other Government agencies and other agencies that help you to develop these vast networks for our benefit. Where can I find that?

Mr. WHITEHEAD. Unfortunately, I think you have to go to several different places. The principal responsibility, as I indicated in my statement, for safeguarding information lies with the agencies that collect and use that information. Our responsibilities come into play only when that information is transferred through electronic communications.

—information only as shown—employment and information levels of the system

Now, that is not a very wide advancing very rapidly so that can become a very real economic

What we are trying to do, anticipate that technology.

Then, on the other hand, to needs to be done, technologies guards will be possible. We the National Bureau of Standards identify just what kinds of safe possible, and which ones are needed.

Ms. ABZUG. Is there anything

Mr. WHITEHEAD. Not yet.

Ms. ABZUG. When do you think

Mr. JOYCE. Are you referring effort?

Ms. ABZUG. Yes.

Mr. JOYCE. I don't know.

Ms. ABZUG. 1973, 1974, 1975,

Mr. JOYCE. The NBS effort it's going to take to protect interconnected computer network difficult to predict when a research success and be completed. I think program to be undertaken.

Mr. WHITEHEAD. I have to be

Ms. ABZUG. I wish you would

Mr. WHITEHEAD. Just as you Government knows very much

Ms. ABZUG. Well, I don't know anything about it.

Mr. WHITEHEAD. Well, one appropriate recommendations.

Ms. ABZUG. I get the impression

Mr. WHITEHEAD. I think we elements of the problem, but we

Ms. ABZUG. Well, let me ask

There was at one time a lot of Bank. Do you know anything about

Mr. WHITEHEAD. I recall the

Ms. ABZUG. Well, do you know whether it is still pending?

Mr. WHITEHEAD. As far as I

Ms. ABZUG. And do you know you're supposed to be the big policy.

Mr. WHITEHEAD. That's right computer activities of the government interconnected electronics

Ms. ABZUG. What? I'm sorry

Mr. WHITEHEAD. I'm only referring part of all of this. I'm not data banks that have been discussed

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Now, that is not a very widespread practice today. The technology is advancing very rapidly so that in the not very distant future that can become a very real economic and technological possibility.

What we are trying to do, and it is an imperfect art at best, is to anticipate that technology.

Then, on the other hand, to make sure that, insofar as we can see what needs to be done, technologies are also developed so that these safeguards will be possible. We have been working, for instance, with the National Bureau of Standards on a technology study to try to identify just what kinds of safeguards are possible, which ones are not possible, and which ones are necessary.

Ms. ABZUG. Is there anything published on that?

Mr. WHITEHEAD. Not yet.

Ms. ABZUG. When do you think that will be published?

Mr. JOYCE. Are you referring to the National Bureau of Standards' effort?

Ms. ABZUG. Yes.

Mr. JOYCE. I don't know.

Ms. ABZUG. 1973, 1974, 1975, 1976?

Mr. JOYCE. The NBS effort is a research program to determine what it's going to take to protect confidential information within modern interconnected computer networks and computer systems. It is pretty difficult to predict when a research program is going to have achieved success and be completed. I think we feel it is a very important research program to be undertaken.

Mr. WHITEHEAD. I have to be honest with you, Ms. ABZUG—

Ms. ABZUG. I wish you would be.

Mr. WHITEHEAD. Just as you suspected, I don't think the Federal Government knows very much about this area today.

Ms. ABZUG. Well, I don't know why they should be in it if they don't know anything about it.

Mr. WHITEHEAD. Well, one of our responsibilities is to make the appropriate recommendations.

Ms. ABZUG. I get the impression they know a lot about it.

Mr. WHITEHEAD. I think we know about the various specific components of the problem, but we don't know how it all fits together.

Ms. ABZUG. Well, let me ask you another specific question.

There was at one time a lot of discussion about a National Data Bank. Do you know anything about that?

Mr. WHITEHEAD. I recall the discussion.

Ms. ABZUG. Well, do you know whether that proposal is dormant or whether it is still pending?

Mr. WHITEHEAD. As far as I know it is dormant.

Ms. ABZUG. And do you know of your own knowledge? I mean, you're supposed to be the big head of all of this telecommunications policy.

Mr. WHITEHEAD. That's right but I'm not responsible for all the computer activities of the government and the data banks that haven't been interconnected electronically.

Ms. ABZUG. What? I'm sorry.

Mr. WHITEHEAD. I'm only responsible for the electronic communications part of all of this. I'm not responsible for computers as such. The data banks that have been discussed in the past have largely been, in

fact to my knowledge, they have all involved the physical accumulation of data into one big bank. I don't have any responsibility for that.

On the other hand, as the Chairman pointed out, the interconnection of a large number of computers each with their own separate data bank, could lead to the same kind of thing electronically, and I think we have to be very alert to the possibilities. That kind of interconnection is not being done today, but the technology is coming rapidly, and that is why we have got to have the safeguards.

Ms. ABZUG. Well, let me ask you this other question, then.

I take it that even with respect to what might be encroachment on a citizen's privacy, the kind of oversight this committee might exercise has not essentially been worked out by you.

Mr. WHITEHEAD. I'm not sure I understand your question.

Ms. ABZUG. Well, let me give you an example. In Sweden, for example, there is a law which is quite involved with the issues of data collected on private citizens and so on. And they realize that, while there is a lot of government activity in that field, it's possible to protect the rights of the individual.

It's a laudable event and I would like to see it happen in this great country of ours. I just wondered whether you have given any of those plans any consideration. Do you know anything about that?

Mr. JOYCE. I think there is a sequential process that has to be established in this planning.

First of all, we have to determine exactly what the rights of the citizens are and should be with respect to various kinds of data. There has been a study going on under the auspices of the Department of Health, Education, and Welfare which is essentially complete now and which I believe did survey some of the other laws in the countries that you are referring to. This type of survey study will determine what basic protections are needed.

The next step is when someone says, well, we are going to connect these things together with a communications network. At that point we must insure that those kinds of steps don't in any way bypass the safeguards and controls which have otherwise been determined to be necessary for the individual systems.

And those steps have to be taken in that order.

Ms. ABzug. Well, the interesting thing to me, and I'm really quite puzzled by this, is that we have been working on the technological development of communication and computer data systems and hybrid computer communications for quite a while. It strikes me as being very strange that we have not concerned ourselves with the total problems involved until now. Maybe we are not too interested.

Let's put it to you this way, how much of your budget is allocated to the issue that we have been discussing for the last 10 minutes?

Mr. WHITEHEAD. A relatively small part of our budget is.

Ms. ABZUG. And how many of your personnel have been put to work on that? What is "small"?

Mr. WHITEHEAD. Well, "small" is perhaps \$50,000 to \$100,000 of contract money.

Ms. ABZUG. Out of—

Mr. WHITEHEAD. Out of about \$1 million. It's maybe 10 percent and maybe 2 to 3 personnel out of 60.

Ms. ABZUG. Well, I would suggest for your consideration that the problem has caught up with us.

Mr. WHITEHEAD. I think
Ms. ABZUG. And passed us
Mr. WHITEHEAD. I really
communications standpoint, it ha
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Ms. ABZUG. Let me ask you expired.

I find one thing extremely in
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Mr. WHITEHEAD. Government

Ms. ABZUG. Well, we have had evidence from NASA witnesses to the fact that satellites to other countries and

How do you see the role of
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Mr. WHITEHEAD. What kind of

Ms. ABZUG. That's what I'm
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[Laughter.]

Ms. ABZUG [continuing]. So with the plans for leasing satellite-making body, regarding what is stated, if you act in that capacity.

Mr. WHITEHEAD. Well, we do what is broadcast over those same willingness on my part to kibbitz where I see them. Let me first

principally development of the satellite, which will be going up the way you were referring to, will be in communications technology—antennas, transmitters, receivers, and so on.

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The Government of India is a national broadcasting system for which it has offered to donate the

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Mr. WHITEHEAD. I think it is very rapidly doing so very rapidly.

Ms. ABZUG. And passed us. And I think we ought to get into that.

Mr. WHITEHEAD. I really don't think, Ms. Abzug, that from a communications standpoint, it has run past us, but it's very rapidly catching up with us. The technology is changing very fast. That is one reason we don't know as much as we would like. As soon as you find out something about how to provide a particular safeguard you discover that some other new technology has come along that enables you to to sneak past that safeguard. So it is very difficult to try to keep up with all of the safeguards, and the people who provide a counter to the safeguards. But certainly my personal judgment would be that we do need in the future to develop more resources to deal with the problem in the future.

Ms. ABZUG. Let me ask you one more question; I think my time has expired.

I find one thing extremely interesting, and that is, do you have jurisdiction over satellite communications?

Mr. WHITEHEAD. Government satellite communications; yes.

Ms. ABZUG. Well, we have had some testimony before this committee from NASA witnesses to the effect that NASA contemplated leasing satellites to other countries and so on.

How do you see the role of OTP in using NASA in the dissemination of information?

Mr. WHITEHEAD. What kind of information?

Ms. ABZUG. That's what I'm interested in. I read in an article somewhere dealing with the perils of cultural domination, and I am concerned with the perils of cultural domination, being a mother—

[Laughter.]

Ms. ABZUG [continuing]. So I'm just wondering what we are doing with the plans for leasing satellites—what your role is as a policy-making body, regarding what kinds of information may be disseminated, if you act in that capacity. What we are saying—

Mr. WHITEHEAD. Well, we don't have any direct responsibility for what is broadcast over those satellites, although I will confess a certain willingness on my part to kibbitz and to call attention to the problems where I see them. Let me first of all say that NASA's responsibility is principally development of the electronic technology. The ATS-F satellite, which will be going up next year and I think is probably the one you were referring to, will be used by NASA to test out communications technology—antennas, tubes, transistors in space, that kind of thing. The problem and the opportunity for abuse arise when at the end of the year NASA will have learned all it needs to learn from the technological standpoint about that satellite, it will still be up there with several years of useful life just floating around. So the question is can it be turned to other useful purposes?

The Government of India is very interested in developing an educational broadcasting system for its own country. The U.S. Government has offered to donate the use of that satellite for 1 year to the Government of India. They will program it. We won't have anything to say about what goes over that program.

The Department of Health, Education, and Welfare has decided that it would be useful to test the use of satellites to transmit educational broadcasts into remote areas in this country. They intend to use

that same satellite at a different time to test educational broadcasting in our Rocky Mountain States and in Alaska.

My role there was simply to sound the alert that a continued program of Government funded educational broadcasting directly into communities raised some concerns. This should be done through public broadcasting and through the private sector. And as a result of those concerns, it was decided by the Secretary of HEW that the program would be limited to 1 year; I should say, by the Secretary in conjunction with the Governors of the States involved.

So our role is to work with NASA, to work with the State Department on an application such as the India experiment, to work with the Secretary of HEW, and to evaluate the general appropriateness of various uses, but certainly we have no operational responsibility for the actual information that would be transmitted. That would lie in this case with the Department of Health, Education, and Welfare.

Ms. ABZUG. Well, I think we get into a lot of troublesome areas here. The Government of India, for example, which has been, so I have read, previously interested in this leasing program, could possibly use this satellite for home country propaganda. You know, we have a problem when we get into some of this.

Mr. WHITEHEAD. Indeed. This is only an experiment. We are donating the use of the satellite to India for 1 year.

If there were to be an active U.S. Government program of making satellites available for free or for pay to other countries, the problems you suggest would be right up front and we would have to deal with them.

Ms. ABZUG. Well, those are very enormous problems, and essentially what we are doing is only touching the surface. I find that the biggest problem in all this, frankly, Mr. Chairman, is our inability to understand how we guarantee that we don't utilize our great technology, which of course we should have, in a way which would be detrimental to the interests of the people in this country, and might possibly interfere in the interests of other countries. I feel this is a very important question on which your Office of Telecommunications Policy apparently does not yet have any guidelines on. It is rather critical that we have such guidelines as soon as possible, Mr. Chairman, and I am quite appalled that we don't already have them.

Mr. WHITEHEAD. I wish, Ms. Abzug, that I could give you a simple answer to that question.

So far we have had to apply the general concept of privacy on a case-by-case basis. We just don't know enough yet about this rapidly changing technology to come up with a statement of general applicability that I think would be worthwhile.

Ms. ABZUG. No further questions.

Mr. MOORHEAD. Ms. Abzug, one point in your very interesting line of testimony has inquired about the study by the National Bureau of Standards. I would suggest that the subcommittee direct a letter to the Bureau asking about the status of that report and their expected completion date.

Ms. ABZUG. Yes, let's do that, Mr. Chairman. Indeed, I think we should inquire of our witness if there are similar contracts which have been let for the purpose of undertaking that kind of research.

We might also inquire as to furnish us with such information.

Mr. MOORHEAD. Would you head?

Mr. WHITEHEAD. I'd be glad.

[See appendix, pp. 580, 581]

Mr. MOORHEAD. Mr. Regula.

Mr. REGULA. Thank you, Mr.

Mr. Whitehead, do you mean to determine if their societies to determine if their societies in effect a propaganda effort?

Mr. WHITEHEAD. No; we do for public information activities.

Mr. REGULA. You don't believe it constitutes really propaganda and

Mr. WHITEHEAD. Well, I have personal views, but since I'm sure they are relevant. I do have official responsibilities. For example, set up a massive Government program on frequencies, that we view and I would very definitely

I have expressed concern. I have policy for the regulation of telecommunications which the Government provides the means but they derive from my concerns but they derive from my concerns the communications systems rather than responsibility for reliability which I do not have.

Mr. REGULA. You really don't see their public information telecommunications?

Mr. WHITEHEAD. I have no objection.

Mr. REGULA. Do you have the data bank that is being

Mr. WHITEHEAD. We are working on communications for that purpose. Central issues in figuring out telecommunications from a technical standpoint.

Mr. REGULA. I am informed to provide this information because of the degree of privacy held in the Federal Government computer.

Mr. WHITEHEAD. I think it is participation in the program.

Mr. REGULA. Then it is as a result of activity to insure that privacy is maintained directly under your jurisdiction.

Mr. WHITEHEAD. Very definitely.

We might also inquire as to which of our governmental agencies could furnish us with such information.

Mr. MOORHEAD. Would you furnish that for the record, Mr. Whitehead?

Mr. WHITEHEAD. I'd be glad to do that.

[See appendix, pp. 580, 585.]

Mr. MOORHEAD. Mr. Regula?

Mr. REGULA. Thank you, Mr. Chairman.

Mr. Whitehead, do you monitor in any way the Government agencies to determine if their so-called public information effort is really in effect a propaganda effort rather than a dissemination of facts?

Mr. WHITEHEAD. No; we do not. We do not have any responsibilities for public information activities of the Government agencies.

Mr. REGULA. You don't have any opinion as to whether this constitutes really propaganda and not just basic information?

Mr. WHITEHEAD. Well, I suppose like everyone I have my own personal views, but since I'm not an expert on the subject I am not sure they are relevant. I do get concerned when it impinges on my official responsibilities. For instance, if someone were proposing to set up a massive Government-owned broadcasting system using Government frequencies, that would very definitely come under my purview and I would very definitely get involved.

I have expressed concern, for instance, in my testimony about our policy for the regulation of television and the public service announcements which the Government encourages and then another arm of the Government provides the announcements. I have those kinds of concerns but they derive from my responsibility for policy with respect to the communications systems—technology, economics, and the like—rather than responsibility for public information activities; a responsibility which I do not have.

Mr. REGULA. You really don't evaluate the way in which agencies use their public information services other than if they would involve telecommunications?

Mr. WHITEHEAD. I have no responsibility for that.

Mr. REGULA. Do you have any involvement with the evaluation of the data bank that is being developed under LEAA jurisdiction?

Mr. WHITEHEAD. We are working closely with LEAA on their use of communications for that purpose, and, indeed, privacy is one of the central issues in figuring out how that system should be designed not only from a technical standpoint but from an operational and use standpoint.

Mr. REGULA. I am informed that one of the States has refused to provide this information because it feels that the information will not be held in the degree of privacy that they would like if it does get into the Federal Government computer system.

Mr. WHITEHEAD. I think it is Massachusetts who finds that their participation in the program would violate their own State laws; yes.

Mr. REGULA. Then it is as part of your responsibility in this type of activity to insure that privacy is protected even though this agency is not directly under your jurisdiction?

Mr. WHITEHEAD. Very definitely.

Mr. REGULA. And you are working with LEAA on the privacy aspects?

Mr. WHITEHEAD. Privacy and a lot of other aspects.

Mr. REGULA. How about the FBI and their computerized information in criminal activity? Do you have any involvement there to insure, again, the matter of privacy?

Mr. WHITEHEAD. We do have a slight involvement. It is not very deep. We have enough to do that; we have not at this point in time endeavored to get into an examination of communications systems that exist solely within one agency. There is enough for us to do dealing with problems that cut across agency lines. So we are not deeply involved in that, but we are aware of it, and we are aware of the fact that it relates to and impinges on the LEAA data system.

Mr. REGULA. Would this study that you commissioned to evaluate the maintenance of privacy be directed toward all aspects of Federal activity in terms of securing privacy of information, such as LEAA and FBI and IRS?

Mr. WHITEHEAD. It would be, yes.

Mr. REGULA. In other words, this would be a part of the description of that effort. Is that correct?

Mr. WHITEHEAD. I don't want to give you the wrong impression. We don't intend at the outset to do a study of each and every Federal system. What we are going to do is do a survey of what safeguards exist of general applicability both in terms of law and policy and in terms of what is possible technologically. And at some point we'll bring these two together and say, where are the gaps, what can be done, what ought to be done, what is not now possible but what type of research is needed to make possible? And then these recommendations will be applied by the agency directly to their systems.

Mr. REGULA. Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. Whitehead, I have a few more questions.

I would like to get to the feel of the relationship that you have with other agencies in the Government, where your responsibilities lie. For example, what is your relationship with the Office of Telecommunications in the Commerce Department?

Mr. WHITEHEAD. Well, it is severalfold; they perform several research functions principally related to the propagation of radio waves through the atmosphere and the space and the like. We draw on their research from time to time.

Second, they provide the basic clerical function—I didn't mean that in a derogatory sense, because it involves use of computers and a fair number of people—for the assignment of radio frequencies to Government users. I have the responsibility for the ultimate decisionmaking in that regard, so we work closely with them in their carrying out of that function.

Third, the Secretary of Commerce is directed by Executive order to provide support to the Office of Telecommunications Policy, and that is a component of the Office of Telecommunications in the Commerce Department that provides technical and economic studies to us.

Finally, of course, many communications matters relate to the private sector, and the Secretary of Commerce has his general responsibilities

for business and communications on communications policy to the Congress. And we work with that, he chooses to have the staff on communications.

Mr. MOORHEAD. How about the Communications Service of GSA?

Mr. WHITEHEAD. We work with the Government Communications Council which I chair, which has communications responsibility.

And GSA, in the new plan about to adopt, will be the lead in administrative communications, and, responsibility through that division.

Mr. MOORHEAD. Would you state that joint commission that you joined?

Mr. WHITEHEAD. Yes; I'd be glad to. [The material referred to follows.]

The following agencies are presently involved in the study of telecommunications policy and planning:

1. Office of Telecommunications Policy
 2. Department of State
 3. Department of Defense
 4. Department of Commerce
 5. Department of Transportation
 6. Central Intelligence Agency
 7. National Aeronautics and Space Administration
 8. General Services Administration
- Consideration is being given to including representatives of other key agencies.

Mr. MOORHEAD. How about the Office of Telecommunications Policy?

Mr. WHITEHEAD. We do work with them. Communications are involved.

Principally they provide information. They have terminated their program of research on principal involvement with particular aspects of satellite communications.

Mr. MOORHEAD. How about the Office of Telecommunications Policy?

Mr. WHITEHEAD. Again, as we work with them. The Commerce Department is involved in the Brooks bill for certain aspects of telecommunications activities, so we need to coordinate with them.

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LEAA on the privacy aspects. computerized information involvement there to

involvement. It is not very far at this point in time communications systems are enough for us to do by lines. So we are not it, and we are aware of the LEAA data system. Commissioned to evaluate all aspects of Federal information, such as LEAA

is a part of the descrip-

the wrong impression. of each and every Federal survey of what safe- in terms of law and policy. And at some other the gaps, what is not how possible but possible? And then these cy directly to their sys-

few more questions. ship that you have with responsibilities lie. For Office of Telecommuni-

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unction—I didn't mean use of computers and a of radio frequencies to for the ultimate deci- ely with them in their

d by Executive order to ations Policy, and there ations in the Commerce omic studies to us. matters relate to the pri- as his general responsi-

bilities for business and commerce and from time to time takes positions on communications policy issues pending before the FCC or the Congress. And we work with him in that regard and usually in that, he chooses to have the staff work done in the Office of Telecommunications.

Mr. MOORHEAD. How about the Automated Data and Telecommunications Service of GSA?

Mr. WHITEHEAD. We work very closely with GSA. GSA is a member of the Government Communications Policy and Communications Council which I chair, which is a panel of policy level people with communications responsibility in the Government.

And GSA, in the new planning concept that I stated that we are about to adopt, will be the lead agency for planning general administrative communications, and, of course, they exercise that kind of responsibility through that division that you mentioned.

Mr. MOORHEAD. Would you supply for the record the membership of that joint commission that you just described?

Mr. WHITEHEAD. Yes; I'd be pleased to do that.

[The material referred to follows:]

The following agencies are presently represented in the Council for Government Communications Policy and Planning:

1. Office of Telecommunications Policy.
2. Department of State.
3. Department of Defense.
4. Department of Commerce.
5. Department of Transportation.
6. Central Intelligence Agency.
7. National Aeronautics and Space Administration.
8. General Services Administration.

Consideration is being given to some expansion in Council membership to include representatives of other key mission areas in the Federal Government.

Mr. MOORHEAD. How about the Office of Communications of NASA?

Mr. WHITEHEAD. We do work with them, of course, where satellite communications are involved.

Principally they provide information to us. Now that they have terminated their program of development of broadcast satellites, our principal involvement with them is getting expertise from them on particular aspects of satellite communications and technology.

Mr. MOORHEAD. How about the National Bureau of Standards?

Mr. WHITEHEAD. Again, as we have discussed, we have some joint projects with them. The Commerce Department is responsible under the Brooks bill for certain aspects of computer usage within the Federal Government. We are responsible for joint computer communications activities, so we necessarily work very closely with the Bureau of Standards. As computers become more and more interconnected through communications, I think it is going to be more and more important that we work with them so that their policies with respect to computers are at least compatible with our policies with respect to communications.

Mr. MOORHEAD. What's your relationship with the Federal Communications Commission?

Mr. WHITEHEAD. My agency is the principal, the lead agency, for making recommendations on behalf of the executive branch to the FCC, and we do make recommendations to them from time to time.

Also, in the planning and the allocation and the assignment of

frequencies for communications we work quite closely with the FCC. They are responsible for assigning frequencies to private citizens. We are responsible for assigning frequencies to Government users. The spectrum is a very broad technical resource and doesn't respect those kinds of artificial distinctions. So there is a need for a very close cooperation to make sure that the frequency bands that are necessary for Government communications are reserved, that the Government does not make excessive use of a frequency, that a large number of frequencies can be shared between Government and private use so we make the maximum use of that resource.

Mr. MOORHEAD. So it was within your official responsibilities to make recommendations to the FCC that the individual licensees be responsible for the content of network news?

Mr. WHITEHEAD. No; first of all, you have to understand that it is now the law. By law, the licensees are responsible. The 1934 Communications Act states that very clearly in saying that broadcasters are not common carriers. It says that they are responsible for what they transmit, just as a publisher of a newspaper bears ultimate responsibility for what he publishes in his newspaper.

The recommendation that I made with regard to license renewal was not made to the FCC. I don't think that would have been appropriate. We thought it called for legislation and we prepared legislation, which was submitted by my office on behalf of the administration to the Congress and is now being considered in the House Commerce Committee.

But on matters that fall short of the need for legislation where it is clear that the FCC has the authority to act under the Communications Act, we do from time to time make recommendations to them about decisions that we think would be in the public interest.

Mr. MOORHEAD. Well, let me understand. The legislation that you proposed would cover the license renewal of the individual stations—

Mr. WHITEHEAD. That's correct.

Mr. MOORHEAD [continuing]. Particularly with respect to or including their responsibility for the content of network news broadcasts?

Mr. WHITEHEAD. Well, our legislation did not address that. It did not undertake to change that aspect of the existing law.

The principal features of our legislation were to extend the license term from 3 years to 5 years, to change license renewal hearing procedures, to clarify the public interest standard that the FCC is expected to apply to make it clear that the public interest was the interest of the community being served, and that the FCC under our bill would not be allowed the right to set its own criteria as to what the American people ought to see on the air. Our bill would require the FCC to measure complaints about a broadcaster's performance in terms of the community's perspective rather than the Government's perspective.

Those are the principal changes our bill would make.

Mr. MOORHEAD. You understand, of course, that the particular concern expressed by the networks that your statement in Indianapolis indicates that the local stations who were up for renewal were being called upon, in effect, to censor the network news broadcasts? I am not saying that they were correct. They may have misinterpreted it. But you would agree that this was the concern they expressed after your Indianapolis speech?

Mr. WHITEHEAD. The network limitations on their operations are not exactly how they would be with the local stations. One would work news as a vital and necessary service to his community, but not to the point that the broadcast materials.

All three networks have a license renewal bill.

Mr. MOORHEAD. But you speak with respect to the responsibility of the networks—

Mr. WHITEHEAD. No; it has always been the case.

I think, Mr. Chairman, that the bill that followed it, which was the bill that these broadcasting policies were national awareness. And if I think the print media, who were working to the extent to which the regulating of television programs.

I guess I'd been so deeply involved that everyone knew that this was a problem in the print media and they took it as a sign that they were moving itself in an unhealthy direction.

I agree that it is an unhealthy direction, perhaps the speech served to bring the print media and other programs is today regulated.

Mr. MOORHEAD. So, are you clarifying the interpretation that you are making?

Mr. WHITEHEAD. I'm clarifying it.

Mr. MOORHEAD. And what is your free now to accept without any broadcasts, but that does not include local news and serving the community.

Mr. WHITEHEAD. That's right. Wherever they want, but it is my final responsibility for what they do.

It is my personal judgment, that the principal function of the network is to get from the network what he gets from the network.

You know, the whole theory of the network is that they have access to all kinds of information, except in the case of the public see something.

to add to it to make sure the information.

Mr. WHITEHEAD. The networks have always expressed concern about limitations on their operations, and I am not sure I can speak about just exactly how they would like things to work in the news area vis-a-vis the local stations. One would hope that they would view the network news as a vital and necessary component of the local broadcaster's service to his community, but certainly not an all-encompassing service to the point that the broadcaster needn't offer some of his own materials.

All three networks have voiced support for the administration's license renewal bill.

Mr. MOORHEAD. But you said that this bill did not change the law with respect to the responsibility of an individual licensee monitoring—

Mr. WHITEHEAD. No; it did not change that in any way. That has always been the case.

I think, Mr. Chairman, there was some confusion, this speech and the bill that followed it, where the first time in many, many years that these broadcasting policy issues had been raised to the level of national awareness. And if I may say so, I think that many people in the print media, who were writing about these stories, were not aware of the extent to which the Government had involved itself in the regulating of television programming.

I guess I'd been so deeply involved in this, that I presumed that everyone knew that this was already the way things were. When the people in the print media saw some of the things that were already law, they took it as a sign that suddenly the Government was involving itself in an unhealthy way.

I agree that it is an unhealthy way. So that I think that if nothing else, perhaps the speech served its purpose by focusing the attention of the print media and other people on the extent to which television programming is today regulated by the Government.

Mr. MOORHEAD. So, are you clarifying your Indianapolis speech, or clarifying the interpretation that was placed upon it?

Mr. WHITEHEAD. I'm clarifying the interpretation that was placed upon it.

Mr. MOORHEAD. And what you are saying is that licensees are just as free now to accept without monitoring, without responsibility, network broadcasts, but that does not relieve them of the responsibility of providing local news and serving a local function.

Mr. WHITEHEAD. That's right. They're free to take their programs from wherever they want, but they have to understand that they have the final responsibility for what they choose to transmit.

It is my personal judgment, but I hope it would be widely accepted that the principal function of the broadcaster is to add to the programming he gets from the network. I don't see that the public interest is well served in very many instances by cutting out something.

You know, the whole theory of an informed, democratic society is that they have access to all kinds of information. And it would be hard for me to conceive, except in a few isolated instances, that a broadcaster would judge that he was serving the public interest by refusing to let his public see something; rather I would think he would want to add to it to make sure the viewers have a broad enough base of information.

Mr. MOORHEAD. So, it is your testimony that the individual broadcaster can accept anything from the networks, but that his responsibility doesn't stop there. He may add to it, or he should add to it.

Mr. WHITEHEAD. To the extent it is his judgment and it should be his judgment, that's correct. It shouldn't be the Government requirements.

Mr. MOORHEAD. One final question, then I will yield.

Do you have, or does there exist technology to monitor, without my consent, what I listen to on the radio, or look at on broadcast TV?

Mr. WHITEHEAD. There is, Mr. Chairman. However, I haven't looked into it.

Mr. MOORHEAD. There is?

Mr. WHITEHEAD. There is. I have not looked into it very deeply, but—and I'm not sure how practical it would be to do this on a widespread basis. But I have read reports, for instance, of it being considered that companies would be set up to compete with Nielsen and survey of what people were watching, by driving a truck through the streets and aiming an antenna at the home, and picking up the very faint signals from a television set; that would indicate what channel was being watched.

That kind of thing is likely to be very expensive, but I suppose it could be done.

Mr. MOORHEAD. There's no question that it exists for cable television.

Mr. WHITEHEAD. It would depend on the particular application of cable technology. For instance, if the programming were programming that the people were buying over the cable, then the fact of recording what the viewer was watching for billing purposes could also be used to keep track of what he was watching for other purposes.

In just the general transmission of advertiser supported programs, I'm not sure that it would be any easier to tell on cable than it is in broadcasting, but certainly it could be determined what a person is watching over cable television.

Mr. MOORHEAD. Now, let me see if I understand what you're saying. Would it be possible, if you wanted to check out an individual—what his pattern of listening habits would be, whether he listens to say, only to all of the "leftwing" broadcasts or all of the "rightwing" broadcasts—you could at least get a pattern on that individual?

I'm thinking of the privacy question again.

Mr. WHITEHEAD. Yes, I think it would be possible, probably be easier in a surreptitious basis to do it with broadcasting than it would be with cable television. With cable, all of the signals are combined within that small cable.

When you get into broadcasting, you have the emission of signals, and when a signal comes into a TV set and is converted into a picture, there are signals generated within the TV set to permit that to be done, and those signals radiate out.

It would be possible if you were determined to do it, not on a widespread basis though. I'm talking about a particular instance, and I think it would fall essentially into the category of what we call bugging; just as you might monitor what someone is saying in his home, you could through appropriate devices, monitor what they were watching on the television.

Mr. MOORHEAD. Mr. Erlernborn?

Mr. ERLERNBORN. I am also very interested in the line of questioning that the chairman has engaged in relative to the license renewal. I

have to apologize for repeating so asked because I had a conversation another matter of great moment to

But let me ask this. Does the renewal put the one seeking the license a new applicant, or does he have to had it in the past?

Mr. WHITEHEAD. Well, that gets says very clearly that there are so there is no right to have a license

On the other hand, I think it is who is doing a good job in his community that his license will not be jerked even every 5 years for that matter not be considered as just another tion process, when someone else says, I would like to have the license

So what we have proposed is making license applications and for guards to the existing licensee. a broadcaster who is now licensed his community, or that there is sure: when it would go to a hearing a determination as to whether, in

They could then take away his an equal of the competing applicant

Mr. ERLERNBORN. You say you posed it in the same speech when short time ago as to the responsibility programming. So that the state of the was at least technically—from a applied differently—the licensee applicant, that is, he had no participation

Mr. WHITEHEAD. Essentially that Mr. ERLERNBORN. Now, if someone license for the first time, he is as and practices will be, is he not?

Mr. WHITEHEAD. That is correct

Mr. ERLERNBORN. And would it say, I'm going to make a contract standards will be ours? Or would programming?

Mr. WHITEHEAD. I think he is it reflects that section of the law for his transmissions.

Mr. ERLERNBORN. The reason I a to be; and when you suggested he responsible for his programming affiliated with a network, there some country that you were somehow

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have to apologize for repeating some of the questions that he may have asked because I had a conversation going with my colleague here on another matter of great moment to our subcommittee.

But let me ask this. Does the state of the law relative to license renewal put the one seeking the license renewal in the same position as a new applicant, or does he have some prior right to that license having had it in the past?

Mr. WHITEHEAD. Well, that gets to be a very difficult area. The law says very clearly that there are no property rights in the spectrum, so there is no right to have a license renewed.

On the other hand, I think it is generally accepted that a broadcaster who is doing a good job in his community should have some assurance that his license will not be jerked out from under him every 3 years, or even every 5 years for that matter; and the incumbent probably should not be considered as just another applicant in a competing application process, when someone else comes in at the end of the license and says, I would like to have the license.

So what we have proposed is new statutory procedure for competing license applications and for granting some stability and some safeguards to the existing licensee. It would have to be shown that the broadcaster who is now licensed is not serving the public interest in his community, or that there is substantial question regarding his service; when it would go to a hearing, and the FCC would have to make a determination as to whether, in fact, this is the case.

They could then take away his license. They could treat him just as an equal of the competing applicants.

Mr. ERLBORN. You say you proposed this, and I believe you proposed it in the same speech where you were quoted by Ms. Abzug a short time ago as to the responsibility of the license holder over programming. So that the state of the law at the time you made that speech was at least technically—from a practical standpoint it may have been applied differently—the licensee stood in the same position as any applicant, that is, he had no particular right to renewal.

Mr. WHITEHEAD. Essentially that's right. Yes.

Mr. ERLBORN. Now, if someone is making an application for a license for the first time, he is asked what his programming standards and practices will be, is he not?

Mr. WHITEHEAD. That is correct.

Mr. ERLBORN. And would it be considered sufficient if he would say, I'm going to make a contract with one of the networks and their standards will be ours? Or would he have to have his own standards of programming?

Mr. WHITEHEAD. I think he is expected to have his own standards. It reflects that section of the law that says each licensee is responsible for his transmissions.

Mr. ERLBORN. The reason I asked is that is the way I understood it to be; and when you suggested that anyone applying for a renewal be responsible for his programming standards even though he may be affiliated with a network, there seemed to be a great furor across the country that you were somehow or other threatening licensees.

Weren't you only, in suggesting that, merely stating what the present state of the law is, that a licensee is responsible for his programming standards and cannot delegate this or say that he has no control

over programing standards merely because he is connected with a network?

Mr. WHITEHEAD. That's right. I thought the point bore some emphasis, because there has been a very steady trend in broadcasting for broadcasters to take a larger and larger percentage of their program schedule from the network. And as a practical matter, many broadcasters don't really pay much attention to what is coming down the network line. They just turn the switch, and let it go out over their transmitter.

I think it bears some emphasis from time to time, that the man who has the license to use the public airways is the man who has the responsibility to his community to make the decisions about what goes out, and what serves their interest best.

Mr. ERLBORN. Well, that's why I was really somewhat surprised at the interpretation that some put on your remarks. It seems to me you were merely saying that the present license holder ought to have the same responsibility for programing as one who would be a competing applicant. That is to say, this would be my policy as to programing, and not be able to avoid responsibility for programing merely by saying he had a contract with somebody who was going to make those decisions for him.

Mr. WHITEHEAD. I think that's right. I must admit, I was surprised by the reaction, too. As I told the Chairman, I do think that many people just weren't aware of the current status of broadcasting regulations.

Mr. ERLBORN. Your comments, I think, were certainly relevant and were accurate as to the current status of the law. In the same speech, you then suggested that you would even give the present license holder an added, extra advantage that he didn't at that time enjoy.

Mr. WHITEHEAD. Yes. I think that is compatible with the concept that the Government's power in the licensing process should not be used to bring about the types of programing that the Government thinks are desirable, however desirable the Government may think they are.

I think that a private media structure is the only thing that is really compatible with the separation between Government and the media that is written into the first amendment.

Now, we have a very delicate problem. We can't necessarily go all the way to achieve that goal, because we do have the concept of the airwaves being owned and controlled by the public. The only recourse the public has is through Government so there do have to be processes to allow for this public recourse. But certainly we can establish those processes so that the criteria for evaluating a broadcaster are the community's criteria, not the Federal Government's criteria.

Mr. ERLBORN. I guess it is somewhat connected with the question that I have just asked you. I'm thinking about the question that the Chairman asked about monitoring what television stations people may be listening to, or watching.

The Chairman said you could then tell if a person was watching right wing programing or left wing programing.

Do you know—and I don't mean this in any critical way—but Mr. Whitehead, do you know of any television channels that could be

described in this way, as have programing?

Mr. WHITEHEAD. No, I don't.

Mr. MOORHEAD. I just want to mean the whole programing. McIntyre.

Mr. ERLBORN. Particular.

Mr. MOORHEAD. Yes.

Mr. WHITEHEAD. I think it is a diversity in our communications possible for there to be right religious channels and what have you in our print media.

But for the time being, we have communications channels, and the broadcaster's responsibility to service rather than focusing on we ever reach the day through cable television, or what have you of outlets, instead of scarcity, specialized station.

Mr. ERLBORN. I think that is forgotten the name of the license oriented organization. And they

Mr. WHITEHEAD. Reverend M.

Mr. ERLBORN. Yes, Reverend M. It is not wrong for a license particular ideological bent to be placed with other ideologies being

As you have suggested, we can have conservative newspapers. As long as people have a right to have a newspaper, and you don't need to have

Mr. WHITEHEAD. Yes. I think that each television station or each that we are just asking for a very low that mediocrity to be specific. We tell the broadcaster, you want to have mediocrity.

That's not the kind of think we want. Mr. ERLBORN. But from a point, that sort of balance to a

Mr. WHITEHEAD. Yes, it is, a sort of license renewals. I made some to regulate radio as a separate regulations apply to broadcasting.

Well, I think it is quite clear a distinction from radio. There are some only unquantifiable, but I think the compulsion of the media.

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described in this way, as having right wing programing or left wing
programing?

Mr. WHITEHEAD. No, I don't.

Mr. MOORHEAD. I just want to correct a misapprehension. I didn't
mean the whole programing. I just meant, say, for example, Reverend
McIntyre.

Mr. ERLBORN. Particular segments of the daily programing?

Mr. MOORHEAD. Yes.

Mr. WHITEHEAD. I think it might be desirable if we had more di-
versity in our communications media and broadcasting. It would be
possible for there to be right wing channels, left wing channels, re-
ligious channels and what have you, just as we have that structure in
our print media.

But for the time being, we have a very limited number of com-
munications channels, and the FCC has always held that it was the
broadcaster's responsibility to provide a broad spectrum of public
service rather than focusing on one particular kind of programing. If
we ever reach the day through better use of UHF channels, or through
cable television, or what have you, so that we do have an abundance
of outlets, instead of scarcity, maybe then we could have that kind of
specialized station.

Mr. ERLBORN. I think that controversy is with us right now. I've
forgotten the name of the license holder, but I think it is some religious
oriented organization. And they—

Mr. WHITEHEAD. Reverend McIntyre.

Mr. ERLBORN. Yes, Reverend McIntyre. There are those who sug-
gest it is not wrong for a licensee operating a radio station to have a
particular ideological bent to the programing, as long as it is bal-
anced with other ideologies being made available through other radio
stations; in other words, as we have in our printed media.

As you have suggested, we can have religious oriented newspapers.
You can have conservative newspapers. You can have liberal news-
papers. As long as people have a choice, they do have the balance avail-
able; and you don't need to have each newspaper provide that balance.

Mr. WHITEHEAD. Yes. I think that if we insist that each newspaper,
or each television station or each radio station have a complete balance,
that we are just asking for a very dull mediocrity. And we are asking
for that mediocrity to be specified through the license renewal process.
We tell the broadcaster, you will get your license if you conform to
this mediocrity.

That's not the kind of think we should encourage.

Mr. ERLBORN. But from a practical standpoint, or a legal stand-
point, that sort of balance to a certain extent is required today. Is it
not?

Mr. WHITEHEAD. Yes, it is, and it's one of the most difficult areas
about license renewals. I made a proposal some time ago that FCC
move to regulate radio as a separate service. Right now, most of their
regulations apply to broadcasting, both television and radio.

Well, I think it is quite clear that television is a totally different
medium from radio. There are many fewer television stations, with
certainly unquantifiable, but I think very real differences in the power
or the compulsion of the media. Somewhat more stringent regulations,

somewhat more careful regulations, probably should apply to television.

In radio, on the other hand, where every listener has a choice of 10-20-30 radio stations, diversity is probably better achieved through the marketplace. Each station would be allowed its own concept of what best serves the audience rather than forcing each of them to program the same thing. And we do that; the FCC allows specialized formats in music. You can have an all news station. You can have a talk station. You can have an all classical station, what have you.

It doesn't seem to stretch my imagination too far to see that you could have some of those stations specializing in certain kinds of political points of view or other points of view, so long as it is not abused in terms of the purposeful keeping off of other points of view, and so long as the overriding goal is established. That goal is to allow a lot of competition and diversity in what is available for the listener, so that he can choose for himself what he wants to hear.

Mr. ERLNBORN. Thank you very much.

Mr. MOORHEAD. Mr. McCloskey?

Mr. McCLOSKEY. I'm going to quote to you from a speech you made on February 2, 1972, on the public broadcasting service program, "This Week": "There are some, I think serious questions of principle as to whether Federal funds should be involved in funding public affairs (programs), because you were taking the taxpayers money, and using it to express controversial points of view." On February 2, 1972.

Now, with respect to the last answer you gave the gentleman from Illinois, Mr. Erlenborn, you would see no problem in radio stations expressing controversial points of view so long as opposing views were permitted on the same station.

Is that correct?

Mr. WHITEHEAD. That is pretty much how the FCC determines things today; yes.

Mr. McCLOSKEY. But with public broadcasting, I take it, you do object to controversial views being expressed on public television.

Mr. WHITEHEAD. No, not at all. The FCC has held that the public broadcast stations have the same responsibility for public service and community service that commercial stations have. Indeed, they have a responsibility under the fairness doctrine to provide the opportunity for discussion of controversial issues of public importance.

Now, they have that responsibility. What I am raising a question about in public broadcasting is the use of the taxpayer's dollar for this purpose. Right now, public broadcasting is funded only to the tune of about 25 percent by the Federal Government. The rest of the money comes from foundations, from listeners and viewers, or from corporations or other private sources.

And I don't see that the Federal Government, certainly not the executive branch, has anything to say about that kind of programming that is done with funding from private sources. The only question I have raised has been about the use of the Federal dollar for that purpose.

Mr. McCLOSKEY. Well, I suppose, in some respects, tax-free foundations' money is the public taxpayer's dollars also since there is a

benefit, is there not, to advocating a political view?

Mr. WHITEHEAD. That's

Mr. McCLOSKEY. Well, the argument that taxpayers in your quote, because he using it to express controversy.

Whether it is 25 percent systems, or 10 percent or in your statement as to whether it is public broadcasting?

Mr. WHITEHEAD. I'm sorry.

Mr. McCLOSKEY. You broadcasting money come difference if it's 10 percent going into the Corporation?

Mr. WHITEHEAD. The principally to funnel Federal system. In effect, it is a uses principally Federal.

Mr. McCLOSKEY. Please Federal Government?

Mr. WHITEHEAD. Creating

Mr. McCLOSKEY. I was

Well, once money goes in your opinion, Mr. Whitehead avoid expressing controversial issue?

Mr. WHITEHEAD. If I could special points of view were that concept might be cannot present all points of points of view.

Immediately, you have certain points of view. There controversial issue. How are we to cover with Federal money about opposition to Government received the Government?

If I could find a way to object. I think the Federal funding public television able to figure out a way to special areas, basically the extremely vexing question the great debates that are being used.

Mr. McCLOSKEY. But in the schools or abortion controversy. Let's take the testimony here today at 1972.

ably should apply to

listener has a choice of better achieved through. It showed its own concept of forcing each of them to the FCC allows specialized station. You can have a station, what have you. It's too far to see that you're going in certain kinds of view, so long as it is not far off of other points of view is established. That goal is in what is available himself what he wants to

from a speech you made broadcasting service program, various questions of principle involved in funding public broadcasting the taxpayers money, of view." On February 2,

you the gentleman see no problem in radio view so long as opposing

how the FCC determines

casting, I take it, you do on public television.

has held that the public for public service and have. Indeed, they have to provide the opportunity of public importance.

I am raising a question the taxpayer's dollar for is funded only to the tune government. The rest of the and viewers, or from

government, certainly not the but that kind of program-sources. The only question the Federal dollar for that

respects, tax-free foundations also since there is a

benefit, is there not, to the tax-free foundations? If they are not advocating a political view, they get tax exemptions.

Mr. WHITEHEAD. That argument could be advanced, yes.

Mr. McCLOSKEY. Well, how do you separate out—if you are making the argument that taxpayers' funds, and again, I want to be precise in your quote, because here you are taking the taxpayers' money and using it to express controversial points of view.

Whether it is 25 percent public funding of public broadcasting systems, or 10 percent or 80 percent, is there any material difference in your statement as to what percentage of the taxpayers' money goes into public broadcasting?

Mr. WHITEHEAD. I'm not sure I understand your question. I'm sorry.

Mr. McCLOSKEY. You responded that only 25 percent of the public broadcasting money comes from the taxpayer. But does it make any difference if it's 10 percent or 80 percent? Still there are public funds going into the Corporation for Public Broadcasting.

Mr. WHITEHEAD. The Corporation for Public Broadcasting exists principally to funnel Federal funds into the public broadcasting system. In effect, it is a creature of the Federal Government, and uses principally Federal funds.

Mr. McCLOSKEY. Please repeat that. It is the preacher of the Federal Government?

Mr. WHITEHEAD. Creature.

Mr. McCLOSKEY. I was terribly dismayed for a minute. [Laughter.]

Well, once money goes into the Corporation for Public Broadcasting in your opinion, Mr. Whitehead, should the Public Broadcasting Service avoid expressing controversial points of view on either side of an issue?

Mr. WHITEHEAD. If I could find a way to be sure that all controversial points of view were presented using that money, my opposition to that concept might be considerably muted. The problem is that you can't present all points of view, so you say, I'll present all significant points of view.

Immediately, you have Federal money being used for editing out certain points of view. Then you have the question of what is the controversial issue. How are we going to choose which issues we are going to cover with Federal money; again raising very perplexing questions about opposition to Government control and catering to what it is perceived the Government wants, so there could be more money next year.

If I could find a way of providing adequate insulation, I would not object. I think the Federal Government does have a role to play in funding public television. But in my limited abilities, I have not been able to figure out a way to funnel that money into the very controversial areas, basically the journalistic program areas, without raising extremely vexing questions about answerability to the Congress, and the great debates that could ensue about how the taxpayer's money is being used.

Mr. McCLOSKEY. But let me go to a precise issue. For example, prayer in the schools or abortion. Both of those examples are very much in controversy. Let's take those two examples and test them against your testimony here today and this speech that you made on February 2, 1972.

Serious question of principle as to whether Federal funds should be involved in funding public affairs programs, because here you are taking taxpayer's money and using it to express controversial points of view. Let's take prayer in the schools to start, which I think was a fairly close vote in the House as to whether we amended the Constitution on that subject.

In your opinion, should the public broadcasting system be precluded from presenting balanced expressions for and against the question of prayer in the schools over a national public affairs network?

Mr. WHITEHEAD. Well, let me preface that by saying—

Mr. McCLOSKEY. Preface it by saying yes or no, and then explain it if you will.

Mr. WHITEHEAD. I've always made it a policy not to discuss specific programming issues on public television, so I don't want to get into the business here or anywhere of making recommendations about what they should or should not program, so—

Mr. McCLOSKEY. Let me say this. I don't think either you have the privilege or we have the privilege to avoid the discussion of specific issues in front of a congressional committee.

Mr. WHITEHEAD. What I'd like to do is discuss that as an example, rather than that as a particular issue.

Mr. McCLOSKEY. I would like, Mr. Whitehead, for you to discuss it as an example, but first to give a yes-or-no answer to my question if you would.

Mr. WHITEHEAD. No.

Mr. McCLOSKEY. No, you do not think public television should be precluded from giving both sides of that issue on prayer in the schools. Do I interpret your no correctly?

Mr. WHITEHEAD. No; I do not think that Federal money should be used for programming of that sort.

Mr. McCLOSKEY. All right.

Then the answer is yes; you do not think that the public broadcasting system should be used to express controversial issues on either side of the prayer in the schools issue.

Mr. WHITEHEAD. Yes; I do not think that Federal money should be used for that purpose.

Mr. McCLOSKEY. Well, there's no way to run the Corporation for Public Broadcasting without Federal money, is there?

Mr. WHITEHEAD. But the Corporation for Public Broadcasting is not the totality of public broadcasting, nor is it the headquarters for public broadcasting. It is simply a corporation that was established by the Congress to create programming and to distribute money to local stations to add to the money they were getting from other sources.

Mr. McCLOSKEY. Well, then the money that the Corporation for Public Broadcasting uses for creating programs, which I would guess is an indistinguishable part of the total money used to create public programming.

Is it your opinion that that money should not be used in any part for the creation of programming on either sides of the prayer in the school issue?

Mr. WHITEHEAD. That is correct.

Mr. McCLOSKEY. And that would extend to abortion, I take it.

Mr. WHITEHEAD. To the extent that we are discussing legislative action or other types of things, yes.

Mr. McCLOSKEY. Well, any of Congress—say the nuclear carrier submarine—in your judgment over public money should not be used to both sides of any controversial issue.

Mr. WHITEHEAD. That is basically a very difficult distinction, and that's these difficult distinctions must be important to some people, and it is a considerable politicalization of public

It is going to create a necessity to press about this programming because there are distinctions that I find a governmental or policy standpoint

For instance, on abortion; at the controversial issue politically or there is a great dearth of knowledge medical and moral issue; about abortion take place; what are the various moral issues been handled in the past

If public television undertook to abortion, its history, its applicability with respect to abortions has developed how that could be called anything but

On the other hand, if it began to the positions of various parties to be hard to distinguish that from a job distinctions to be made in almost presents a very vexing problem.

Mr. McCLOSKEY. Well, I appreciate that it is vexing. But I am able between the position on network of stations are encouraged to run commercial as they are balanced on television, and television. I tend to agree with you are encouraged even more there with are so many other radio stations, the programming.

But now we come to public television you want to shut off all controversy

Mr. WHITEHEAD. No, Mr. McCLOSKEY. I have said public television holds the commercial stations have.

Mr. McCLOSKEY. Then how do you public moneys on public television. distinguishable, should not be permitted to the abortion issue or both sides of a public

Mr. WHITEHEAD. Well, I think the are distinguishable.

Mr. McCLOSKEY. Then, you do make the private enterprise marketplace have espoused; there is a difference the public dollar is used in public television

Mr. McCLOSKEY. Well, any of the great national issues before the Congress—say the nuclear carrier that we vote on today or the Trident submarine—in your judgment over the Public Broadcasting System, public money should not be used to program balanced presentations on both sides of any controversial issue involving public action?

Mr. WHITEHEAD. That is basically my position. Now, you get into very difficult distinction, and that's one reason for our position, is that these difficult distinctions must be made. They are passionately important to some people, and it is going to create, on some issues, considerable politicalization of public broadcasting.

It is going to create a necessity for oversight hearings in the Congress about this programing because many people are upset about it. And there are distinctions that I find almost impossible to draw from a governmental or policy standpoint.

For instance, on abortion; at the time when abortion is an important controversial issue politically or from a public action standpoint, there is a great dearth of knowledge and a great uncertainty as a medical and moral issue; about abortion, at what stages should abortion take place; what are the various procedures; and how have the moral issues been handled in the past and in other societies.

If public television undertook to do an educational program on abortion, its history, its applicability in other cultures, how the law with respect to abortions has developed; it would be very hard to see how that could be called anything but an educational show.

On the other hand, if it began to get into the current debate, and the positions of various parties to that debate, then it would be very hard to distinguish that from a journalistic show. There are great distinctions to be made in almost any subject area. I think that it presents a very vexing problem.

Mr. McCLOSKEY. Well, I appreciate your point of view, and I appreciate that it is vexing. But I am trying to understand the rationale between the position on network programing, in which licensees of stations are encouraged to run controversial points of view, so long as they are balanced on television, and your contrary position on public television. I tend to agree with your position on radio, that they can be encouraged even more there with a little less concern because there are so many other radio stations, that the listener has his choice of programing.

But now we come to public television, and if I understand your position, you want to shut off all controversial programs whatsoever.

Mr. WHITEHEAD. No, Mr. McCloskey; that's not the case at all, and I have said public television holds that same responsibility that commercial stations have.

Mr. McCLOSKEY. Then how do you say that public television or public moneys on public television, and the two seem to be indistinguishable, should not be permitted to have programs on both sides of the abortion issue or both sides of a prayer-in-the-schools issue?

Mr. WHITEHEAD. Well, I think the Federal dollar and other dollars are distinguishable.

Mr. McCLOSKEY. Then, you do make the distinction between public and the private enterprise marketplace operation of television which you have espoused; there is a difference, and it's based on the fact that the public dollar is used in public television.

Mr. WHITEHEAD. I'm not sure I'm communicating, Mr. McCloskey.
Mr. McCLOSKEY. That's both of our jobs, and I'm not sure I understand, so maybe it's my fault, not yours. Go ahead.

Mr. WHITEHEAD. Public television stations are licensed to serve their community. They have been doing so for some 20 years. It has only been in the last 5 years that the Federal Government has been, through the Corporation for Public Broadcasting, directly funding the creation of programming for public television stations.

The public television stations, just like commercial stations, have always had the responsibility for programming controversial issues of public importance, and making sure that all important sides of those issues are discussed. I think that is a fine concept. I think that concept ought to be continued.

However, I do not think that Federal funds should be channeled directly to that use. The responsibility that a public TV station has to program controversial issues should be met with funding from other sources; from foundations, from their viewers, from wherever they've been getting funds in the past. And they should use those funds for that type of programming rather than looking to Washington to give them funds, or looking to Washington to create that kind of programming for them. By Washington in this case, I mean the Corporation for Public Broadcasting.

Mr. McCLOSKEY. Then any nationally conceived program that was put out for distribution to local broadcasting systems in your judgment should not touch on either side or both sides of the controversial issue. Is that correct?

Mr. WHITEHEAD. Only if there is Federal money involved.

Mr. McCLOSKEY. Well, the Corporation for Public Broadcasting is a national distributor of funds for national, all public funds, isn't it?

Mr. WHITEHEAD. That's right, but certain corporations have underwritten programs, and if they chose to underwrite a program on some controversial issue, and distribute it across the country to the local stations, I see nothing wrong with that. There's no direct Federal involvement in that, and it is up to the local stations to decide whether they carry it or not as a component of their public service responsibility.

Similarly, a foundation, the Ford Foundation is right now, as in the past, funding these kinds of programming. I recognize your point earlier, but for my present purposes, let me say that they are basically private, and I don't see that there is any direct Federal involvement there; and therefore, there is no reason for the Federal Government to make a comment one way or the other about that program.

Mr. McCLOSKEY. Well, until this year it is true, is it not, that the Corporation for Public Broadcasting has used Federal dollars to create programs on controversial issues?

Mr. WHITEHEAD. Yes, it has, and it is continuing to do so.

Mr. McCLOSKEY. And it is continuing to do so, and your Office of Telecommunication Policy seeks, I assume then, to deny them that right to continue.

Mr. WHITEHEAD. There's no way that we can deny them that right, Mr. McCloskey. We simply can state our view as to what would be sound principles for channeling Federal money into a system like this that is so sensitive and so important.

They are free to ignore us, independent of us, and they take their own decisions.

Mr. McCLOSKEY. You mentioned earlier, this Network Project and perhaps this statement, "in 1968, he, Mr. Whitehead, studies on the use of Presidential policy."

Is that a correct statement?

Mr. WHITEHEAD. That is correct.

Mr. McCLOSKEY. Well, the statement of national policy by the Corporation for Public Broadcasting, couldn't you?

Mr. WHITEHEAD. In a broad sense, yes.

Mr. McCLOSKEY. So you are upon the Corporation for Public Broadcasting withholding of their funds couldn't you?

Mr. WHITEHEAD. We can make appropriations in this case.

Mr. McCLOSKEY. You cannot.

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. The implication, you cannot do.

Mr. WHITEHEAD. We cannot.

Mr. McCLOSKEY. So you are vetoing, if we apply it for too long a time.

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. And then?

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. So then the means to exert pressure, and the threat of the policy decisions. Is that correct?

Mr. WHITEHEAD. Yes. That is a blunt instrument.

Mr. McCLOSKEY. A very blunt instrument.

Mr. WHITEHEAD. The kind of thing that was talking about executive branch wherein the purposes, affect what the executive branch is able to do, as the Chief Executive.

On the other hand, in the rightfully, the decisions of an autonomous board, and there should be no opportunity for Congress in my judgment. The decisions about particular show earlier in talking about particular.

Mr. McCLOSKEY. Well, assistant, Brian Lamb, about

communicating, Mr. McCloskey. and I'm not sure I understand.

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e can deny them that right, view as to what would be money into a system like

They are free to ignore us. They are set up by the Congress as independent of us, and they take their own votes, and they make their own decisions.

Mr. McCLOSKEY. You mention in this booklet that I quoted to you earlier, this Network Project booklet, that there are some inaccuracies, and perhaps this statement is inaccurate. I'd like you to comment; "in 1968, he, Mr. Whitehead, was hired by Richard Nixon to conduct studies on the use of Presidential budget as an instrument of national policy."

Is that a correct statement?

Mr. WHITEHEAD. That is basically correct.

Mr. McCLOSKEY. Well, then, you could use the budget as an instrument of national policy by denying funds to the Corporation for Public Broadcasting, couldn't you?

Mr. WHITEHEAD. In a broad sense, yes.

Mr. McCLOSKEY. So you could exercise, by your position, influence upon the Corporation for Public Broadcasting by the denial or withholding of their funds by the Office of Management and Budget, couldn't you?

Mr. WHITEHEAD. We cannot withhold the funds that the Congress appropriates in this case.

Mr. McCLOSKEY. You cannot. You concede that.

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. The impoundment of funds for public broadcasting, you cannot do.

Mr. WHITEHEAD. We cannot impound those funds.

Mr. McCLOSKEY. So your only instrument there in the use of the budget is vetoing, if we appropriate too much money, in your opinion, or for too long a time.

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. And that's precisely what you did in 1972.

Mr. WHITEHEAD. Yes.

Mr. McCLOSKEY. So then the question is the use of the budget as the means to exert pressure on the Corporation for Public Broadcasting, and the threat of the veto as a means to effect their programming policy decisions. Is that correct?

Mr. WHITEHEAD. Yes. That's, as you appreciate in this case, a very blunt instrument.

Mr. McCLOSKEY. A very blunt instrument.

Mr. WHITEHEAD. The kinds of things that the booklet you're referring to was talking about was the President's administration of the executive branch wherein he can, by controlling money for various purposes, affect what the executive branch is doing, which is his responsibility to do, as the Chief Executive.

On the other hand, in the Corporation for Public Broadcasting, very rightfully, the decisions with respect to programming are given to an autonomous board, and there is no opportunity, and I think there should be no opportunity, for the executive branch, or indeed the Congress in my judgment, to make specific decisions or recommendations about particular shows, which was the reason for my sensitivity earlier in talking about particular programming.

Mr. McCLOSKEY. Well, I'm reminded of this quote from your assistant, Brian Lamb, about those appointments to the Corporation,

stating, "we would hope they would reflect our feeling, these are the nominees to the Corporation".

Mr. WHITEHEAD. The President usually appoints people who reflect his philosophy when he is responsible for making appointments. I think he would be derelict in his duties if he didn't appoint people who he thought had sound judgment.

Mr. McCLOSKEY. So then I assume you screen appointees for the Corporation for Public Broadcasting on whether or not they agree with the Office of Telecommunications Policy in keeping that corporation out of the programing of controversial materials with taxpayer's dollars.

Mr. WHITEHEAD. It's not my responsibility, not being within the President's personal staff, to do the personnel screening.

Mr. McCLOSKEY. Let me tie down, if I may, a few questions that I asked earlier, because I want to be absolutely clear on this. During the year 1972—I take it there was no communication between your office and the Committee to Re-elect the President.

Mr. WHITEHEAD. Not to my knowledge, no.

Mr. McCLOSKEY. And there was no communication between your office and that of the Republican National Committee.

Mr. WHITEHEAD. There may have been a conversation between Mr. Lamb and Mr. Nofziger, but to the best of my recollection Mr. Nofziger wanted information on what our position was, and we provided it to him, just as we would provide it to anyone who called and asked.

Mr. McCLOSKEY. And I take it, the single exception to your testimony would be communications between Mr. Lamb and Mr. Nofziger.

Mr. WHITEHEAD. Yes, sir.

Mr. McCLOSKEY. May I ask, Mr. Chairman, if the witness could then furnish to this committee any memoranda or communications between your office or any employee of your office and any employee or member of the Committee To Re-elect the President or of the Republican National Committee that occurred during the year 1972?

Mr. WHITEHEAD. I will endeavor to do so.

[The material referred to follows:]

In late 1971 the OTP and the FCC made a review of the radio frequencies which were expected to be used by broadcasters and the various U.S. Government agencies at the 1972 Presidential nominating conventions. The purpose of this review was to ensure to the extent practicable that the various radio communications equipments could be operated during the convention without causing or receiving objectionable interference.

A letter was sent subsequently from FCC Chairman Dean Burch to the chairman of both the Republican and Democratic Parties informing them that the FCC was prepared to designate its engineer-in-charge to assist with matters involving the use of radio by non-Government licensees in the area of the convention. In addition, he could serve as the local point of contact for liaison with the U.S. Government agencies that would be using radio in the area of the convention.

On January 24, 1972, the security advisor of the Republican National Committee and the Committee for Re-election of the President, Mr. James McCord, met with Mr. Lyman G. Hailey of my staff. Mr. McCord requested frequency advice in connection with his communications requirements at the proposed San Diego convention. He was informed of OTP/FCC actions up to that date and was given a copy of the FCC letter to the Republican National Committee.

As mentioned in an earlier answer to a question concerning OTP contacts with persons employed at the RNC, Mr. Brian Lamb of my staff did have conversations with Mr. Lyn Nofziger, formerly deputy chairman of the RNC for communications. These contacts were made in October of 1971 not in 1972 as I had previously

suggested. Mr. Lamb to Mr. Nofziger for information. International Radio and Nofziger subsequently, zine, a committee publication.

Mr. MOORHEAD. speech—because I think misapprehensions—who confused sensat manager who failed time.

The word "correct majority of the FCC cal name, a one-time "elitist gossip." He

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Mr. MOORHEAD. I countable at license about is not what he FCC thinks about Jo

Mr. WHITEHEAD. The broadcaster is sions, as a publisher the press. He make

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Mr. MOORHEAD. I switching channels,

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I not in 1972 as I had previously

suggested. Mr. Lamb tells me that the purpose of this contact was a request from Mr. Nofziger for information concerning a speech I had delivered before the International Radio and Television Society in New York on October 6, 1971. Mr. Nofziger subsequently published excerpts in a future edition of Monday magazine, a committee publication.

Mr. MOORHEAD. Mr. Whitehead, going back to your Indianapolis speech—because I think this gives you a good platform to correct some misapprehensions—you talked about correcting so-called professionals who confused sensationalism and so forth. And then you say a station manager who failed to correct them would be accountable at license time.

The word "correct" is what I wanted to zero in on. Suppose that the majority of the FCC considers John Q. Smith, a hypothetical, mythical name, a one-time national broadcaster, as being the dispenser of "elitist gossip." He does it every time he comes on the air.

Is it "now," to quote correctly, the duty of the station to go off the air, or replace him when he comes on? Is it the duty of the station after you hear John Q. Smith, at least regularly, for the station manager to say that "in the opinion of this station, John Q. Smith is some kind of a nut?" Or is it their responsibility to "correct"—to have local programming of a slant opposite to John Q. Smith—to present a balanced picture?

Mr. WHITEHEAD. I think it's the latter. I've always felt that elitists are entitled to have their point of view, and that other people were entitled to hear that point of view and so forth.

The answer is, as you suggest, not to cut off. Now, certainly, there are certain kinds of programming that the broadcaster may judge are just patently offensive and he may choose not to run them.

But basically the concept is that he should add to the network, he should add to John K. Smith, assuming that he has made the judgment that John Q. Smith is dispensing elitist gossip all the time. The important thing is that he should make the judgment, as a responsible community leader; he should say all right, I'm watching what's coming over my network, and I've determined that John Q. Smith is dispensing elitist gossip all the time, and it's darn well my responsibility to put something else on, in addition to that, that will give my viewing public a little bit of a broader perspective on these kinds of issues.

Mr. MOORHEAD. But when you link the words "correct" with "accountable at license renewal time," what he is going to be thinking about is not what he thinks of John Q. Smith, but what he thinks the FCC thinks about John Q. Smith.

Mr. WHITEHEAD. Well, that is of course a great point of contention. The broadcaster is in many ways free. He has to make his own decisions, as a publisher does. I think he should be considered a member of the press. He makes journalistic judgments about what he puts on.

Because we have the concept of the airwaves belonging to the public and if the public doesn't agree with him, the public reasonably ought to have some way of expressing that disagreement.

Mr. MOORHEAD. If it is more than a one channel town, they do it by switching channels, which is probably the best—

Mr. WHITEHEAD. Which is probably the best thing, but I think we have to concede the point that where there are only one or two channels, or even four or five channels, there is a possibility that a broadcaster

could theoretically be so insensitive to the public interest in his community, that the community might have an argument that the guy just should not be licensed.

I think the law has to provide mechanisms for that as long as he is using public airwaves. The point is, however, that, to the extent that the broadcaster is answerable to anyone in his uses of those public airwaves, he should be responsible to the community that he endeavors to serve. It should not be the judgment of the seven FCC Commissioners. They should not sit around saying, this kind of thing is good programming. So the people ought to have a lot of that. And that is not so good programming, so they should not have any of that.

Where there are disputes about licenses, the FCC ought to be asking how seriously has broadcaster *x* endeavored to serve his public interest? Has he gone out and interviewed people? Has he made an effort to identify all of the various subcommunities to find out what their interests are and make an evaluation of what is available on station Y and station Z and asked what his role should be in adding to their programming?

If he has made those kinds of good faith judgments, then I think that is about as far as the FCC ought to go. They should not interpose themselves and say, you did all of that and the community is pretty happy with you. There are some discontents, but we in our wisdom think that your community ought to have a different kind of programming than you and they think they ought to have, and those are the criteria that we are going to use to renew your license.

Well, that to me is rather frightening, because that says loud and clear to every television and radio station owner in this country, you program what we want you to have or you are not likely to have your license. And that is precisely the kind of thing I was trying to call attention to in that speech.

Apparently I may have done it in the inverse way.

Mr. MOORHEAD. I think that was the result, but I think the policy should be at least where there is a two-station availability, that the best solution is the freedom of the individual—his ability to switch channels.

Mr. WHITEHEAD. That is the ultimate freedom, and certainly the more channels the more freedom you have and the less need for government regulation.

Mr. MOORHEAD. Mr. Phillips?

Mr. PHILLIPS. Mr. Chairman, the staff has some questions we would like to submit in writing in view of the hour.

Mr. MOORHEAD. I am willing to sit for awhile and miss this quorum if you wish to proceed. Questions in writing sometimes have the effect of—

Mr. PHILLIPS. Thank you, Mr. Chairman. We will then proceed. First, we would ask unanimous consent to insert two documents in the hearing record that I think would be helpful. One is a study prepared for the subcommittee by the Congressional Research Service, entitled "The Office of Telecommunications Policy, a Brief Profile of its Origins, Creations and Status."

Mr. MOORHEAD. Without objection that will be made part of the record.

[See appendix, pp. 677-692.]

Mr. PHILLIPS. And the and Programs Report for that we have discussed he

Mr. MOORHEAD. Without record.

[See appendix, pp. 693-

Mr. PHILLIPS. Also, for some elaboration in the five on page 2 of Mr. Whitehead's enforcement, Transportation and Communications. I think a couple of paragraphs to discuss each of these mission area responsibilities as far as the

[The information follows]

The status of this arrangement on the concept of coordinating systems by identifying functions are similar, and having agency future plans under the chair are: The complete membership of reference, procedures, scope, that assignment of responsibilities, emergency support planning, of restoration priorities of these points will be settled.

The lead agency assignment: National security—Department of Defense; Transportation; environment; Department of Justice; and

tration. The national security area activities. The transportation and navigation activities which routinely collect data on and other environmental conditions, agencies which procure or use commercial services as telephone

Mr. PHILLIPS. On the just one question here.

Does any of the planning the development of a copy possible of classified documents

There has been some discussion need for computerization and millions of classified documents about this vast question.

Mr. WHITEHEAD. Well, of computers within the by themselves for any purpose. We are only concerned, in communications activities

Mr. PHILLIPS. Well, techniques, the dissemination

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Mr. PHILLIPS. And the second is an OTP document, their Activities and Programs Report for 1972-73, which covers many of the areas that we have discussed here and many others that we have not.

Mr. MOORHEAD. Without objection, that will be made a part of the record.

[See appendix, pp. 693-727.]

Mr. PHILLIPS. Also, for the record, I think we should perhaps have some elaboration in the five initial study mission areas that were listed on page 2 of Mr. Whitehead's statement—National Security, Law Enforcement, Transportation, Environment and General Administrative Communications. I think for the record we should have perhaps a couple of paragraphs to describe what the status of the planning is in each of these mission areas, what is contemplated, who has collateral responsibilities as far as the Federal agencies are involved, and so on.

[The information follows:]

RESPONSE

The status of this arrangement is that general agreement has been reached on the concept of coordinating the planning of Government communications systems by identifying functional areas in which communications requirements are similar, and having agencies with missions in these areas work jointly on future plans under the chairmanship of a lead agency. Presently under study are: The complete membership within each of the five mission areas; the terms of reference, procedures, scope, and initial tasks for each planning group; and that assignment of responsibilities for three governmentwide functions: Standards, emergency support planning, and the processing of requests of the assignment of restoration priorities to private line circuits. It is expected that all of these points will be settled within the next 2 months.

The lead agency assignments which are planned at this time are as follows: National security—Department of Defense; transportation—Department of Transportation; environmental—Department of Commerce; law enforcement—Department of Justice; and general administrative—General Services Administration.

The national security area includes defense, foreign affairs, and intelligence activities. The transportation area includes aviation and maritime communications and navigation activities. The environmental area includes activities which routinely collect data over large geographical areas concerning the weather and other environmental conditions. The general administrative area includes agencies which procure or use to a significant degree such commonly available commercial services as telephone, teletype, and data communications service.

Mr. PHILLIPS. On the national security topic I would like to ask just one question here.

Does any of the planning in this national security area contemplate the development of a computer that would store and make retrieval possible of classified documents? Is that part of that study?

There has been some discussion in the Defense Department of the need for computerization techniques for the handling of the millions and millions of classified documents. The subcommittee is also concerned about this vast problem and that is why I am asking the question.

Mr. WHITEHEAD. Well, let me give you a general answer. The use of computers within the Department, or indeed, the use of computers by themselves for any purpose, really does not fall into our purview. We are only concerned, in this effort, with the planning of electronic communications activities in these various mission areas.

Mr. PHILLIPS. Well, this would also involve communications techniques, the dissemination of classified information contained in those

documents, for example; also questions of cryptographic applications, the use of satellites for transmitting classified material, and so on. So that they would, in one sense, I believe, overlap your jurisdiction.

Mr. WHITEHEAD. Yes. We are concerned and are working with the Defense Department on the area of security of communications, both data and voice communications. The planning for secure communications would be a component of the planning that would be done within the national security area that we have described.

Mr. PHILLIPS. Mr. Whitehead, in the Federal Register for June 28 of this year, there is an insertion that deals with the establishment of an Office of Plans and Policy in the Federal Communications Commission. Are you familiar with this regulation?

Mr. WHITEHEAD. I have not seen the recommendation. I am generally familiar with the establishment of the office.

Mr. PHILLIPS. Is this a reorganization of the Plans and Policy Unit that had been in FCC earlier and which Mr. Hinchman headed up, or is this a new one?

Mr. WHITEHEAD. I believe this is the same thing, Mr. Phillips.

Mr. PHILLIPS. Perhaps it is a reformulation of their areas of responsibility, but my question is, in reading over the functions, the very specific areas in which they are directed to operate in the planning and policy areas, they seem to be quite similar to areas of responsibility of your office. Was this regulation developed in consultation with your office? Was there some agreement as to a sharing of overall communications policies between OTP and FCC in the long-range planning area?

Mr. WHITEHEAD. No, there was not. I think that reflects Chairman Burch's concern that the Commission itself is so involved in its day-to-day regulatory responsibility, and each Bureau of the Commission is so involved in day-to-day activities that they were not able to devote adequate resources to the longer range planning issues.

Somehow or other they had some problems in dealing with policy issues that cut across two of the different bureaus, for instance, the Cable Television Bureau and the Broadcast Bureau. They felt they needed some capability to get staff work done on those kinds of problems.

I was not involved in the establishment of that Office, but certainly it makes things easier from a liaison standpoint if there is a capacity within the Commission to look at some of the same kinds of issues that we are looking at. The Commission and OTP are parts of two separate branches of government, and I do not view it as duplication. I view it rather as both of us having the capability for focusing on these long-run issues.

Chairman Burch and others testified before the Congress that the establishment of OTP was a big help in getting more response from the executive branch and what the executive branch views were. So I think having that capability in the Commission would make it easier for us to provide useful information to them and work with them.

Mr. PHILLIPS. Is it not true that Mr. Hinchman came out of OTP and went to FCC?

Mr. WHITEHEAD. He was employed at OTP for about 2 years. That is correct.

Mr. PHILLIPS. So that he is familiar with OTP policies the very detailed way in which many of them seem to duplicate what has been doing.

Mr. WHITEHEAD. Well, I don't know.

Mr. PHILLIPS. Maybe there is some implication.

Mr. WHITEHEAD. I think that you need some of the perspective may be in the area of communications policy. Health, Education, and Welfare area or I might work with the State. Those perspectives are Federal Communications Commission.

On the other hand, they are getting points of view from industry representation of regulatory responsibility.

I think having the two kinds of problems from the Congress. The Congress and present their points of view and wider perspective on the matter.

Mr. PHILLIPS. This does areas of jurisdictional responsibility overall telecommunications branch.

Mr. WHITEHEAD. No. The authority over the communications.

Mr. PHILLIPS. So anything internal and for their own and plans?

Mr. WHITEHEAD. That is correct.

Mr. PHILLIPS. In May of 1964 for the development of a study of telecommunications, at least this is our understanding.

Is this study in any way the Domestic Council that communications for Social Needs?

I know in that study there is in such HEW areas as health and social fields.

Are you familiar enough to indicate to this subcommittee whether or not it is going to be a continuation of the Domestic Council?

Mr. WHITEHEAD. I can't say.

Mr. PHILLIPS. I would not.

Mr. WHITEHEAD. It covers a far healthier perspective.

of cryptographic applications, classified material, and so on. So they overlap your jurisdiction. They are working with the majority of communications, both planning for secure communications that would be done within the described.

Federal Register for June 28 deals with the establishment of Federal Communications Commission?

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Mr. PHILLIPS. So that he certainly would therefore be thoroughly familiar with OTP policies and operations. It just seemed that from the very detailed way in which their functions are spelled out, that many of them seem to duplicate work that OTP is already doing and has been doing.

Mr. WHITEHEAD. Well, I do not think it is duplication.

Mr. PHILLIPS. Maybe it is the phraseology that gives that implication.

Mr. WHITEHEAD. I think it is because we have two different branches that you need some of the same kinds of things going on in both branches. Perspective may be quite different in addressing a particular area of communications policy. I may work with the Secretary of Health, Education, and Welfare and the Attorney General in a different area or I might work with the Secretary of Defense and the Secretary of State. Those perspectives are typically not available to the Federal Communications Commission.

On the other hand, they have processes for having public hearings and getting points of view in a formal way from public interest groups and from industry representatives. They also have a very real operation of regulatory responsibility that gives them a perspective from ours.

I think having the two organizations looking at some of the same kinds of problems from different perspectives will ultimately benefit the Congress. The Congress could then ask both organizations to come and present their points of view, giving the Congress, I hope, a richer and wider perspective on the issues that get to the legislative stage.

Mr. PHILLIPS. This does not reflect, then, any change in the basic areas of jurisdictional responsibility that your office has with regard to overall telecommunications policy coordination within the executive branch.

Mr. WHITEHEAD. No. The FCC has no responsibility and indeed, no authority over the communications within the executive branch.

Mr. PHILLIPS. So anything they would be doing would be strictly internal and for their own—for the Commission's long-range policies and plans?

Mr. WHITEHEAD. That is right.

Mr. PHILLIPS. In May of this year, HEW announced negotiations for the development of a comprehensive plan for demonstrating the use of telecommunications technology for public services delivery. At least this is our understanding.

Is this study in any way the type that was involved in the study for the Domestic Council that you mentioned earlier in the report "Communications for Social Needs"?

I know in that study there was some discussion of delivery systems in such HEW areas as health, education, day care, and other related fields.

Are you familiar enough with this study that is going on in HEW to indicate to this subcommittee what areas it might encompass and whether or not it is going in some of the same directions as that portion of the Domestic Council study that was done in 1971?

Mr. WHITEHEAD. I can make a general comment.

Mr. PHILLIPS. I would not expect you to go into great detail.

Mr. WHITEHEAD. It covers the same area but does it, I think, from a far healthier perspective. The NASA study we talked about was very

much oriented to helping the Federal Government create large communications systems and use them to pump information out to the public. This study is oriented, I think, 180 degrees the other way. It asks, given the availability of existing communications systems, telephones, televisions, cable TV, what have you, what government services could be provided better or more effectively or more efficiently by making use of communications?

I think that is a very healthy kind of question to ask.

Mr. PHILLIPS. Of course, this is one of the major concerns of these hearings—how information technology can be used to improve governmental delivery systems to the public. We were particularly interested in this study.

Do you have any idea when the completion date is scheduled?

Mr. WHITEHEAD. It is a 6-month study that began at the end of June.

Mr. PHILLIPS. Do you know of other studies of this type that have been undertaken involving telecommunications technology in other departments?

For example, we had some testimony concerning the IMIS project—Integrated Municipal Information Systems projects—at HUD and nine other agencies that are involved, in which there are demonstration projects currently underway in a number of cities.

I believe there was another one that was done by the Office of Education entitled "Telecommunications in Education" done under contract last year with Synergetics.

Is your office in a position to consult and coordinate with other agencies when they go out to do a study in a certain area to make sure that whatever has been done in another agency is not overlapping or duplicating? Is there coordinated policy for taking one study and then moving it along to a higher level, if possible?

Mr. WHITEHEAD. That is indeed one of our responsibilities and I am sure you and the Congress know it is not easy to find out all the things that agencies are doing. I think it is probably safe to say we know most of what is going on now in the various agencies. We do make just those kinds of comments; informing one agency that something is already going on that they ought to know about in another agency.

I think that is coming to be the norm now rather than the exception. It very much used to be the exception, so I think we are making some progress in spite of the fact that OTP is so small, and we are so limited in our funds and our people. We only focus the major studies and the major projects.

For instance, we have worked with LEAA and other agencies on their information system. We have considered the possibility of a project on uses of two-way radio by Government agencies to improve their various mission functions. By necessity we have to focus our own attention on relatively few of those kinds of projects, but we try to maintain an awareness of the others, and get the right people in the various agencies talking to each other.

Mr. PHILLIPS. Do you take the initiative in suggesting certain study areas, where you feel that there is a gap, to an agency that perhaps might have funds available to undertake such a study?

Is it a two-way relationship where you do more than just observe what other agencies might be doing in a certain field, but also initiate,

suggest, and recommend study be done?

Mr. WHITEHEAD. Yes, for what other agencies were just talking about, at from our office. We felt way to go about it, but it was a more productive get more useful information.

Mr. PHILLIPS. Thank you.

Mr. MOORHEAD. Mr. CORNISH.

Mr. CORNISH. Thank you.

Mr. Whitehead, do you magnetic tapes from one agency?

Mr. WHITEHEAD. The

No, they do not.

Mr. CORNISH. If there was material was drawn out of a computer, would that come in?

Mr. WHITEHEAD. You mean

Mr. CORNISH. Yes.

Mr. WHITEHEAD. Yes, it operate the systems.

Mr. CORNISH. I understand physical transfer of a tape connection existed wouldn't it?

Mr. WHITEHEAD. Well, it the same.

On the other hand, the communications lines tying would, I think, be qualitative have a large scale physical computers, but if they are a is quite feasible to get access tively you would have quite

Mr. CORNISH. Did I understand planning mission area that the record spelling those out?

Mr. WHITEHEAD. Yes.

Mr. CORNISH. I was very guards and the right to privacy single, generally accepted a got over on another page I with the exception of one we to the assumption that all mental way his own, for h extent it is communicated to

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you do more than just observe a certain field, but also initiate,

suggest, and recommend that certain research and development or a study be done?

Mr. WHITEHEAD. Yes, it is. I do not want to claim too much credit for what other agencies are doing, but the HEW studies that we were just talking about, at least in part, grew out of recommendations from our office. We felt the NASA study really was not the right way to go about it, but that was an important area to look at, and it was a more productive way of casting the problems so we would get more useful information out of it.

Mr. PHILLIPS. Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. Cornish?

Mr. CORNISH. Thank you, Mr. Chairman.

Mr. Whitehead, do your responsibilities cover the transmission of magnetic tapes from one agency to another?

Mr. WHITEHEAD. The physical transmission?

No, they do not.

Mr. CORNISH. If there was an interconnection there, for example, and material was drawn out of one computer into another agency's computer, would that come under your responsibility?

Mr. WHITEHEAD. You mean over a communications line?

Mr. CORNISH. Yes.

Mr. WHITEHEAD. Yes, it would from a policy standpoint. We do not operate the systems.

Mr. CORNISH. I understand that. It would not cover the actual physical transfer of a tape from one agency to another, but if an interconnection existed wouldn't the effect actually be the same then?

Mr. WHITEHEAD. Well, the ultimate effect would very definitely be the same.

On the other hand, the cumulative effect of the large number of communications lines tying together large numbers of computers, would, I think, be qualitatively different. It is just not practical to have a large scale physical transfer of tapes among a large number of computers, but if they are all tied together by communications lines, it is quite feasible to get access to almost anything you want, and qualitatively you would have quite a different operation.

Mr. CORNISH. Did I understand correctly that in relation to your planning mission area that you were going to provide something for the record spelling those out in a little more detail?

Mr. WHITEHEAD. Yes.

Mr. CORNISH. I was very much interested in your comments on safeguards and the right to privacy. I notice that you stated that there is no single, generally accepted definition of privacy, and then as soon as I got over on another page I thought you had an excellent one, perhaps with the exception of one word where you said, "these concepts are tied to the assumption that all information about a person is in a fundamental way his own, for him to determine when, how, and to what extent it is communicated to others."

The only change I would make is the substitution of the word "right" for "assumption." I would think that all of those probably would be wrapped up in a package under the first, fourth, fifth and ninth amendments to the Constitution. You also said in your statement that OTP has undertaken to investigate the adequacy of common law statutes and Federal regulations to protect individuals regarding the

privacy of their electronic communications and the security of the systems. I would hope that you would crank in the Constitution in that, as I am sure you are—I do not think that was deliberate omission or anything.

Mr. WHITEHEAD. No. We are very definitely doing that.

Mr. CORNISH. Well, I think that is where the right of privacy really lies—in the Constitution of the United States and it lies in the amendments that I have enumerated.

Mr. WHITEHEAD. Indeed, Mr. Cornish, they have to in many ways go farther back and deeper into the traditions of our cultures to get that because the Constitution itself in some cases is a little vague, and when you get to talking about rights, that is why I used the word "assumption" because I wanted to imply that it is broader than just the laws or even the Constitution. It is a very fundamental part of our way of life and our culture, but when you start talking about rights, you inevitably start weighing one right off against another right.

As I mentioned I think further in that paragraph, the Government does have legitimate reasons for getting information about people that they do not want us to have.

Mr. CORNISH. I think what you are saying—and I do not want to quibble about the semantics of the thing—is that the people have the rights—the Government has no rights, they have powers.

Mr. WHITEHEAD. Yes.

Mr. CORNISH. So it is not a question of balancing the peoples' rights against the Government's rights. That is not the question involved here. You are not trying—

Mr. WHITEHEAD. That wasn't what I was trying to say.

Mr. CORNISH. Did you have any input at all into the decision of President Nixon to issue Executive orders permitting the Department of Agriculture to have access to certain personal financial information from income tax returns of persons having farm operations?

Mr. WHITEHEAD. No, we did not.

Mr. CORNISH. Now, on the shared systems, Mr. Whitehead, you mentioned there were certain studies that have been initiated there. You also mentioned the need for guidance in the planning aspects of these shared systems.

Are there only technicians involved in this or are there social scientists and constitutional lawyers and persons with that sort of expertise working on this?

Mr. WHITEHEAD. Well, from the standpoint of shared communications systems, by and large we are talking about technical people. When you get into the question of joint computer systems where privacy safeguards, questions of privacy are more complex, then you have to address not only the technical and economic possibilities but also the legal questions, so there very definitely the lawyers do get at it, very definitely, from a constitutional perspective.

Mr. CORNISH. That is going to be part and parcel of the entire package of studies which you have been describing today as I understand it.

Mr. WHITEHEAD. Very much so.

Mr. CORNISH. Now, when you stated that you opposed the idea that legislation should be sought to force manufacturers to incorporate such

a receiver in every TV set—I am whose idea was that?

Was that the technicians' idea?

Mr. WHITEHEAD. Yes; I do not know. I think it was just a feeling who were involved in designing it.

Mr. PHILLIPS. That is discussed in "Records, Communications for Social Needs," that aspect of the study.

Mr. CORNISH. Mr. Chairman, I intended to ask have been covered few additional questions that we have.

Mr. MOORHEAD. If we submit them, would you be willing to answer them, would you?

Mr. WHITEHEAD. Certainly.

[The questions and answers follow.]

Question. Does OTP maintain a general study of the use of communications technology and proposals for utilization of advanced technology?

Answer. Yes, OTP has tried to maintain along with all other aspects of agency work due to the scope of Federal telecommunications staffing we were forced to take a new approach of implementing a concept of mission to provide better coordination and a new base upon which to act.

Question. Are agencies required to report on what basis?

Answer. No, not presently on a routine basis. Communications coordination all plans and programs will be submitted to OTP.

OTP has required reporting of telecommunications technology on an ad hoc basis.

Question. Are agencies required to report on what basis?

Answer. No.

Question. How would OTP rate the use of telecommunications technology by Federal agencies?

Answer. There is presently no way of measuring telecommunications technology. However, the methods and telecommunications technology are being studied.

Question. How many agencies do you have, if any?

Answer. We would estimate that telecommunications capability mainly because of the telecommunications industry and general technology is the best link in majority of the agencies. Inadequate staffing in the telecommunications of modern and advanced telecommunications to develop professional telecommunications are to use our Nation's telecommunications technology.

Question. How does the use of telecommunications services and Government information affect the availability and decreasing of services delivered by Government?

Answer. Communications technology is being studied for their availability and decreasing of services delivered by Government. Safeguards will be required in government technology to service delivery in order to protect the government itself.

Question. Did OTP participate in the HEW study entitled "Records, Communications, and Information Technology?"

Answer. No.

a receiver in every TV set—I am talking about the DID system—whose idea was that?

Was that the technicians' idea?

Mr. WHITEHEAD. Yes; I do not recall that it was any particular agency. I think it was just a feeling on the part of some of the people who were involved in designing the system and analyzing the effect.

Mr. PHILLIPS. That is discussed in the report, "Communications for Social Needs," that aspect of it is in there, which is a NASA study.

Mr. CORNISH. Mr. Chairman, I believe that most of the questions I intended to ask have been covered. However, there probably are a few additional questions that we would like to submit.

Mr. MOORHEAD. If we submitted questions in writing, you would be willing to answer them, would you not?

Mr. WHITEHEAD. Certainly.

[The questions and answers follow:]

Question. Does OTP maintain a general overview of all Federal agency plans and proposals for utilization of advanced communications technology?

Answer. Yes, OTP has tried to maintain a general overview of this subject along with all other aspects of agency telecommunications activities. However, due to the scope of Federal telecommunications activities and the level of OTP staffing we were forced to take a new approach. OTP is presently in the process of implementing a concept of mission related telecommunications planning to provide better coordination and a more organized and comprehensive information base upon which to act.

Question. Are agencies required to report plans and proposals to OTP, and on what basis?

Answer. No, not presently on a routine basis, however, once our new Government telecommunications coordination concept is fully implemented, agency overall plans and programs will be submitted to OTP on an annual basis.

OTP has required reporting of the agencies utilization of specific advanced communications technology on an ad hoc basis.

Question. Are agencies required to make such reports to any other central office?

Answer. No.

Question. How would OTP rate the present use of advanced communications technology by Federal agencies?

Answer. There is presently no way to rate agencies in their use of advanced communications technology. However, we are attempting to develop evaluation methods and telecommunications coordination mechanisms to accomplish this.

Question. How many agencies do not have an adequate communications capability, if any?

Answer. We would estimate that most agencies do have an adequate communications capability mainly because of our Nation's active telecommunications industry and general technology leadership. However, historically the weakest link in majority of the agencies communications capabilities has been their inadequate staffing in the telecommunications management area. The utilization of modern and advanced telecommunications technology will require more agencies to develop professional telecommunication managers and planners if they are to use our Nation's telecommunication resources wisely and economically.

Question. How does the use of communications technology affect the delivery of services and Government information to the public?

Answer. Communications technology affects the delivery of services by increasing their availability and decreasing their cost. The effect is basically the same on services delivered by Government or by the private sector. However, safeguards will be required in governmental applications of communications technology to service delivery in order to prevent the misuse of such systems by Government itself.

Question. Did OTP participate in the planning and or production of the recent HEW study entitled "Records, Computers and the Rights of Citizens?"

Answer. No.

Mr. MOORHEAD. Mr. Daniels?

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. Whitehead, speaking again of the adequacy of common law statutes and Federal regulations to protect individuals regarding the privacy of electronic communications, why did your study begin only 1 month ago? Why did the study not begin earlier than that—for example, 2 or 3 years ago?

Mr. WHITEHEAD. Well, in one sense we have been trying to be aware of these kinds of issues and it is just inevitable that an agency such as ours gets caught up in the day-to-day crunch of business, and this I think has been one of those areas where we all have a nagging feeling that maybe we ought to be doing more, but there is no crisis, there is no immediate issue that presents itself, at least not very often.

Now, where the specific issues did present themselves, we dealt with them, for example, in the NASA report and in the DIDS policy. Just as I gather has been the case with this subcommittee, we have become increasingly aware that the problems were deeper, that the technology was catching up with us, as Ms. Abzug said, and it just so happened that it was just about a month ago that it finally all coalesced, and we decided we needed a rather formal, full-scale look into this problem.

Mr. DANIELS. Just to correct the record, this subcommittee has been interested in the same subject for several years. We are not just now getting around to it.

Mr. WHITEHEAD. No, I understand, but I was talking more on accumulation of concern.

Mr. DANIELS. Regarding your evaluation of station licenses and a requirement that you would impose that balanced viewpoints be presented on private television stations, you stated that in your view it should be the responsibility of the station owner or manager in light of the standards in his particular community to insure that viewpoints presented on the station are balanced.

If a network commentator presents what might be termed "elitist gossip," a local commentator at some other time would present "non-elitist gossip," so to speak, or some other kind of viewpoint balancing the network commentator's.

Mr. WHITEHEAD. Or elitist fact or something.

Again, to correct the record, I made no such proposal. In fact, it is the law that each broadcaster is responsible for what he transmits, and we went into that a little bit earlier. I simply called attention to the fact that the networks programed an ever larger percentage of the daily broadcast schedule on the affiliated stations. The broadcaster's responsibility to his viewers to make sure that they are getting public service and other kinds of programing, needed more attention than it did when there was much less network programing. I emphasized the fact that it was his responsibility, it was his judgment that should be brought to bear, and not that of the FCC or other Government agencies.

Mr. DANIELS. Suppose a broadcaster, when it came time for his license to be renewed, merely stated to the FCC, "In all good faith, I state that in my opinion, the programs being presented on my station do represent balanced viewpoints. I think that the networks themselves present balanced viewpoints, and therefore I have not presented any sort of local commentary countering them."

Would that suffice?

Mr. WHITEHEAD. Well, there were no complaints of performance, his license made a good faith effort that I had and interests, that is in that kind of circumstances know better what the to be programing.

But the problem a situations, where there ernment has to have because the airwaves criteria, as to what. The FCC's process s on the presumption a FCC thinks is good p

Mr. DANIELS. And balanced programing national standards.

Mr. WHITEHEAD. I You always find a one is of one very na I think that rarely pr

Mr. DANIELS. Well It says to me that a be required, if this v graming than a bro networks are center located.

Mr. WHITEHEAD. more or less local pr number of subcomm own unique diversi forth, and the New gram to them just a that goes across the c

So I do not think t Mr. DANIELS. Mo lic broadcasting, I money should not broadcasting.

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Mr. WHITEHEAD. Well, it depends on the context. I suppose that if there were no complaints from the community about the broadcaster's performance, his license were not challenged, and he says, I have made a good faith effort and I am prepared to document the good faith effort that I have made to program to my community's needs and interests, that is basically enough. I do not see that the Government in that kind of circumstance has to intervene and say, we think that we know better what the public interest is, and here is what you ought to be programing.

But the problem arises, of course, the great complexities and sensitivities, where there are challenges, and complaints. Then the Government has to have a process for dealing with those complaints because the airwaves do belong to the public, and the local public criteria, as to what is and is not good programing, should prevail. The FCC's process should be set up on that presumption rather than on the presumption that the broadcaster exists to program what the FCC thinks is good programing.

Mr. DANIELS. And you are advocating that the FCC interpret balanced programing in terms of community standards rather than national standards.

Mr. WHITEHEAD. In a broad way, yes.

You always find at least the hypothetical community where everyone is of one very narrow political persuasion except one person, but I think that rarely presents itself.

Mr. DANIELS. Well, I am not so sure that it so rarely presents itself. It says to me that a broadcaster in a small town in the South would be required, if this were the standard, to present far more local programing than a broadcaster in New York City, which is where the networks are centered and where the network commentators are located.

Mr. WHITEHEAD. Well, the point is not whether he ought to do more or less local programing. Heaven knows, there are a tremendous number of subcommunities within New York City, each having their own unique diversity and cultural tradition and richness and so forth, and the New York City broadcaster has an obligation to program to them just as much as he does to pump out the network fare that goes across the country.

So I do not think that is necessarily a safe generalization.

Mr. DANIELS. Moving on to another subject, when speaking of public broadcasting, I believe that you gave your opinion that Federal money should not be used to present controversial views in public broadcasting.

What is a controversial view?

Mr. WHITEHEAD. Well, that is kind of unknowable in an ultimate sense, highly debatable and in some cases, highly political. I do not know how to make that distinction except in the broadest way, and that indeed underlies the premise of our position in the first place.

Mr. DANIELS. Who would determine what the view is?

Mr. WHITEHEAD. Well, I think the agency—in this case it is the Corporation for Public Broadcasting—that is responsible to the Congress for its using its funds. They have to make that determination.

Mr. DANIELS. In other words, your statement is merely that the

Corporation for Public Broadcasting should determine how Federal money is used for public broadcasting.

Mr. WHITEHEAD. Consistent with the public Broadcasting Act, of course.

Mr. DANIELS. Surely.

Mr. WHITEHEAD. That is their job.

Mr. DANIELS. But if the Corporation determined that someone you deemed to be a left wing commentator should be funded so that his views could be presented on nationwide public broadcasting, neither you nor anyone else in the administration would attempt to interpose your will against that decision.

Mr. WHITEHEAD. No; just as I presume no one in the Congress would attempt to interpose his will.

Mr. DANIELS. Thank you.

That concludes my questioning, Mr. Chairman.

Mr. MOORHEAD. Thank you very much, Mr. Whitehead and Mr. Joyce. We appreciate your contributions to these hearings. I think this has been a very useful exchange, sometimes wandering a little bit far afield from our narrow subject matter, but I think you have clarified a number of points which have been troubling the members of Congress, and we appreciate your being with us.

Mr. WHITEHEAD. Thank you, Mr. Chairman.

I do not have any illusions that we have solved all of your problems for you or have given you full answers to all of the questions you asked, but just as you are casting a critical eye on this area, we are also trying to do so.

I think a continuing examination of this type is critical in this very important area, so I am very happy to have been here today and to have testified.

Mr. MOORHEAD. Well, this is a vast and important new technology that can be of great good for the American people. We do not want to kill it, but we have got to recognize that it could be abused. How do we accomplish the good and not permit the bad? That is our problem.

Mr. WHITEHEAD. That is absolutely right.

Mr. MOORHEAD. Thank you very much.

The subcommittee is now adjourned.

[Whereupon, at 1 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX 1.—ADVANCE
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SEARCH SYSTEM
TRIEVAL OF CRIMINAL

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STATEMENT BY
JOHN M. EGER, DEPUTY DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

ON
FEDERAL MONITORING PRACTICES

before the

Subcommittee on Foreign Operations
and Government Information
Honorable William S. Moorhead, Chairman
Committee on Government Operations
U.S. House of Representatives

June 11, 1974

My name is John M. Eger. I am Deputy Director of the Office of Telecommunications Policy. With me today is Mr. Charles C. Joyce, Jr., OTP's Assistant Director for Government Communications. I welcome this opportunity to testify before the Government Information Subcommittee, and I particularly wish to commend you, Mr. Chairman, the other members of this Subcommittee and your staff for the fine work which you have done over the years relative to telephone monitoring and other surveillance practices within the Federal Government.

In 1961, this Subcommittee issued a report which criticized the lack of regulations governing monitoring practices and recommended broad principles which OTP generally supports and which guides OTP's own use of transmitter cut-off switches. For the present hearings, you asked that I discuss the nature and use of telephone monitoring equipment by this Office. OTP does not permit telephone monitoring without the consent of all parties to the conversation. When such consent is given, secretaries may come on the line, and transmitter cut-off devices are useful for reducing background noise. As we reported in response to the GAO survey, three transmitter cut-off switches are installed on secretarial telephone consoles in the Director's office. The total rent for Fiscal Year 1973 was \$90.00; we expect that to be about the same for Fiscal 1974.

In addition to OTP's use of telephone listening devices, you also requested that we summarize the results of the privacy study we discussed with the Subcommittee last July. When Clay T. Whitehead, Director of OTP, testified before this Subcommittee at that time, he said that the Office had undertaken a study of the adequacy of present law and regulation to protect the privacy of individuals in their electronic communications and the security of the systems carrying them.

The study was conducted by Professor R. Kent Greenawalt of the Columbia University School of Law in New York City. Professor Greenawalt is a distinguished legal scholar with broad experience in the field of privacy protection. His study, entitled "Privacy -- Its Meaning and Legal Protection," is in the final stages of preparation and should be available for release in the near future. This Subcommittee will, of course, receive a copy.

By way of a brief summary, the study deals with the concept of privacy, the issues regarding its legal protection, and various problems of special concern to OTP and to the Domestic Council Committee on the Right of Privacy. Although the concept of privacy is multi-faceted, the study concentrates on privacy as an individual's control of information about himself. The reason for this is that control over information about oneself is a prerequisite for the development of individuality, intellectual growth, creative activity, emotional release and the maintenance of relationships with others.

Professor Greenawalt noted that, while there are various significant nonlegal restraints on invasions of privacy including physical barriers, indifference, and ethical restraints, legal protections are the most significant restrictions.

A person can lose control of information about himself when information is obtained against his wishes from him or from some area in which he expects privacy, when information is obtained from the original recipient of information against the wishes of both subject and recipient, and when information is willingly disclosed by the original recipient against the wishes of the subject.

Among the various legal rules dealing with the acquisition of information from the subject or from areas in which he expects privacy are the law of search and seizure and the privilege against self-incrimination. The first embodies a kind of balancing approach, in theory applied in advance by a disinterested official, the "probable cause" standard defining when the public interest in a search overcomes the individual's interest in privacy. By contrast, the privilege against self-incrimination totally insulates some areas from inquiry. The search and seizure approach has been applied to electronic surveillance; the main responsibility for reviewing present law in this regard lies with a National Commission created under the applicable 1968 Act.

In identifying areas in which there may be a need for further legal protection, Professor Greenawalt's study shows that much information is disclosed by individuals to obtain benefits, such as a job or credit, and there is a need to inform individuals more fully how information is used and to review the need for much information that is gathered.

With respect to the acquisition of information from unwilling original recipients, what is needed is more effective physical protection of record systems from outsiders and from "insiders" who act with illegitimate purposes. Careful review is also needed of the dissemination policies of original recipients, private and public. Information may be passed on without very strong justification and contrary to the understanding of the subject of the information. The tort right of privacy protects against only a limited class of disclosures and systematic legislation and administrative regulation is required to deal with the threats to privacy posed by comprehensive manual and computerized record systems.

While the study states that many of the most dire predictions about computers have not been realized, there is a need to regulate the pervasive record systems that now play such an important part in peoples' lives. There should be more effective review and control of the kinds of information

that are gathered; better efforts to inform subjects of the uses of information; more careful scrutiny of exchanges of information among different record systems; and rights of notice, access, and challenge to contribute to accuracy, and to undercut secret files except where clearly needed.

Finally, and of most immediate interest in the context of these hearings, the study identifies the area of monitoring or recording by a participant to a conversation as one of the most murky aspects of the privacy problem. Indeed, Professor Greenawalt has stated that the proper boundaries of such recording and effective enforcement of existing restrictions are among the most significant problems for the protection of privacy.

As we continue to evaluate Professor Greenawalt's study, we intend to give particular attention to the question of participant monitoring within the Government. We shall, of course, work closely with this Subcommittee, as we have in the past, to respond to the possible need for further legal safeguards to deal with such monitoring, including the adequacy of the present Department of Justice guidelines in this area.

This concludes my statement.

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*Eger statement and testimony
House Government Operations Subcommittee
Federal Monitoring Practices
June 11, 1974*

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Mr. MOORHEAD. Thank you.

Thank you both very much for your very eloquent and helpful statements. We know that it is a very difficult area.

The subcommittee will now recess until 2 o'clock this afternoon.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. MOORHEAD. The Subcommittee on Foreign Operations and Government Information will please come to order.

Today's and Thursday's public hearings by the subcommittee are part of a longstanding and continuing investigation by Congress into the problems of invasion of privacy. At these particular sessions we are focusing on the use of telephone monitoring and telephone surveillance devices by the Government, especially as they affect the people of the United States.

The subcommittee will consider mainly the magnitude and propriety of the monitoring of exchange of information among Government agencies and between those agencies and the public. We firmly believe when a citizen contacts a Federal agency by telephone he should know whether his call is being monitored and recorded and if so, why.

As our first witness this afternoon the subcommittee would like to hear from John Eger, Deputy Director, Office of Telecommunications Policy, accompanied by Charles C. Joyce, Jr., Assistant Director for Government Communications.

STATEMENT OF JOHN EGER, DEPUTY DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY; ACCOMPANIED BY CHARLES C. JOYCE, JR., ASSISTANT DIRECTOR OF GOVERNMENT COMMUNICATIONS

Mr. EGER. Good afternoon, Mr. Chairman.

Mr. MOORHEAD. Won't you sit down?

I will not administer the oath until there is a quorum present.

You may proceed as you wish, read your entire statement or summarize it and we will put the entire statement in the record, as you personally prefer.

Mr. EGER. Thank you, Mr. Chairman.

Because of the statement's brevity, I would like to read it if the chairman pleases?

Mr. MOORHEAD. Fine, we will be delighted to hear it.

Mr. EGER. I am here today with Mr. Charles Joyce, OTP's Assistant Director for Government Communications. I welcome this opportunity to testify before the Foreign Operations and Government Information Subcommittee, and I particularly wish to commend you, Mr. Chairman, the other members of this subcommittee and your staff for the fine work which you have done over the years relative to telephone monitoring and other surveillance practices within the Federal Government.

In 1961, this subcommittee issued a report which criticized the lack of regulations governing monitoring practices and recommended

broad principles which OTP generally supports and which guide OTP's own use of transmitter cutoff switches. For the present hearings, you asked that we discuss the nature and use of telephone monitoring equipment by this Office. OTP does not permit telephone monitoring without the consent of all parties to the conversation. When such consent is given, secretaries may come on the line, and transmitter cutoff devices are useful for reducing background noise. As we reported in response to the GAO survey, three transmitter cutoff switches are installed on secretarial telephone consoles in the director's office. The total rent for fiscal year 1973 was \$90; we expect that to be about the same for fiscal 1974.

In addition to OTP's use of the telephone listening devices, you also requested that we summarize the results of the privacy study about which Clay T. Whitehead, Director of OTP, testified before this subcommittee last July. He stated that the Office had undertaken a study of the adequacy of present law and regulation to protect the privacy of individuals in their electronic communications and the security of the systems carrying them.

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Professor Greenawalt noted that while there are various significant nonlegal restraints on invasions of privacy including physical barriers, indifference, and ethical restraints, legal protections by far are the most significant restrictions.

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While the study states that many of the most dire predictions about computers have not been realized, there is a need to regulate the pervasive record systems that now play such an important part in people's lives. There should be more effective review and control of the kinds of information that are gathered; better efforts to inform subjects of the uses of information; more careful scrutiny of exchanges of information among different record systems. In addition, there should be clearly defined rights of notice, access and challenge to insure accuracy, and to undercut secret files except where clearly needed.

Finally, and of most immediate interest in the context of these hearings, the study identifies the area of monitoring or recording by a participant to a conversation as one of the most murky aspects of the privacy problem. Indeed, Professor Greenawalt has stated that the proper boundaries of such recording and effective enforcement of existing restrictions are among the most significant problems for the protection of privacy.

As we continue to evaluate Professor Greenawalt's study, we intend to give particular attention to the question of participant monitoring within the Government. We shall, of course, work closely with this subcommittee, as we have in the past, to respond to the possible need for further legal safeguards to deal with such monitoring, including the adequacy of the present Department of Justice guidelines in this area.

This concludes my statement.

Mr. Joyce and I are prepared to answer any questions you may wish to address to us.

Mr. MOORHEAD. Thank you very much, Mr. Eger. I think your statement is excellent.

I like your definition of privacy—with the importance of privacy as you have expressed it at the bottom of page 2—"prerequisite for the development of individuality, intellectual growth, creative activity, emotional release, and maintenance of relationships with others." That is an excellent statement. But I am perturbed when I see that statement

on page 2 and then turn to page 5, where I understand you to say that monitoring or recording by a participant to a conversation is one of the most murky aspects of the privacy problem. It seems to me that is a clear invasion of the privacy, not a murky one, if I define murky to be unclear.

Mr. EGER. Until such time as it is finished and coordinated between ourselves and the Privacy Committee and other interested agencies, I can't be definitive. However, when Professor Greenawalt talks about its being a murky area, I think he has in mind that there are Supreme Court decisions which say there isn't a constitutional invasion here. We recognize it flirts with some of the fundamental concepts inherent in constitutional principles, and indeed the fabric of our society. There are good arguments on both sides. As compared to some of the other more abusive or offensive violations of the rights of privacy, even as broadly used as that term often is, this particular term of monitoring does raise some problems which are murkier, perhaps, than other forms.

Mr. MOORHEAD. Maybe I am hazy on the word "monitoring." I include in that to mean wiretapping or picking up the extension phone.

Mr. EGER. Yes sir.

Mr. MOORHEAD. And you still consider that to be murky?

Mr. EGER. Yes sir. I think it is.

Mr. MOORHEAD. Murky in the case of the law as it now exists, or murky as to whether it should be considered an invasion of privacy?

Mr. EGER. Certainly murky as to the law which now exists, Mr. Chairman.

Mr. MOORHEAD. I would think that monitoring, by whatever means, is an invasion of an individual's privacy—he loses control over information about him if he is revealing something on the telephone or other device and that is being monitored by someone else—it seems to me a clear case following under your excellent definition.

Mr. EGER. As broadly as one wishes to define privacy, the development question is first, whether it is such an offensive invasion that you wish to define it as an invasion of privacy; and second, what does one do about it? In your home or mine, when two people pick up the phone at the same time, with one on an extension who listens for a minute, that is monitoring, and one might say that is an argument in favor of taking some sanctions against my wife or my daughter, for example. I see the principle there. The question is what do we do with it. To that extent I have to agree with the chairman.

Mr. MOORHEAD. It may be that what we do about it is murky, but it seems to me just as clear as can be that this is an invasion of privacy. It may be a permitted invasion of privacy under court order or something like that, but it is clearly to me an invasion of privacy as you define it. We start with a fairly clear proposition of what it is, and then the murky part begins with what do we do about it. Your definition was so good and then I was a little disturbed about that.

Do you consider that OTP has any responsibility, say, to advise the President on how telecommunications can be used to invade privacy and how it should be restrained?

Mr. EGER. Absolutely, sir. I think it is our responsibility, and there are a number of other agencies with responsibility in this area as well. Our office considers this very high in our order of priorities and with respect to the particular subject of this hearing, that is, participant

monitoring, we intend as one of our acts to investigate further what, if any, recommendations for safeguards we should consider.

Mr. MOORHEAD. I understand you have three of these transmitter cutoff switches in your agency.

Mr. EGER. Yes sir, we do.

Mr. MOORHEAD. Used properly—when you inform people—it does make it easier to make recordings, or at least you don't have the noise in the background of the monitoring telephone?

Mr. EGER. Yes sir.

Mr. MOORHEAD. Does not that device also make it easier to monitor without the subject knowing he is being monitored?

Mr. EGER. Unquestionably it would, sir. Certainly it is easier than going to an extension telephone and cupping one's hand over the transmitter if one were desirous of monitoring that way.

Mr. MOORHEAD. That would be the purpose of the transmitter cutoff if it were to be used, as I say, without the subject knowing about it?

Mr. EGER. I think that is certainly one of the uses of the transmitter cutoff, Mr. Chairman.

Mr. MOORHEAD. If you found some department or agency having a disproportionately large number of these cutoff switches, would you think that that was a signal that would cause OTP or whoever else might have the responsibility to say "wait a minute," is that a signal that they may be using it for improper monitoring?

Mr. EGER. I don't know. We have no idea what other offices are using transmitter keys, push, talk, listening circuits for. Fortunately, through this committee we are gaining information about how other Government agencies are using them. That is one factor we will have to crank—

Mr. MOORHEAD. The one factor being a disproportionate number?

Mr. EGER. Whether it is a large number or not, I can't answer that question today.

Mr. MOORHEAD. We are going to have that particular department up here to testify. I think it will be very brief testimony. You might want to stick around.

Mr. EGER. I certainly will stay around this afternoon, and we will have coverage in these hearings as we have in the past, because we are very interested in the work the subcommittee is doing. It is very helpful to us.

Mr. MOORHEAD. I ask you because you are in the Office of Telecommunications Policy, you may have some technical information that can help us.

What is the KDZ instrument? Do you know that?

Mr. EGER. Mr. Chairman, I am a lawyer by training, not an engineer. I will have to ask Mr. Joyce if he knows what that refers to.

Mr. JOYCE. Mr. Chairman, I am an engineer by training, but I don't know what that refers to.

Mr. MOORHEAD. Well, I have a definition. "service observing equipment associated with a call director appears as a separate button on the telephone." Does that help us along?

Mr. JOYCE. No, sir. I heard the distinction between service observing and supervisory observing, but I am afraid I can't address that question.

Mr. MOORHEAD. Mr. Cornish?

Mr. CORNISH. Yes, thank you, Mr. Chairman.

Mr. EGER. I notice on page 1 you state the Office of Telecommunications Policy does not permit telephone monitoring without the consent of all parties to the conversation.

Mr. EGER. That is correct.

Mr. CORNISH. That goes beyond mere notification. What if someone said well, I don't want my telephone monitored. You just notified me that it is being monitored. What would you do in that case, halt the monitoring?

Mr. EGER. No, Mr. Cornish, it would never even get started. What I meant to convey is that if for some reason we wish the secretary to take notes, we would ask the other party on the line, do you mind if my secretary gets on to take notes? If the answer is no, obviously we do not have consent and therefore we do not monitor it.

Mr. CORNISH. You are using consent with the full implication and meaning of the word?

Mr. EGER. Yes, notification and authorization.

Mr. CORNISH. Would you suggest this be the practice throughout the entire U.S. Government where telephone monitoring is?

Mr. EGER. That is a question I can't answer at this time for other agencies. Again, we have only three cutoff keys. I didn't know how they were used. I didn't know my secretary had one until Friday. But I can't address that question because I don't know about other agencies and hopefully we will hear about how they use them and how valuable they are so we can apply balancing tests at some appropriate time.

Mr. CORNISH. Were you here this morning when I was discussing the taxpayers calling into IRS offices for tax information?

Mr. EGER. Yes, I was.

Mr. CORNISH. And that there were certain numbers of those calls monitored. Would you suggest that might be an instance where a person would be notified and also asked for his consent?

Mr. EGER. Professor Greenawalt addressed that, and again I haven't gotten into it in any great depth, but he suggested that perhaps there should be notification and the opportunity to be heard. You know, the twin peaks of fundamental due process ought somehow to be worked into this kind of monitoring, whether it is participant monitoring or consent of all the parties.

Mr. CORNISH. I think there are certain elements in your statement that are really excellent.

Thank you.

Mr. EGER. Thank you, Mr. Cornish.

Mr. MOORHEAD. Mr. Daniels?

Mr. DANIELS. No questions, Mr. Chairman.

Mr. MOORHEAD. Mr. Phillips?

Mr. PHILLIPS. Just a couple, Mr. Chairman.

Mr. Eger, as part of your overall responsibility in this area that you referred to earlier, was OTP consulted by the White House concerning the decision to tape record private conversations in the Oval Office?

Mr. EGER. Mr. Phillips, I can't speak to that question. I have only been with the office 4 months now, so I simply can't answer it. It may be that Mr. Joyce has personal knowledge of that.

Mr. JOYCE. I have no personal knowledge of OTP's being consulted. It certainly didn't come to me.

Mr. EGER. I should say, and I read some of the testimony of Mr. Whitehead and some of the fine questions posed to him during his first appearance here about what the functions and responsibilities of the Office of Telecommunications Policy are, that I think it is highly likely we would not have been asked, because we do not usually render ad hoc advisory opinions, nor operate or control any of the systems at all, and even though we are in the Executive Office of the President, the President's communications are governed and ordered by the White House communications agencies. I believe that is correct.

Mr. PHILLIPS. Could you check and see if someone in the agency who might have been there at the time this decision was made? I think it would have been either late in 1970 or early 1971. But this was asked in the context of the study that you had mentioned that had been commissioned, and also your comments about the whole question of privacy and the role which OTP is playing, an important role, in assuring a greater emphasis and awareness of this whole privacy problem as it affects Government agencies.

It would seem to me that certainly there would be an invasion of privacy of those individuals whose conversations in the oval office were taped without their knowledge or consent and this is certainly not the policy that you have been enunciating as it affects your agency and any other agency.

[A response to the above paragraph follows:]

OFFICE OF TELECOMMUNICATIONS POLICY,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., June 17, 1974.

Hon. WILLIAM S. MOORHEAD,
Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During our testimony on June 11, Mr. Phillips of your staff asked if OTP was involved in the decision to tape record conversations at the White House, and suggested that we submit a response for the record.

I have been able to verify that OTP was not consulted on that matter, and was unaware of the recording until it became public knowledge.

Sincerely,

JOHN M. EGER.

Mr. MOORHEAD. Do any other staff members have questions?

Mr. STETTNER. No, Mr. Chairman.

Mr. MOORHEAD. Well, thank you very much.

[Questions submitted in writing to the OTP and answers thereto follow:]

Question 1. What criteria have been furnished to the General Services Administration against which that agency might measure representations of other agencies that their "operational needs" require transmitter cutoffs, service observing equipment, and so forth?

Answer. OTP has not furnished to the General Services Administration any criteria regarding the use of transmitter cutoff switches or service observing equipment. OTP commissioned a study by Professor Kent Greenawalt of Columbia Law School on the legal protection of privacy. Professor Greenawalt describes participant monitoring as perhaps the most confused area, both legally and philosophically, in the whole field of privacy. OTP is going to do further investigation in this field, and will in addition recommend to the Domestic Council Committee on Privacy that it examine the area.

Question 2. Does the Office of Telecommunications Policy assume that the General Services Administration has responsibility for and has developed criteria, of its own initiative?

WILLIAM S. MOORHEAD, PA., CHAIRMAN
JOHN E. MOSE, CALIF.
TORBERT H. MACDONALD, MASS.
JIM WRIGHT, TEX.
ALEXANDER, ARK.
ALLEN, N.Y.
STANTON, OHIO

JOHN H. ELLERBORN, ILL.
PAUL H. MCCORMACK, JR., CALIF.
GILBERT GORDON, MD.
CHARLES THOMAS, NEBR.
RALPH S. REGULA, OHIO

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NINETY-THIRD CONGRESS

Congress of the United States
House of Representatives

FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE
OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-371-B
WASHINGTON, D.C. 20515

June 18, 1974

Honorable John Eger
Deputy Director
Office of Telecommunications Policy
1800 G Street, N.W.
Washington, D. C. 20504

Dear Mr. Eger:

Enclosed is the transcript of the Foreign Operations and Government Information Subcommittee's hearing on telephone monitoring and other surveillance practices, held June 11, 1974. Also enclosed is a list of nine questions to be answered for inclusion in the hearing record.

Please make any necessary grammatical corrections of your testimony in the transcript and return it, along with the replies to the questions, to the Subcommittee by Monday, July 8, 1974.

Return to: Foreign Operations and Government
Information Subcommittee
Room B-371B, Rayburn Building
Washington, D. C. 20515

Thank you.

Sincerely,

Martha M. Doty

Martha M. Doty (Mrs.)
Clerk

Enclosures

QUESTIONS FOR THE OFFICE OF TELECOMMUNICATIONS POLICY

1. What criteria have been furnished to the General Services Administration against which that agency might measure representations of other agencies that their "operational needs" require transmitter cut-offs, service observing equipment, etc?
2. Does the Office of Telecommunications Policy assume that the General Services Administration has responsibility for and has developed criteria, of its own initiative?
3. What is the nature of any limitation on the authority delegated by OTP to the General Services Administration to prescribe in the Federal Property Management Regulations operating practices relating to the monitoring of telephone conversations?
4. Does the Office of Telecommunications Policy assume that agencies' requests to the General Services Administration for installation of such equipment would be questioned (i.e., critically challenged) beyond requiring that such requests be made in writing?
5. Which agency (OTP or GSA) should be concerned with the matter of excessive numbers of such equipment and/or service being obtained, where agencies deal directly with operating telephone companies because in that location General Services Administration has not established a centralized switchboard operation?
6. What are the views of the Office of Telecommunications Policy on the concept of "teleservice centers" and the widespread introduction of service monitoring equipment in these centers, in terms of their potential and actual invasion of privacy of those calling in?
7. Does the Office of Telecommunications Policy support the decision by the Secretary of HEW to discontinue service monitoring at its teleservice centers and recommend similar action be taken by those other agencies operating numbers of similar teleservice centers?
8. What reservations would OTP have to recommending Government-wide adoption of its own policy that monitoring of telephone conversations not be permitted without the consent (i.e., notification and authorization) of all parties to the conversation rather than the mere notification, which is now the policy of many Federal agencies?

9. Summarize for the Subcommittee those actions taken by OTP, in consonance with responsibilities and authorities set out in Executive Order 11556, dated September 4, 1970, as these relate to:

a. consultation with agencies to ensure that their conduct of telecommunications activities is consistent with the policies and standards of the Director, OTP. (Section 1(b))

b. Coordinate the telecommunications activities of the Executive Branch and formulate policies and standards therefor, including ... privacy... . (Section 1(e))

c. conduct and coordinate economic, technical, and systems analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities (Section 1(j))

1. What criteria have been furnished to the General Services Administration against which that agency might measure representations of other agencies that their "operational needs" require transmitter cutoffs, service observing equipment, etc.?

OTP has not furnished to the General Services Administration any criteria regarding the use of transmitter cutoff switches or service observing equipment. OTP commissioned a study by Professor Kent Greenawalt of Columbia Law School on the legal protection of privacy. Professor Greenawalt describes participant monitoring as perhaps the most confused area, both legally and philosophically, in the whole field of privacy. OTP is going to do further investigation in this field, and will in addition recommend to the Domestic Council Committee on Privacy that it examine the area.

2. Does the Office of Telecommunications Policy assume that the General Services Administration has responsibility for and has developed criteria, of its own initiative?

The primary responsibility of the General Services Administration is to procure the goods and services needed by Government agencies on terms most advantageous to the Government. It is not the responsibility of the General Services Administration to determine requirements. While the General Services Administration should not conduct any procurement which violates Government policy, it is not the responsibility of GSA to develop such policy, at least in the telecommunications area. Notwithstanding this, GSA procurement regulations issued in 1968 state that the use of transmitter cutoff switches and other monitoring devices is not permitted. However, agency heads are permitted to exempt their agencies from this prohibition, and to delegate the authority for such exemption within their own agencies. This in effect leaves to the agencies the authority to determine whether such devices are required.

As stated in response to question one, OTP will consider whether there is a need for overall policy guidance in this field; and if so, which agency or agencies should provide the appropriate guidance.

3. What is the nature of any limitation on the authority delegated by OTP to the General Services Administration to prescribe in the Federal Property Management Regulations operating practices relating to the monitoring of telephone conversations?

OTP has not delegated to GSA any authority relating to the specification of operating practices for telephone monitoring.

4. Does the Office of Telecommunications Policy assume that agencies' requests to the General Services Administration for installation of such equipment would be questioned (i.e., critically challenged) beyond requiring that such requests be made in writing?

At present, if the agency heads or their delegates submit the required determinations, there is no basis for GSA to question agency requests for the installation of monitoring equipment. We understand that GSA requires that these determinations be made in writing.

5. What agency (OTP or GSA) should be concerned with the matter of excessive numbers of such equipment and/or service being obtained, where agencies deal directly with operating telephone companies because in that location General Services Administration has not established a centralized switchboard operation?

At present, we assume GSA's only concern would be whether, as required by its procurement regulations issued in 1971, the head of the procuring agency or his authorized designee had determined in writing that the monitoring device was essential to the effective execution of agency responsibilities or was required by operational needs, and the agency had retained this determination in its files.

6. What are the views of the Office of Telecommunications Policy on the concept of "teleservice centers" and the widespread introduction of service monitoring equipment in these centers, in terms of their potential and actual invasion of privacy of those calling in?

Clearly, assuming that notification and authorization is the ideal in any participant monitoring situation, the problem of providing adequate notification is more vexing in the case of service monitoring than in most other forms of participant monitoring. OTP is examining the question of service monitoring in telephone service centers as part of its broader concern with participant monitoring.

7. Does the Office of Telecommunications Policy support the decision by the Secretary of HEW to discontinue service monitoring at its teleservice centers and recommend similar action be taken by those other agencies operating numbers of similar teleservice centers?

The Office of Telecommunications Policy has not reviewed the use of service observing by HEW, nor the reasons for its discontinuance, and therefore has no comment on this action at this time.

8. What reservations would OTP have recommending Government-wide adoption of its own policy that monitoring of telephone conversations not be permitted without the consent (i.e., notification and authorization) of all parties to the conversation rather than the mere notification, which is now the policy of many Federal agencies?

As we indicated in our testimony, transmitter cutoff devices are used only at the top executive levels in OTP, and then only with the consent of all parties to the conversation. Where transmitter cutoffs are used in other Federal agencies at the Executive level, we would assume that similar reasons for their use prevail, and that the application of the same policy might well be appropriate. However, before recommending government-wide adoption of this policy at all levels, we would want to be more familiar with other types of situations in which these devices are used and the justification therefor. It may turn out that some distinctions will have to be made between applications in which the consent of all parties should be obtained, and those where it is not in the public interest to do so.

9. Summarize for the Subcommittee those actions taken by OTP, in consonance with responsibilities, and authorities set out in Executive Order 11556, dated September 4, 1970, as these relate to:

- a. consultation with agencies to ensure that their conduct of telecommunications activities is consistent with the policies and standards of the Director, OTP. (Section 1(b))
- b. Coordinate the telecommunications activities of the Executive Branch and formulate policies and standards therefor, including...privacy... (Section 1(e))
- c. conduct and coordinate economic, technical, and systems analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities (Section 1(j))

The attached Programs and Activities Reports describe the broad range of OTP's activities. The activities which are most pertinent to the responsibilities listed in question No. 9 are summarized below.

In late 1972, OTP developed and promulgated a set of management procedures (OTP Circular No. 11), requiring all Federal Government agencies to submit their frequency plans to OTP well in advance, with the objective of ensuring a critical review of frequency spectrum availability for Government communication-electronic systems prior to the commitment or expenditure of public funds. OTP's experience with the application of these procedures has confirmed emphatically that the procedures are appropriate and can meet the desired objectives.

In matters related to management of the Government's use of the radio frequency spectrum, OTP is assisted by the Interdepartment Radio Advisory Committee (IRAC). The IRAC is composed of representatives of 16 Government agencies having major communication-electronic operations, plus a liaison representative from the Federal Communications Commission.

OTP also established in 1972, the Council of Government Communications Policy and Planning. This council, chaired by OTP's Director, currently includes policy level representatives from the Departments of State, Treasury, Defense, Justice, Commerce, and Transportation and from the General Services Administration, the National Aeronautics and Space Administration, and the Central Intelligence Agency. The Council provides a consultative forum for OTP and Federal departments and agencies with the most significant telecommunications system development and operational responsibilities.

In October, 1973, OTP established a formal planning and coordination process (OTP Circular No. 12) called the Government Communications Planning Program (GCPP) which was designed to achieve many of OTP's objectives through the day-to-day activities of the operating departments and agencies. The objectives of the Government Communications Planning Program are:

first, to identify all the communications activities and resources of the Federal Government; second, to determine the needs for effective information exchange among the various departments and agencies; third, to promote economy in the Government's use of communications, through sharing of facilities, elimination of duplication, and effective use of commercial services; and finally, to encourage the use of communications to improve productivity and enhance coordination of Federal Government activities.

In June of this year, OTP established guidelines (OTP Circular No. 13) designed to clarify the normal Federal role as a user, rather than a provider, of telecommunication service. The policy emphasizes the need to place maximum reliance on the private sector in providing telecommunications services to the Federal Government.

With respect to OTP's privacy-related efforts, it has been proposed recently to the Domestic Council's Committee on the Right of Privacy that OTP's GCPP be used to assure that personal privacy rights are given systematic consideration in the planning, coordination and procurement of Federal data communications systems. This recommendation was developed by an interagency task force, chaired by OTP's Assistant Director for Government Communications. The need for such systematic review was demonstrated recently by the events relating to GSA's plans for FEDNET, which progressed undetected until just before release of the formal request for proposals to industry. OTP analyzed the communications component of FEDNET and, after full consideration of various aspects including the economic and privacy implications,

recommended a complete reorientation of that communications program. OTP continues to be concerned with FEDNET and is monitoring closely Federal procurement of telecommunications equipment associated with ADP operations to prevent other "FEDNETS" from advancing so far undetected.

Another privacy-related activity, discussed in our answer to question No. 1, is an OTP-commissioned study by Professor Kent Greenawalt of Columbia Law School. OTP is presently studying his recommendations and we expect some of them to result in action by OTP, and some to result in further recommendations by OTP to the Domestic Council's Committee on the Right of Privacy.

A

SUMMARY CHRONOLOGY -- GSA's FEDNET PROPOSAL

1. August 30, 1967: OMB Circular A-76 - Policies for acquiring commercial or industrial products and services for government use. States there is no change in policy of relying on private sector.
2. July 31, 1973: OTP testifies before House Government Operation Subcommittee (Representative Moorehead) on Federal Information Systems (see also briefing material on Federal Information and Monitoring Procedures).
3. October 12, 1973: OTP Circular 12.
4. January 31, 1974: OTP letter to GSA's M. S. Meeker questions draft RFP.
5. March 4, 1974: OTP letter to Meeker says we are "dismayed" over implications of GSA proposal.
6. April 25, 1974: Representative Moss writes GSA, questions "extraordinary circumstances" surrounding GSA's RFP.
7. April 30, 1974: OTP letter to GSA's Sampson strongly opposes GSA's plan for government designed and operated data communications network.
8. May 9, 1974: OMB's Ash letter to GSA's Sampson recommends that GSA withdraw RFP, notes OTP opposition.

9. May 9, 1974: Vice President Ford speaks in Chicago, soundly roasts FEDNET, says Privacy Committee concerned.
10. May 10, 1974: GSA's Sampson replies to Representative Moss, assures him that individual privacy will be central concern in Procurement Plan.
11. May 15, 1974: Representative Moss again responds to Sampson, says latter only partially answered his questions, calls explanations "meaningless."
12. May 16, 1974: Sampson responds to OTP, agrees to amend RFP to (1) eliminate data communications network, and (2) three of four optional sites are deleted.
13. May 30, 1974: OTP testifies before Senator Montoya's Appropriations Subcommittee on GSA FEDNET.
14. June 18, 1974: OTP testifies before Senate Judiciary Subcommittee on privacy aspects of GSA's FEDNET.
15. June 21, 1974: OTP Circular 13.

B

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

August 30, 1967

CIRCULAR NO. A-76
Revised

Transmittal Memorandum No. 1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use

Transmitted herewith is a revision of Bureau of the Budget Circular A-76 dated March 3, 1966. It is issued to clarify some provisions of the earlier Circular and to lessen the burden of work by the agencies in implementing its provisions. A brief summary of the changes is attached.

There is no change in the Government's general policy of relying upon the private enterprise system to supply its needs, except where it is in the national interest for the Government to provide directly the products and services it uses.

We intend to keep the provisions of the Circular under continuing review. We anticipate that further changes will be desirable in light of experience gained from implementing the Circular's provisions, including the required reviews of existing Government commercial or industrial activities to be completed by June 30, 1968. We intend to give special attention to the adequacy of the guidelines contained in the Circular for such matters as comparative cost analyses; the circumstances under which cost differentials in favor of private enterprise are appropriate; and the use of contracts involving support services that require minimal capital investment.

We welcome your suggestions.

PHILLIP S. HUGHES
Acting Director

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON, D.C. 20503

August 30, 1967

CIRCULAR NO. A-76

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for acquiring commercial or industrial products and services for Government use

1. Purpose. This Circular replaces Bureau of the Budget Circular A-76 issued March 3, 1966. It is issued to clarify some provisions of the earlier Circular and to lessen the burden of work by the agencies in implementing its provisions. The basic policies to be applied by executive agencies in determining whether commercial and industrial products and services used by the Government are to be provided by private suppliers or by the Government itself are the same as those contained in Circular A-76 dated March 3, 1966.

2. Policy. The guidelines in this Circular are in furtherance of the Government's general policy of relying on the private enterprise system to supply its needs.

In some instances, however, it is in the national interest for the Government to provide directly the products and services it uses. These circumstances are set forth in paragraph 5 of this Circular.

No executive agency will initiate a "new start" or continue the operation of an existing "Government commercial or industrial activity" except as specifically required by law or as provided in this Circular.

3. Definitions. For purposes of this Circular:

a. A "new start" is a newly established Government commercial or industrial activity involving additional capital investment of \$25,000 or more or additional annual costs of production of \$50,000 or more. A re-activation, expansion, modernization or replacement of an activity involving additional capital investment of \$50,000 or more or additional annual costs of production of \$100,000 or more are, for purposes of this Circular, also regarded as "new starts." Consolidation of two or more activities without increasing the overall total amount of products or services provided is not a "new start."

b. A Government commercial or industrial activity is one which is operated and managed by an executive agency and which provides for the Government's own use a product or service that is obtainable from a

private source. The term does not include a Government-owned contractor-operated activity.

c. A private commercial source is a private business concern which provides a commercial or industrial product or service required by agencies and which is located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico.

4. Scope. This Circular is applicable to commercial and industrial products and services used by executive agencies, except that it:

a. Will not be used as authority to enter into contracts if such authority does not otherwise exist nor will it be used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, nor will it be used for the purpose of avoiding established salary or personnel limitations.

b. Does not alter the existing requirement that executive agencies will perform for themselves those basic functions of management which they must perform in order to retain essential control over the conduct of their programs. These functions include selection and direction of Government employees, assignment of organizational responsibilities, planning of programs, establishment of performance goals and priorities, and evaluation of performance.

c. Does not apply to managerial advisory services such as those normally provided by an office of general counsel, a management and organization staff, or a systems analysis unit. Advisory assistance in areas such as these may be provided either by Government staff organizations or from private sources as deemed appropriate by executive agencies.

d. Does not apply to products or services which are provided to the public. (But an executive agency which provides a product or service to the public should apply the provisions of this Circular with respect to any commercial or industrial products or services which it uses.)

e. Does not apply to products or services obtained from other Federal agencies which are authorized or required by law to furnish them.

f. Should not be applied when its application would be inconsistent with the terms of any treaty or international agreement.

5. Circumstances under which the Government may provide a commercial or industrial product or service for its own use. A Government commercial or industrial activity may be authorized only under one or more of the following conditions:

a. Procurement of a product or service from a commercial source would disrupt or materially delay an agency's program. The fact that a commercial or industrial activity is classified or is related to an agency's basic program is not an adequate reason for starting or continuing a Government activity, but a Government agency may provide a product or service for its own use if a review conducted and documented as provided in paragraph 7 establishes that reliance upon a commercial source will disrupt or materially delay the successful accomplishment of its program.

b. It is necessary for the Government to conduct a commercial or industrial activity for purposes of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.

c. A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed. Agencies' efforts to find satisfactory commercial sources should be supplemented as appropriate by obtaining assistance from the General Services and Small Business Administrations or the Business and Defense Services Administration. Urgency of a requirement is not an adequate reason for starting or continuing a Government commercial or industrial activity unless there is evidence that commercial sources are not able and the Government is able to provide a product or service when needed.

d. The product or service is available from another Federal agency. Excess property available from other Federal agencies should be used in preference to new procurement as provided by the Federal Property and Administrative Services Act of 1949, and related regulations.

Property which has not been reported excess also may be provided by other Federal agencies and unused plant and production capacity of other agencies may be utilized. In such instances, the agency supplying a product or service to another agency is responsible for compliance with this Circular. The fact that a product or service is being provided to another agency does not by itself justify a Government commercial or industrial activity.

e. Procurement of the product or service from a commercial source will result in higher cost to the Government. A Government commercial activity may be authorized if a comparative cost analysis prepared as provided in this Circular indicates that the Government can provide or is providing a product or service at a cost lower than if the product or service were obtained from commercial sources.

However, disadvantages of starting or continuing Government activities must be carefully weighed. Government ownership and operation of facilities usually involve removal or withholding of property from

tax rolls, reduction of revenues from income and other taxes, and diversion of management attention from the Government's primary program objectives. Losses also may occur due to such factors as obsolescence of plant and equipment and unanticipated reductions in the Government's requirements for a product or service. Government commercial activities should not be started or continued for reasons involving comparative costs unless savings are sufficient to justify the assumption of these and similar risks and uncertainties.

6. Cost comparisons. A decision to rely upon a Government activity for reasons involving relative costs must be supported by a comparative cost analysis which will disclose as accurately as possible the difference between the cost which the Government is incurring or will incur under each alternative.

Commercial sources should be relied upon without incurring the delay and expense of conducting cost comparison studies for products or services estimated to cost the Government less than \$50,000 per year. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study will be directed by the agency head or by his designee even if it is estimated that the Government will spend less than \$50,000 per year for the product or service. A Government activity should not be authorized on the basis of such a comparison study, however, unless reasonable efforts to obtain satisfactory prices from existing commercial sources or to develop other commercial sources are unsuccessful.

Cost comparison studies also should be made before deciding to rely upon a commercial source when terms of contracts will cause the Government to finance directly or indirectly more than \$50,000 for cost of facilities and equipment to be constructed to Government specifications. Cost comparison studies should also be made in other cases if there is reason to believe that savings can be realized by the Government providing for its own needs. Such studies will not be made, however, if in-house provision of the product or service, or commercial procurement thereof, is clearly justified in accordance with other provisions of this Circular.

The determination as to whether to purchase or to lease equipment or to construct buildings or acquire their use under lease-construction arrangements involves a determination of the difference in costs under the alternatives, and the principles set forth in this Circular should be applied to the extent relevant in making such determinations.

a. Costs of obtaining products or services from commercial sources should include amounts paid directly to suppliers, transportation charges, and expenses of preparing bid invitations, evaluating bids, and negotiating, awarding, and managing contracts. Costs of materials furnished by the Government to contractors, appropriate charges for Government-owned equipment and facilities used by contractors and costs due to incentive or

premium provisions in contracts also should be included. If discontinuance of a Government commercial or industrial activity will cause a facility being retained by the Government for mobilization or other reasons to be placed in a standby status, the costs of preparing and maintaining the facility as standby also should be included. Similarly, if such a discontinuance is expected to result in premature retirement of Government employees which will cause a significant increase in retirement costs to the Government, such increased cost should be added to the cost of procurement from commercial sources. Costs of obtaining products or services from commercial sources should be documented and organized for comparison with costs of obtaining the product or service from a Government activity.

b. For purposes of economy and simplicity in making cost comparison studies, generally agreed costs that would tend to be the same under either alternative need not be measured and included (for example, bid and award costs and operating costs under lease-purchase alternatives).

c. Costs of obtaining products or services from Government activities should include all costs which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial source. The objectives should be to compute, as realistically as possible, the incremental or additional cost that would be incurred by the Government under the alternatives under consideration. In making such determinations it is important that recognition be given to the full amount of additional or incremental direct and indirect cost to be incurred in providing the products or services required. Under this general principle, the following costs should be included, considering the circumstances of each case:

(1) Personal services and benefits. Include costs of all elements of compensation and allowances for both military and civilian personnel, including the full cost to the Government of retirement systems, calculated on a normal cost basis, Social Security taxes where applicable, employees' insurance, health, and medical plans, (including services available from Government military or civilian medical facilities), living allowances, uniforms, leave, termination and separation allowances, travel and moving expenses, and claims paid through the Bureau of Employees' Compensation.

(2) Materials, supplies, and utilities services. Include costs of supplies and materials used in providing a product or service and costs of transportation, storage, handling, custody, and protection of property, and costs of electric power, gas, water, and communications services.

(3) Maintenance and repair. Include costs of maintaining and repairing structures and equipment which are used in providing a product or service.

(4) Damage or loss of property. Include costs of uninsured losses due to fire or other hazard, costs of insurance premiums and costs of settling loss and damage claims.

(5) Federal taxes. Include income and other Federal tax revenues (except Social Security taxes) received from corporations or other business entities (but not from individual stockholders) if a product or service is obtained through commercial channels. Estimates of corporate incomes for these purposes should be based upon the earnings experience of the industry, if available, but if such data are not available, The Quarterly Financial Report of Manufacturing Corporations, published by the Federal Trade Commission and the Securities and Exchange Commission may be consulted. Assistance of the appropriate Government regulatory agencies may be obtained in estimating taxes for regulated industries.

(6) Depreciation. Compute depreciation as a cost for any new or additional facilities or equipment which will be required if a Government activity is started or continued. Depreciation will not be allocated for facilities and equipment acquired by the Government before the cost comparison study is started. However, if reliance upon a commercial source will cause Government-owned equipment or facilities to become available for other Federal use or for disposal as surplus, the cost comparison analysis should include as a cost of the Government activity, an appropriate amount based upon the estimated current market value of such equipment or facilities. The Internal Revenue Service publication, Depreciation Guidelines and Rules may be used in computing depreciation. However, rates contained in this publication are maximums to be used only for reference purposes and only when more specific depreciation data are not available. Accelerated depreciation rates permitted in some instances by the Internal Revenue Service will not be used. In computing the depreciation cost of new or additional facilities or equipment to be acquired if a Government activity is started or continued and in determining comparative costs under lease-purchase alternatives, appropriate recognition should be given to estimated residual or salvage values of the facilities or equipment.

(7) Interest. Compute interest for any new or additional capital to be invested based upon the average rate of yield for long-term Treasury bonds as shown in the current monthly Treasury Bulletin. The method of computation should provide for reduction in the capital investment to which interest is applied over the useful life of the asset on a straight-line basis.

(8) Indirect costs. Include any additional indirect costs incurred resulting from a Government activity for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

7. Administering the policy.

a. Inventory. Each agency will compile and maintain an inventory of its commercial or industrial activities having an annual output of products or services costing \$50,000 or more or a capital investment of \$25,000 or more. In addition to such general descriptive information as may be appropriate, the inventory should include for each activity the amount of the Government's capital investment, the amount paid annually for the products or services involved, and the basis upon which the activity is being continued under the provisions of this Circular. The general descriptive information needed for identifying each activity should have been included in the inventory by June 30, 1966. Other information needed to complete the inventory should be added as reviews required in paragraphs 7.b. and c. are completed.

b. "New starts."

(1) A "new start" should not be initiated until possibilities of obtaining the product or service from commercial sources have been explored and not until it is approved by the agency head or by an assistant secretary or official of equivalent rank on the basis of factual justification for establishing the activity under the provisions of this Circular.

(2) If statutory authority and funds for construction are required before a "new start" can be initiated, the actions to be taken under this Circular should be completed before the agency's budget request is submitted to the Bureau of the Budget. Instructions concerning data to be submitted in support of such budget requests will be included in annual revisions of Bureau of the Budget Circular No. A-11.

(3) A "new start" should not be proposed for reasons involving comparative costs unless savings are sufficient to outweigh uncertainties and risks of unanticipated losses involved in Government activities.

The amount of savings required as justification for a "new start" will vary depending on individual circumstances. Substantial savings should be required as justification if a large new or additional capital investment is involved or if there are possibilities of early obsolescence or uncertainties regarding maintenance and production costs, prices and future Government requirements. Justification may be based on smaller anticipated savings if little or no capital investment is involved, if chances for obsolescence are minimal, and if reliable information is available concerning production costs, commercial prices and Government requirements. While no precise standard is prescribed in view of these varying circumstances a "new start" ordinarily should not be approved unless costs of a Government activity will be at least 10 percent less than costs of obtaining the product or service from commercial sources. It is emphasized that 10 percent is not intended to be a fixed figure.

A decision to reject a proposed "new start" for comparative cost reasons should be reconsidered if actual bids or proposals indicate

that commercial prices will be higher than were estimated in the cost comparison study.

(4) When a "new start" begins to operate it should be included in an agency's inventory of commercial and industrial activities.

c. Existing Government activities.

(1) A systematic review of existing commercial or industrial activities (including previously approved "new starts" which have been in operation for at least 18 months) should be maintained in each agency under the direction of the agency head or the person designated by him as provided in paragraph 8. The agency head or his designee may exempt designated activities if he decides that such reviews are not warranted in specific instances. Activities not so exempted should be reviewed at least once before June 30, 1968. More frequent reviews of selected activities should be scheduled as deemed advisable. Activities remaining in the inventory after June 30, 1968, should be scheduled for at least one additional follow-up review during each three-year period but this requirement may be waived by the agency head or his designee if he concludes that such further review is not warranted.

(2) Reviews should be organized in such a manner as to ascertain whether continued operation of Government commercial activities is in accordance with the provisions of this Circular. Reviews should include information concerning availability from commercial sources of products or services involved and feasibility of using commercial sources in lieu of existing Government activities.

(3) An activity should be continued for reasons of comparative costs only if a comparative cost analysis indicates that savings resulting from continuation of the activity are at least sufficient to outweigh the disadvantages of Government commercial and industrial activities. No specific standard or guideline is prescribed for deciding whether savings are sufficient to justify continuation of an existing Government commercial activity and each activity should be evaluated on the basis of the applicable circumstances.

(4) A report of each review should be prepared. A decision to continue an activity should be approved by an assistant secretary or official of equivalent rank and the basis for the decision should appear in the inventory record for the activity. Activities not so approved should be discontinued. Reasonable adjustments in the timing of such actions may be made, however, in order to alleviate economic dislocations and personal hardships to affected career personnel.

8. Implementation. Each agency is responsible for making the provisions of this Circular effective by issuing appropriate implementing instructions and by providing adequate management support and procedures for review and followup to assure that the instructions are placed in effect. A copy of

the implementing instructions issued by each agency will be furnished to the Bureau of the Budget.

If overall responsibility for these actions is delegated by the agency head, it should be assigned to a senior official reporting directly to the agency head.

If legislation is needed in order to carry out the purposes of this Circular, agencies should prepare necessary legislative proposals for review in accordance with Bureau of the Budget Circular No. A-19.

9. Effective date. This Circular is effective on October 2, 1967.

PHILLIP S. HUGHES
Acting Director

(No. A.-76)

SUMMARY OF CHANGES IN BUREAU OF THE BUDGET CIRCULAR NO. A-76
AS REVISED AUGUST 1967

Paragraph 3 - Definitions

3.a. The definition for a "new start" has been split as between (a) a newly established Government commercial or industrial activity and (b) a reactivation, expansion, modernization, or replacement of an activity. These separate definitions have been provided so that different dollar limitations on capital investment and annual cost of production may be applied. There is no change in the dollar limitations applicable to newly established Government commercial or industrial activities. But the dollar limitations have been doubled for the category of "new starts" that are a reactivation, expansion, modernization, or replacement of an activity. The change is necessary in order to avoid applying the "new start" procedures to routine adjustments for handling existing workload. For example, the replacement of a single machine tool at a shipyard may easily add capital cost of more than \$25,000, or the addition of only 10 employees at relatively low grades would add more than \$50,000 per year to production cost. This type of change occurs several times a year at a large facility and, under the terms of the earlier Circular A-76, each such change would have to be treated as a "new start" with a detailed cost study and a special approval.

3.b. The definition of a Government commercial or industrial activity has been clarified. The earlier Circular, by definition, excluded a Government-owned-contractor-operated activity but the wording was not entirely clear. The change made clarifies the fact that a Government-owned-contractor-operated activity is not to be regarded as a Government commercial or industrial activity for purposes of the Circular.

Paragraph 4 - Scope

4.c. The words "professional staff" that were contained in the earlier Circular have been eliminated. Paragraph 4.c. is intended to exempt various kinds of staff advisory services which are so intimately related to the processes of top management and control of Government programs that the general provisions of A-76 favoring reliance upon commercial sources should not be applicable. The term "professional staff" was so broad that it could be interpreted to apply to a large variety of services which are commercially available and which are not necessarily related intimately to top management and control of Government programs. The change will clarify the meaning of this subparagraph.

Paragraph 6 - Cost comparisons

A change is made in the third unnumbered paragraph to make clear that if there is reason to believe savings can be realized by the Government providing for its own needs, cost comparison studies should be made before

deciding to rely upon a commercial source. However, the changed wording also makes it clear that cost studies will not be required if in-house provision of the product or service, or commercial procurement thereof, is clearly justified in accordance with other provisions of the Circular.

A new unnumbered paragraph has been added to provide guidelines for applying provisions of the Circular to purchase vs lease of equipment, and to construction of buildings vs acquisition under lease-construction arrangements. The paragraph requires a determination of the difference in costs under the alternatives, and application of the principles set forth in the Circular in making judgments in these areas.

6.a. A sentence has been added providing that if discontinuance of a Government commercial or industrial activity will result in premature retirement of Government employees, and will cause a significant increase in retirement costs to the Government, such increased costs should be added to the cost of procurement from commercial sources.

6.b. This is a new subparagraph. It provides that costs which would tend to be the same for both Government and industry need not be measured and included in comparative cost analyses (for example, bid and award costs and operating costs under lease-purchase alternatives). The change is made in the interest of economy and simplicity in making cost comparisons.

6.c. (Paragraph 6.b. in the earlier Circular). A sentence has been added to clarify the fact that the incremental method of costing is to be employed and to emphasize the importance of a realistic recognition of all such additional or incremental costs.

6.c.(1). (Paragraph 6.b.(1) in the earlier Circular). Some additional wording has been added to clarify, in connection with personal services and benefits, that the full cost to the Government of retirement systems should be included.

6.c.(6). (Paragraph 6.b.(6) in the earlier Circular). A sentence has been added to make clear that appropriate recognition should be given to estimated residual or salvage value of facilities or equipment in computing depreciation.

6.c.(7). (Paragraph 6.b.(7) in the earlier Circular). This paragraph has been rewritten to provide that the computation of interest for any new or additional capital to be invested will be based upon the average rate of yield for long-term Treasury bonds as shown in the current monthly Treasury Bulletin. Also, the method of computation suggested would provide for reduction in the capital investment to which interest is applied as the

asset is depreciated. The purpose of the change is to clarify the rate and source of interest to be charged and to provide guidance as to the principal to which it is to be applied. The suggested rate is a readily available measure of the current cost of money to the Government and the provision for reducing the balance to which interest is applied is considered reasonable because the interest cost should not go on indefinitely.

6.c.(8). (Paragraph 6.b.(8) in the earlier Circular). A change in wording has been made to clarify that Government costs should include any additional indirect costs incurred for such activities as management and supervision, budgeting, accounting, personnel, legal and other applicable services.

Paragraph 7 - Administering the policy

7.b.(3). In the past there has been some misunderstanding about the cost differential in favor of private enterprise due to uncertainties relating to Government production costs, equipment obsolescence, and other factors, including the amount of capital investment involved. A sentence has been added to clarify the fact that the ten percent cost differential in favor of private enterprise, mentioned in this subparagraph, is not intended to be a fixed figure. The differential may be more or less than ten percent, depending upon the circumstances in each individual case.

Paragraph 8 - Implementation

A sentence has been added requiring agencies to furnish the Bureau of the Budget with a copy of their implementing instructions.

C

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

October 12, 1973

OTP CIRCULAR NO. 12

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Government Communications Planning Program.

1. Purpose. This Circular sets forth policies and establishes procedures for a coordinated Government planning program for telecommunications systems and services required by Government agencies in the conduct of their activities.

2. Objective. The objectives of the coordinated Government planning program established by this Circular are:

- o To promote more effective use of communications technology, resources, and services by Government agencies;
- o To permit better evaluation of existing and planned communications systems;
- o To help achieve the optimum degree of coordination, compatibility, and resource sharing in Federal communications programs; and,
- o To promote economy in the Government's use of communications.

3. Approach. The communications services used by the Government can be divided into two general classes.

One is the class of services which are widely used and common to many agencies, where the efficiency or cost-effectiveness of the service is a paramount consideration. These services are most economically provided on a common user basis. The General Services Administration is responsible for planning such services.

The other class of services supports operational functions in support of particular agency missions, in which cost considerations must yield to performance or security factors. These services have some characteristics in common, but often cannot be adequately satisfied by general purpose systems designed to provide the most economical bulk services. These services are most efficiently provided by systems or services planned by those responsible for the mission.

4. Mission Area Planning. Many communications systems have unique operational reasons for their existence, but there are areas in which agencies with similar missions have separate but similar systems. In each of these areas, a greater degree of coordinated communications planning is desirable.

Four broad mission areas have been identified, which require such treatment:

- o National Security
- o Transportation
- o Environment
- o Law Enforcement.

To achieve the necessary improvements in Government-wide planning in these mission areas, the following agencies are designated to take leading and participating roles in coordinated communications planning:

National Security - Lead Agency: Department of Defense as Executive Agent, National Communications System -
Participants: Departments of State, Defense, and Transportation, Central Intelligence Agency, General Services Administration.

Transportation - Lead Agency: Department of
Transportation - Participants: Departments of
Defense and Commerce, National Aeronautics and
Space Administration.

Environment - Lead Agency: Department of Commerce -
Participants: Environmental Protection Agency,
Departments of Defense, Interior and Transportation.

Law Enforcement - Lead Agency: Department of Justice -
Participants: Departments of Treasury and Interior.

Other Executive branch agencies not identified above may be invited by Lead Agencies to participate as appropriate for specific purposes.

5. Implementation. Each Mission Area Group will develop an annual summary plan for its area of responsibility including appropriate treatment of requirements, system plans, alternatives, cost, performance, standards, interconnections, and other relevant aspects. The General Services Administration will prepare a comparable plan for general-purpose Government systems. OTP will provide pertinent planning guidance at the beginning of each planning cycle. These summary plans should cover five years from the date of submission and should be transmitted to the Office of Telecommunications Policy, Executive Office of the President, Washington, D. C. 20504, no later than August 15th of each year.. OTP will review these plans to determine compliance with overall Federal Government telecommunications policy, including evaluation of whether an appropriate degree of compatibility and resource sharing is represented in the plans. The determinations made by OTP on such plans will be reported to the agencies involved and to the Office of Management and Budget for their consideration with respect to planning, programming, and budgeting, and to GSA as appropriate for consideration with respect to their planning and procurement actions.

6. Effective Date. This Circular is effective immediately.

Clay T. Whitehead
Director

D

January 31, 1974

ASSISTANT DIRECTOR

Mr. M. S. Meeker
Commissioner
Automated Data and
Telecommunications Services
General Services Administration
Washington, D.C. 20405

Dear Shy:

For some time we have been seeking to establish a more uniform understanding and implementation in the telecommunications field of the government's policy of reliance on the private sector to supply goods and services needed by the government. In a few days we expect to distribute a proposed policy on this matter for final comment within the Executive Branch.

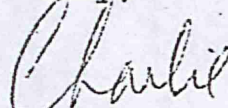
As I mentioned on the telephone last week, it is unclear to us at present whether the "New Equipment Project" procurement will permit telecommunications service suppliers (e.g. carriers) to compete to provide the telecommunications services required.

An unofficial draft of the RFP which my staff recently was able to see leaves us with the impression that a specific communications network design has been specified by the government, and that the government intends to buy or lease switches to implement that design, with circuitry supplied by carriers. There appears to be no performance requirement specified for the Data Communications Network as a whole, which would make it difficult for any private firm to offer to provide overall service unless he is willing to adopt the precise government design.

In the past, we have been given to understand that the current RFP for this procurement is not available in Washington. We have not therefore been able to make any definitive assessment on these matters. However, in order to clarify this situation as soon as possible, I have asked my staff to work with GSA, through Mike Muntner, to make the best assessment possible based on the information available. The principal questions we are concerned about are enclosed for your information.

The data communications industry is still relatively small, but is growing rapidly and can be one of national importance. It is our hope that the government can make use of this industry for many of its needs, rather than unnecessarily building up in-house capabilities to provide data communications service. The New Equipment Project seems to be a potential landmark in the Federal Government's response to new communications needs and technology, and we naturally hope it will set the most desirable precedents.

Sincerely,

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

Charles C. Joyce, Jr.

Enclosure

1. Who will actually operate and maintain the DCN? Since various portions of the DCN are being procured separately, can any supplier of service (common carrier) respond effectively to your planned RFP? Are there not several planned and/or existing commercial data communications service offerings which can provide at least the level of service foreseen by the DCN?
2. If alternative means of data communications service will exist during the period of your requirement needs, how do they compare in cost to the total DCN cost (including procurement, design, management, maintenance, etc.)? Does your proposal require the respondent to use existing communications switching software or would he be forced to develop his own?
3. Will the DCN replace the ARS or simply overlay it? Will any other existing or planned Federal data networks be integrated into the DCN or be eliminated by it?
4. Will the DCN be capable of interconnecting with the other Federal and commercial data communications systems which will also exist in the same period?
5. What are the overall DCN performance requirements? Since GSA currently plans to obtain parts of the network through different procurement activities, how will contractor compliance with these parameters be assured? Since the DCN user will apparently be limited to 2.4 kbps, how will higher speed Federal requirements (e.g. computer-computer) be satisfied?

JANUARY 31, 1974

E

Cpl. [unclear]

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

March 4, 1974

ASSISTANT DIRECTOR

Mr. M. S. Meeker
Commissioner
Automated Data & Telecommunications
Services
General Services Administration
Washington, D.C. 20405

Dear Shy:

Members of my staff met with Mike Muntner, Bob Seraphin, and Mike Goldstein of GSA to follow-up on my letter of January 31, 1974, concerning the New Equipment Project. Enclosed is our understanding of the answers to each of our questions as provided by your people.

It seems clear from these answers that the only thing which the communications industry will provide for this program is transmission circuits between switches. The use of a switched data communications service provided by a carrier never received any serious consideration, and is completely precluded by the way the procurement is structured.

Earlier this week we solicited final agency comments on Guidelines for Obtaining Telecommunications Services. We feel that the proposed Circular sets forth sound government policy, and although it is not yet a final document it is certainly consistent with previous policies and practices to a great extent. We are, therefore, dismayed to see a procurement of the importance and magnitude of your New Equipment Project following such a heavily hardware oriented course.

While I appreciate the urgency of the need for improved services for GSA and the Agriculture Department, I hope that you will give serious consideration to the possibility of opening up this procurement so that suppliers of communications services can compete for that portion of the program.

Sincerely,

Charles C. Joyce, Jr.
Charles C. Joyce, Jr.

Enclosure

Question 1a: Who will actually operate and maintain the DCN?

Answer: Initial plan is a minimum of 1-2 years facilities management. Eventually phase over to a total in-house system.

Question 1b: Since various portions of the DCN are being procured separately, can any supplier of service (common carrier) respond effectively to your planned RFP?

Answer: Not with a data communications service offering; although they could provide services on a subcontract basis.

Question 1c: Are there not several planned and/or existing commercial data communications service offerings which can provide at least the level of service foreseen by the DCN?

Answer: We don't know because we haven't evaluated them.

Question 2a: If alternative means of data communications service will exist during the period of your requirement needs, how do they compare in cost to the total DCN cost (including procurement, design, management, maintenance, etc.)?

Answer: A detailed cost analysis was not performed.

Question 2b: Does your proposal require the respondent to use existing communications switching software or would he be forced to develop his own?

Answer: The software will have to be developed, but this is not anticipated to be a major effort.

Question 3a: Will the DCN replace the ARS or simply overlay it?

Answer: Initially overlay, maybe replace later. There is the question of the termination liability.

Question 3b: Will any other existing or planned Federal data networks be integrated into the DCN or be eliminated by it?

Answer: Not sure about SSADARS or the ARS. The DCN will be used to implement the USDA county network.

ENCLOSURE

Question 4: Will the DCN be capable of inteconnecting with the other Federal and commercial data communications systems which will also exist in the same period?

Answer: Yes -- ARS, AUTODIN, SSADARS, and FTS (on a dial in and out basis). Others can be inter-connected with a simple "black box" interface.

Question 5a: What are the overall DCN performance requirements?

Answer: Performance specs for specific system components are in the RFP. It is assumed that the total system performance will be the sum of the component performances.

Question 5b: Since GSA currently plans to obtain parts of the network through different procurement activities, how will contractor compliance with these parameters be assured?

Answer: No problem foreseen -- the pieces not under contract will have no effect.

Question 5c: Since the DCN user will apparently be limited to 2.4 kbps, how will higher speed Federal requirements (e.g., computer-computer) be satisfied?

Answer: They will not be satisfied.

F

DISTRICT OFFICE
DISTRICT REPRESENTATIVE
JERRY WYMONIE
6068 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814
PHONE (916) 449-3543

ENVIRONMENT OPERATIONS COMMITTEE:
15 MAJORITY MEMBER SUBCOMMITTEES ON
ENVIRONMENT & GOVERNMENT INFORMATION
ENVIRONMENT & NATURAL RESOURCES

INTERSTATE AND FOREIGN COMMERCE COMMITTEE:
CHAIRMAN,
COMMERCE & FINANCE SUBCOMMITTEE

DEMOCRATIC STEERING AND POLICY COMMITTEE

REF ID: A66666
 Date: 10/1/74
 Signature of: [Signature]
 Title: [Signature]
 Place the card to:
 [Signature]
 REPLY DUE: 5/3/74

Arthur F. Sampson
Administrator
General Services Administration
18th and F Streets, N.W.
Washington, D. C. 20405

Dear Mr. Sampson:

My purpose in writing is to specifically inquire into the extraordinary circumstances surrounding the General Services Administration's Project #MCS97-72/ RFP/CDPA74-14, which ostensibly would create a telecommunications system for the Agriculture Department. Upon inquiry, I discover this undertaking appears to involve far more than its formal description.

The plan calls for a "packet-switched network", not a new development in the computer industry. What seems to be envisioned is the largest non-military government data communications procurement in American history, designed to move information in short bursts, which would seem to be inadequate for a night-and-day client such as the U.S. Government. Doctor H. R. J. Grosch, noted computer expert, states that the packet-switched concept is "a rather wasteful way" for government to go about its business nowadays. A fully implemented system would cost about \$90 million at face value, but computer specialists inform me this figure is likely to double to \$180 million by the time such a system is in full operation.

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REC'D

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Arthur F. Sampson

-2-

April 25, 1974

It is alleged that GSA is presently following a project timetable calling for a bidder to be accepted by the end of this year, yet no authorization or appropriation has been forthcoming from Congress. Conceivably, the program can be under way before another round of congressional appropriations hearings are held in 1975. My information is that initial funding is allegedly coming from your agency's \$50 million ADP, or Automatic Data Processing, fund.

Further, GSA's plan calls for a rental computer network, which many in Congress believe to be a far more costly approach than a system purchased by the government. In this manner, GSA will be renting hardware but will not utilize experienced outside talent to operate it.

By its very conceptual size, the plan guarantees that only the very largest contractors will be able to fulfill the requirements, in turn guaranteeing a huge system. It would appear that not only would smaller contractors automatically be excluded from participation, but government would have no option but to create the largest possible system.

This brings me to the most ominous and questionable aspect of this endeavor--tying other Federal agency computers into the proposed network. I am informed that GSA is allegedly holding private discussions with other Federal agencies, including the Veterans Administration, with a view to their participation. Are such discussions in fact underway, and if so, with what Federal agencies? 1

It has been claimed that with such a system, a government agency could initiate a pushbutton search into all aspects of the private lives of Americans who have interacted with participating Federal agencies in some form or other. Experts tell me that cooperation between various Federal agencies would allow assembly of dossiers on any individual or institution interacting with the Federal government, and that as other Federal agencies join in cooperation with and access to such a network linking government computers, invasions of privacy and potential for abuse grows.

Arthur F. Sampson

-3-

April 25, 1974

Is this information accurate? What congressional authority exists for such a system and activities? 2

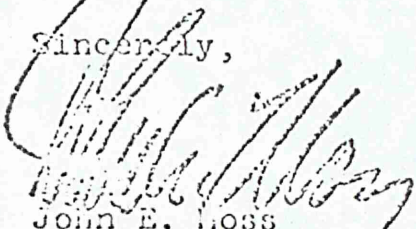
If true, then what could emerge as an ultimate abuse of government power through backdoor spending could be made possible. As one whose congressional service has been marked by intensive activity in the area of government information, I view these possibilities with grave misgivings and alarm. Potential abuse of the ADP fund and total absence of hearings and appropriations authority compound the situation, making the entire issue one fraught with the most serious consequences.

Therefore, Mr. Administrator, I formally request that you promptly forward to me all available relevant information dealing with this proposal, including fact books describing the project, presently being overseen by M. Shy Meeker, Commissioner for Automated Data and Telecommunications. Materials bearing on the project worked on by Messrs. Muntner and Finley of GSA should also be included. All information made available to potential bidders should also be included. 3

I also wish to be informed as to what legal basis there is for putting out this project for bids without formal authorization or appropriations permission from Congress. Has there been any formal communication between your agency and the appropriate congressional committees, informing them that the ADP fund was being utilized in this manner? I am especially interested in whether or not GSA has informed the House Government Operations Committee on this subject. 5

A prompt, comprehensive reply, complete with documentation and enclosures, is needed, especially in view of the fact that none of the requested material is of a nature to be withheld on any enumerated grounds set forth in the Freedom of Information Act (5USC552).

Sincerely,



John E. Moss

Member of Congress

G

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

APR 30 1974

DIRECTOR

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D.C. 20405

Dear Mr. Sampson:

I am quite concerned over the approach GSA is taking to obtain data processing and communications network services. Instead of obtaining the necessary services directly from the private sector, GSA has chosen instead to procure and operate a large amount of data processing and communications hardware itself.

Procurement of service rather than hardware allows the government to take maximum advantage of continuing improvements in technology while at the same time remaining sensitive to changes in user demands. New commercial offerings are constantly arising which offer an ever widening range of features to satisfy a great variety of user needs. Since it is the policy of the Federal Government to encourage the private sector in continuing to offer new and innovative communications services on a fully competitive basis, the government should take advantage of this capability where possible to meet its own internal needs.

The cost of commercial data communications services has been declining at an annual rate of over 10% during the past few years. Even at today's rates, equivalent commercial services would cost about half as much as the proposed GSA data communications network.

It is my view that present GSA plans for an in-house government designed and operated data communications network should be terminated and at least the communications portion of the present solicitation should be reoriented toward procurement of commercial services. Further serious consideration should also be given to the advantages of obtaining the data processing service on a similar basis.

Moreover, a government-owned network of computers of such large capacity and with such widespread remote access, raises important questions about privacy: For example, how will

access be controlled through use of the communications links, and what incentives will there be to fill the computers with unnecessary data on individuals and firms?

Please let me know what action you plan to take on this matter. Because the request for bids has already been released prompt action is necessary.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Clay T. Whitehead', with a large, sweeping flourish extending to the right.

Clay T. Whitehead

H

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 9 1974

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D. C. 20405

Dear Art:

This is in regard to your April 2, 1974, letter concerning GSA's proposed acquisition of ADP and telecommunications equipment. We have carefully reviewed the extensive volume of material supplied by GSA and have discussed the matter with representatives of the Department of Agriculture and the Office of Telecommunications Policy.

We have concluded that your pending Request for Proposal (RFP CDPA 74-14) to acquire nine computer sites and a data communications network should be withdrawn. The proposed data communications network is not responsive to the Department of Agriculture requirements. Moreover, the pending procurement is inconsistent with guidance of the Office of Telecommunications Policy which has called for termination of the proposal.

There is no economic advantage to the proposed acquisition of the initial GSA site. More importantly, there are a number of viable alternatives which would satisfy GSA's internal processing requirements. These include: Reutilization of Agriculture's IBM 370-168 computer which will be replaced by the new equipment now being procured, use of excess USDA capacity which will be available at the new sites, purchase of a smaller computer for GSA for use along with commercial ADP services.

With regard to the three optional GSA sites, there is no identifiable workload associated with these machines nor is there an assurance that this particular configuration will satisfy future needs. In addition, considering the "single prime contractor" approach of the RFP, the relative inflexibility of the data communications

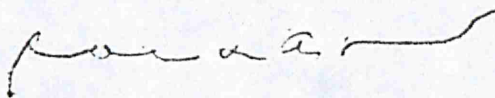
requirements, and the potentially limited competition, the solicitation for these three options is not without inherent cost to the Government. Finally, the proposed acquisition of ADP and telecommunications capability for unspecified uses poses a serious potential threat to the right of privacy at a time when this issue is under intense review by the Executive Branch and the Congress.

In view of the above considerations, GSA should take the following actions:

1. Immediately withdraw the Request for Proposal (RFP).
2. Reissue a new RFP limited to four firm and two optional sites (one for USDA and one for GSA). The GSA option should only be exercised after a thorough review of available alternatives and the necessary budget approval has been obtained.
3. The communication requirements should be acquired separately in accordance with OTP guidance and should be restated in a manner acceptable to the users.

Any procurement of ADP and telecommunications equipment or services with funds available to GSA may be obligated only in accordance with guidance contained in this letter.

Sincerely,

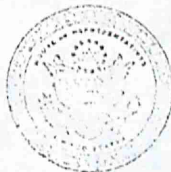


Roy L. Ash
Director



JOHN E. MOSS
3RD DISTRICT
SACRAMENTO, CALIFORNIA

ADMINISTRATIVE ASSISTANT
JACK MATTESON



WASHINGTON OFFICE
LEGISLATIVE ASSISTANT
EUGENE A. BROVNI
ROOM 2054
PAYROLL/PLANS OFFICE BUILDING
PHONE (202) 347-7163

DISTRICT OFFICE
DISTRICT REPRESENTATIVE
JERRY WYMORE
6050 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814
PHONE (916) 449-3313

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

GOVERNMENT OPERATIONS COMMITTEE:
RANKING MAJORITY MEMBER SUBCOMMITTEES ON
FOREIGN OPERATIONS & GOVERNMENT INFORMATION
CONSERVATION & NATURAL RESOURCES

INTERSTATE AND FOREIGN COMMERCE COMMITTEE:
CHAIRMAN,
COMMERCE & FINANCE SUBCOMMITTEE

DEMOCRATIC STEERING AND POLICY COMMITTEE

May 15, 1974

Arthur Sampson
Administrator
General Services Administration
18th and F Streets
Washington, D.C. 20405

Dear Mr. Administrator:

I am afraid that your May 10th, 1974 letter leaves several questions unanswered, only partially answers others and offers responses to some queries that are prone to misinterpretation.

To begin with, according to my best information there is no existing system or contemplated system known to the computer industry guaranteeing that time-sharing on computers will not be turned into data sharing. If I am in error I will be pleased to review your proof of my error.

IBM is engaged presently in a crash \$50 million undertaking to find even a few primitive barriers to such invasions of privacy among computer users. If they cannot offer such a defense to their massive list of commercial users, how does FEDNET propose to do so. Therefore, your disclaimers and assurances of seeking to avoid any invasion of privacy under such a system are, although sincere, meaningless in an effective sense.

Reply to be prepared by:	C
Coordinate Reply with:	
<input checked="" type="checkbox"/> For Action	<input type="checkbox"/> For Information
Propose Reply or Signature of:	H
Forward Copy of Reply to:	H
Copy also sent to:	PLB, L, W, D, J, H, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z
REPLY DUE:	5/20/74

5/16/74 - 11:59 AM

May 15, 1974

I have been joined in voicing vigorous protests against this endeavor by a bipartisan group of people in public life. You have received such communications from Vice President Ford, Senators Ervin, Goldwater and Hruska, Congressman Moorhead of Pennsylvania, the Office of Management and Budget and the White House Office of Telecommunications Policy. OMB has formally asked you to drastically curb the limits of your ongoing procurement effort. Nevertheless, in spite of these efforts, you inform me that GSA is going ahead with its plans to bring into being telecommunications computer network, on a modular basis, between GSA and the Department of Agriculture.

Both the Subcommittee on Foreign Operations and Government Information of the House Government Operations Committee and the Senate Constitutional Rights Subcommittee have held hearings on this subject in the past year. GSA appeared before both of them. In each case, GSA was asked whether or not new computer systems were being contemplated. In each case, GSA told these two committees that no such effort was underway. Yet your own personnel have informed Congressional staff people on these two subcommittees in recent meetings that FEDNET was begun in summer of 1972. Both these subcommittees repeated their queries in writing to GSA and received the same negative response. Obvious conclusions can be drawn from these findings.

It is obvious to me and a growing number of Congressional observers that both the intent and will of Congress in creating the Automatic Data Processing Fund are being willfully violated by GSA in forging ahead with FEDNET. Such action is a perversion of the ADP fund and Congressional intent. Intensive hearings are required because of the unprecedented size of this procurement and the system its envisions. Its potential impact on our society and privacy of every American is so vast and pervasive that explicit Congressional approval must be given.

Mr. Administrator

-Page 2-

May 15, 1974

Ten years ago, when another such national data center was proposed, the Congress expressed its fears for the privacy of Americans.

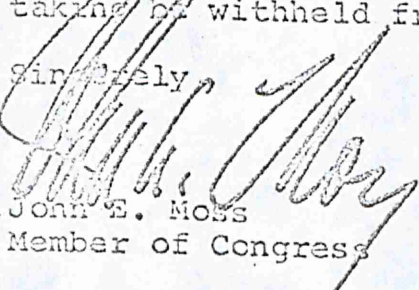
On May 9th, 1974, Vice President Ford stated his concerns to the National Computer Conference:

"I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals... We must also consider the fallout hazards of FEDNET to traditional freedoms."

In light of this overwhelming evidence, I find your vehemently expressed reluctance in House Appropriations Committee testimony on May 14th, 1974 when asked to submit FEDNET plans in writing to Congress, difficult to understand, and can only draw obvious conclusions.

I am therefore proceeding to request that formal oversight hearings be held in both houses of Congress into this state of affairs, and that appropriations for this undertaking be withheld from your agency.

Sincerely,



John E. Moss

Member of Congress

JEM:Sm

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



MAY 16 1974

Honorable Clay T. Whitehead
Director
Office of Telecommunications Policy
Washington, D. C. 20504

Dear Dr. Whitehead:

This is in reply to your letter of April 30, 1974, concerning the joint GSA/USDA computer and data communications procurement.

While we believe in the economies that are inherent in the RFP as currently specified as well as the greater reliability that would result from the prime contractor concept, we are making the following amendments to the RFP:

- (1) The data communications network will be deleted from the solicitation and procured separately
- (2) Three of the four optional sites will be deleted from the RFP and the GSA site will be made optional.

We believe that these changes will alleviate the concerns expressed by the Office of Management and Budget and are in compliance with the referenced OTP direction. However as the data communications support will now be acquired separately and is planned to be fully competed to all segments of the market, further evaluation will be necessary to determine how it should be procured in light of valid present concerns relative to the privacy of data systems.

If you have any further questions, please let us know.

Sincerely,

A large, stylized handwritten signature in dark ink, which appears to read "Sampson", is written over the typed name and extends across the bottom of the page.

Arthur F. Sampson
Administrator

K

~~May 31, 1974~~ May 30, 1974

Sen. Montoya's Appropriations Subcommittee

1563

OTP ACHIEVEMENTS

Mr. WHITEHEAD. The main points I would like to highlight, Mr. Chairman, are that OTP after 3 years of existence has begun to consolidate its directions and its activities and its management.

The work which this subcommittee and your counterpart in the House of Representatives did on consolidating the budgets for OTP and its support program in the Department of Commerce was, I think, very constructive. I would like to say that I do not believe this resolves all of the management questions that the Congress has had about this endeavor. It certainly doesn't resolve all of the questions I have in my mind. I welcome working with this subcommittee over the next year to see whether additional improvements can be made to clarify just how this program is working in toto.

In the last year, OTP has achieved a number of substantive accomplishments in the area of communications. There were times when I was testifying here last year when I thought people thought we were engaged in nothing but television network regulation.

I kept saying we were involved in a lot of other things, and I am very happy to say that during the past year many of those things have come to fruition. For example, in the domestic satellite area, one in which OTP played a major role, the first satellite for U.S. domestic service has now been launched. The FCC has adopted, in large measure, our recommendations relating to the increase in available frequencies for two-way mobile communications for small businesses and private users. Our efforts to make available new frequencies for emergency medical communications that could lead to savings of thousands of lives have been successful, and we have made substantial improvements in the area of disaster communications. All of these accomplishments have been very constructive, and I am very proud that the people in OTP and the other Government agencies involved have been able to bring them to fruition.

I would also like to point with some pride to the President's Domestic Council Committee on the Right of Privacy. As you know, one of OTP's important responsibilities has been the privacy aspects of computer and communications operations which are growing so rapidly in the Government and in the private sector.

OTP proposed this initiative to the President for his State of the Union message and the Domestic Council Committee is now busily at work with OTP providing substantial monetary and staff support.

At this point I would be pleased to answer any questions that you or the other members of the subcommittee have, Mr. Chairman.

CENTRALIZED GOVERNMENT DATA COLLECTION

Senator MONTOKA. Have you initiated studies about telecommunications within the Government and assembling of data under a centralized data collecting system in the Government? What can you tell me as to the propriety of assembling this data under those conditions and what can you tell me with respect to the feelings of the administration with respect to same?

Mr. WHITEHEAD. Our authority for collecting this data derives from our directive in the Executive order assigning responsibilities to OTP,

to which I alluded in my opening statement. That is to say, we have responsibility within the executive branch for those policy matters related to the joint use of computers and communications.

So much of the opportunity for abuse of privacy in the growth of computerized data banks arises from the possibility of easy access, not only at the point of the computer, but anywhere around the country through communications lines, to whatever is in these computers. The opportunity also arises for very easy exchange of information between computer data banks located in various parts of the country.

In fulfillment of our responsibilities for recommending policies to deal with this problem our first step naturally was to find out what is now going on with respect to linking together all of these data banks by means of communications.

We found that we didn't know. We found that nobody does. None of this information had ever been pulled together in one place.

We further found in working with the Domestic Council Committee on the Right of Privacy that there was no procedure within the Government to review the privacy aspects of these kinds of systems. So working partly under our own authority and partly under the charter of the Domestic Council Committee on the Right of Privacy, of which I am a member, we have undertaken this review that I mentioned.

It is important that the Government know how much data it is collecting on its citizens, where that data resides, who has access, what are the criteria for protecting privacy and the like. Without that kind of information, we simply are ill prepared to adopt the kind of policies we are going to need to protect privacy.

Senator MONTTOYA. What assurance can you give this committee that during your existence you can conduct meaningful surveillance over any attempts to collect this data and bank it and thus invade the right of privacy?

Mr. WHITEHEAD. OTP has no direct access to any of these communications systems. We are not an operator of communications systems. It is our job to look at what the various agencies are doing with their communications and to recommend policies therefor.

GSA FEDNET PROPOSAL

Senator MONTTOYA. Are you acquainted with the attempt by GSA to create a Fednet system?

Mr. WHITEHEAD. I am eminently familiar with that.

Senator MONTTOYA. Have you made a study of it?

Mr. WHITEHEAD. Yes. We made a very thorough study of it.

Senator MONTTOYA. At whose request did you make it?

Mr. WHITEHEAD. We made it under our own auspices. We have a program, Mr. Chairman, for reviewing the planning for communications systems for all Government agencies. I went into that in brief in my statement which I introduced for the record.

Senator MONTTOYA. What do you estimate the cost of this system to be as it is presently contemplated?

Mr. WHITEHEAD. As I understand it, the system is no longer presently contemplated. We objected to the system on the grounds of cost, system design, and privacy considerations. GSA has withdrawn its

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plans for proceeding. However, the cost, as best we could pin it down at the time it was planned in all its glory, was approximately \$100 million.

Senator MONTTOYA. What money was going to be used for this purpose?

Mr. WHITEHEAD. It would have been financed principally out of GSA funds, although in providing services to other agencies they were planning to bill those agencies for those services.

Senator MONTTOYA. Is that why the cost of GSA rent has gone up?

Mr. WHITEHEAD. I don't know.

Senator MONTTOYA. It is certainly higher than what these agencies were paying in the private sector now that GSA has taken it over.

Mr. WHITEHEAD. That is quite right. In fact, one of our reasons for objecting was that the price of obtaining similar services from the private sector seemed to be much lower. Also, obtaining these services from the private sector would offer the Government the opportunity to take advantage of more innovative, new technologies.

GSA WITHDRAWAL OF FEDNET

Senator MONTTOYA. What assurances can you give this committee that GSA is not going to do this out of its administrative appropriation and out of its revolving fund?

Mr. WHITEHEAD. GSA has written to me and to the Director of the Office of Management and Budget giving assurances that they have withdrawn their plans and will work with us preparing any future plans for providing any services of this type.

Senator MONTTOYA. What gave genesis to this plan initially?

Mr. WHITEHEAD. I am not sure that I have fully ascertained that, Mr. Chairman.

Senator MONTTOYA. Didn't you investigate it?

Mr. WHITEHEAD. We did. GSA said that some agencies, particularly Agriculture, had a need for automatic data processing support that would involve some communication. I think GSA went from there to design a system that would be available and applicable to a broader range of Government agencies.

Senator MONTTOYA. I will insert in the record at this point a copy of your letter to Mr. Sampson wherein you stated your opposition to this plan for a Fednet.

[The letter follows:]

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

APR 30, 1974

Honorable Arthur P. Sampson
Administrator
General Services Administration
Washington, D.C. 20405

Dear Mr. Sampson:

I am quite concerned over the approach GSA is taking to obtain data processing and communications network services. Instead of obtaining the necessary services directly from the private sector, GSA has chosen instead to procure and operate a large amount of data processing and communications hardware itself.

Procurement of service rather than hardware allows the government to take maximum advantage of continuing improvements in technology while at the same time remaining sensitive to changes in user demands. New commercial offerings are constantly arising which offer an ever widening range of features to satisfy a great variety of user needs. Since it is the policy of the Federal Government to encourage the private sector in continuing to offer new and innovative communications services on a fully competitive basis, the government should take advantage of this capability where possible to meet its own internal needs.

The cost of commercial data communications services has been declining at an annual rate of over 10% during the past few years. Even at today's rates, equivalent commercial services would cost about half as much as the proposed GSA data communications network.

It is my view that present GSA plans for an in-house government designed and operated data communications network should be terminated and at least the communications portion of the present solicitation should be reoriented toward procurement of commercial services. Further serious consideration should also be given to the advantages of obtaining the data processing service on a similar basis.

Moreover, a government-owned network of computers of such large capacity and with such widespread remote access, raises important questions about privacy: For example, how will access be controlled through use of the communications links, and what incentives will there be to fill the computers with unnecessary data on individuals and firms?

Please let me know what action you plan to take on this matter. Because the request for bids has already been released prompt action is necessary.

Sincerely,

Clay T. Whitehead

Clay T. Whitehead

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ASSURANCES FROM GSA

Senator MONTROYA. I want to commend you for being so expressive about this and being so concerned about possible invasion of privacy of individuals.

When did you receive assurances from GSA that they would not go through with this?

Mr. WHITEHEAD. I do not recall the exact date of that correspondence, Mr. Chairman. It has been within the past few weeks.

I would like to emphasize, Mr. Chairman, that we work very closely with GSA through our procedures for coordinating Government communications systems planning. We shall continue to work with them and keep apprised of their progress on all of their communications. Their communications' plans will be submitted to us this summer, and we will be able to monitor the situation on a continuing basis. I can assure you of that.

GSA LETTER TO REPRESENTATIVE MOSS

Senator MONTROYA. I have a letter here which I will submit for the record, dated May 24, 1974, by the Honorable John E. Moss, House of Representatives, and I will read from that letter. This is by GSA to him. I quote:

A review has been made of this project in light of concerns raised in several quarters, and the following changes are being made in the requests for proposal:

"(1), The data communications network will be deleted from the solicitation and procured separately.

(2), Three of the four optional sites called for in the original solicitation will be deleted from the RFP and GSA's firm site be made optional."

Doesn't that indicate that GSA has not abandoned this proposal?

Mr. WHITEHEAD. Mr. Chairman, they have clearly abandoned the grandiose proposal that they originally made. GSA does have a responsibility for providing data communications' support to Government agencies that need it. They have the responsibility for providing automatic data processing support to these agencies.

The way I read what they have done, they have withdrawn their plans for FEDNET; they are now proposing, in a more responsible way, to acquire the needed communications and the needed automatic data processing support on an incremental, step-by-step basis.

Senator MONTROYA. Isn't that leading toward the same objective?

Mr. WHITEHEAD. It is leading toward the same objective of providing communications and data processing service, but it will not provide them one gigantic, interconnected system that lends itself to the kind of privacy abuse that we are talking about.

[The letter follows:]

MAY 24 1974

Honorable John E. Moss
House of Representatives
Washington, DC 20515

Dear Mr. Moss:

This is in regard to your letter of May 15, 1974, concerning the joint GSA/USDA computer and data communications project.

As we stated in our previous letter of May 10, 1974, we share your concern relative to the potential dangers regarding the right of security and privacy of data in computer systems. We agree that security and privacy of data in any computer system, whether in Government or in the private sector is of vital concern. In this regard, irrespective of the technical safeguards to prevent the potential abuse of any computer system, the major factors in insuring against invasion of privacy are policies and law.

GSA's role is related to the fulfillment of stated agency requirements and not with the establishment of those requirements. Our responsibility is to take advantage of savings realized from volume procurement and shared use of Government resources. There is not and never has been any plan or intent by GSA to create a national data center.

A review has been made of this project in light of concerns raised in several quarters and the following changes are being made in the Request for Proposal:

1. The data communications network will be deleted from the solicitation and procured separately.
2. Three of the four optional sites called for in the original solicitation will be deleted from the RFP, and GSA's firm site will be made optional.

We anticipate that the preparation of the specifications for data communications support will take a minimum of 12 months. This will allow GSA time to ensure that security/privacy safeguards associated with the network reflect the results of the studies currently underway by the Domestic Council Committee on the Right of Privacy and to incorporate related legislative action.

A review of the hearings before the Subcommittee of Foreign Operations and Government Information of the House Government Operations Committee on June 26, 1973, does not reveal any instance where GSA was asked whether or not new computer systems were being contemplated. I am also not aware in the last year of any GSA testimony on this subject before the Senate Constitutional Rights Subcommittee. In addition we believe we

have been fully responsive to any inquiries received from these congressional committees.

I would like also to clarify the misunderstanding you have of the testimony before the House Appropriations Subcommittee hearings of May 14, 1974. At that time I indicated that we procure computers as a part of our daily mission and questioned whether the Committee wished to review our procurement activities on such a repetitive basis. After clarification, I did state that we would provide the plans for this project as requested. We are now in the process of doing so.

I have advised Chairman Moorhead that GSA will be glad to work with the House Government Operations Committee and provide our full technical, management, and procurement expertise in the development of any necessary legislation to further safeguard the privacy of personal and organizational information. In addition he has been informed that we are hopeful that Congress will act on related legislation prior to the end of this session. Should no legislation be enacted, we would plan on meeting with the appropriate committees of Congress prior to soliciting for the data communications network.

Sincerely,

Arthur F. Sampson
Administrator

PRIVACY SAFEGUARDS IN COMPUTERIZED DATA COLLECTION

Senator MONTTOYA. What is the difference as long as the data is there present and through computerization it can be disseminated upon inquiry by some other Government agency? What is the difference?

Mr. WHITEHEAD. That is precisely the point. By doing it incrementally, by acquiring it in steps, GSA, OTP, and, indeed, the Congress have the opportunity to examine the interface between those various parts and make sure that adequate safeguards are built in, to make sure that there is no potential for abuse.

I want to emphasize, Mr. Chairman, that simply because GSA withdrew its plans for FEDNET does not mean that the problem is solved. OTP and OMB and the Congress are going to have to continue to watch this, together with GSA.

NEED FOR DATA COMMUNICATION

Senator MONTTOYA. Why should we watch it and why don't we just not let it get started?

Mr. WHITEHEAD. Because, Mr. Chairman, in this complex Government of ours, our agencies do have a need for data communication. The Agriculture Department, for instance, has very important responsibilities for maintaining information on crops and on international trade and so forth.

They need to process that information very quickly and disseminate it very quickly around the country to the people who need it. They can do it much more effectively and inexpensively with automatic data processing.

Senator MONTTOYA. Why don't we confine it to economic statistics if that is what you are primarily interested in and have a bar with respect to individuals and to the collection of data about individuals?

Mr. WHITEHEAD. I think that can be done to a very large extent.

Senator MONTTOYA. What do you recommend?

Mr. WHITEHEAD. I recommend something exactly like that. However, there is a point at which you begin to get into the area of responsibility of the mission agency who has the responsibility for carrying out these things, for example, the Department of Agriculture.

All we can do in the communications field is to make sure that the data communications capability that the agencies are using and asking for is economical, that it is needed, and that there is built into the communications system adequate provision for such privacy safeguards as the agency wants to endorse.

If the Department of Agriculture or any other agency decides, and the Congress concurs, that they are going to collect information on individuals and store it in their computers, we as communicators and data processors cannot really control that.

But we can make sure that there is no inadvertent invasion of privacy and that the communications systems are designed to facilitate the protection of privacy.

Senator MONTTOYA. Who is going to take the lead on this to make sure that that doesn't happen?

Mr. WHITEHEAD. OTP clearly has the responsibility.

Senator MONTTOYA. Mr. WHITEHEAD. Senator MONTTOYA. Mr. WHITEHEAD. Department, with the cooperation of the agency from the central command. Mr. WHITEHEAD. sure the unauthorized control of it has been people do.

Senator MONTTOYA. collect this data. Mr. WHITEHEAD. President has data on individuals and whether

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Mr. WHITEHEAD. General Saxton communication very close together. However, collect, as you of the Congress absolutely crucial

Senator MONTTOYA. another agency

Mr. WHITEHEAD. ness these days we barred GSA ply be forced and communication

ADEQUACY OF TOP STAFF

Senator MONTTOYA. How many people do you have?

Mr. WHITEHEAD. At the present time we are authorized 52 people.

Senator MONTTOYA. Can you do it with 52 people?

Mr. WHITEHEAD. We do it only with our support from the Commerce Department, which adds a substantial number of people and through the cooperation of the other Government agencies.

Senator MONTTOYA. How are you going to keep some Government agency from pushing that button and getting this information out of the central computer?

Mr. WHITEHEAD. We can do that in only one way. We can make sure the unauthorized buttons are not there, and we can make sure that when a communications system like this is installed the people in control of it have designed it in such a way as to insure that unauthorized people do not have access to the buttons that are there.

CONTROLLING DATA COLLECTION

Senator MONTTOYA. Are you, in effect, saying that it is all right to collect this data, but it is not all right to disseminate it?

Mr. WHITEHEAD. No; I am not saying that at all. I believe, as the President has stated, that the Government is collecting far too much data on individuals and that we need to assess just what all of this data is and whether it is really necessary to accumulate it.

Once the data is collected Mr. Chairman, it becomes very difficult to control it. If you want to protect privacy, you have to control the collection of data.

Senator MONTTOYA. That is correct. We are very concerned that the FBI has so much data on individuals and we are going to do something about it in the Congress because I think it is unfair for any agency of the Government, including the FBI, to go around talking to neighbors, and enemies of people, and putting it in permanent form and filing it away in the archives of the FBI.

This could happen with respect to any collection by GSA or any other Government agencies and feeding it into the GSA central data system.

Mr. WHITEHEAD. That is right. I recently talked with Attorney General Saxbe about problem of the FBI and computerization and communications access to these very sensitive data files. We are working very closely with them to control the privacy aspects of this matter. However, when it comes to the question of what they can lawfully collect, as you are discussing, that is something that is in the province of the Congress, and I commend you in your efforts. I think it is absolutely crucial.

Senator MONTTOYA. Is it possible that if GSA is barred from this that another agency might do the same thing?

Mr. WHITEHEAD. As I mentioned, the impossibility of doing business these days without computers and communications means that, if we barred GSA from providing these services each agency would simply be forced to go out to the private sector and procure computers and communications themselves to do their business.

I think there are certain economies and advantages, including ease of oversight on the privacy aspect, that might result from permitting GSA to provide these services for the various agencies. So I do not see the need to abandon the concept completely, but I certainly do see a need for very critical oversight such as you suggested.

RENT PAYMENTS TO GSA

Senator MONTTOYA. Your estimate includes \$142,941 for payment to the General Services Administration for rent. Would you present for the record information showing the major areas where these rents will occur and to the extent possible indicate commercial charges for comparable space?

Mr. WHITEHEAD. I would be pleased to do that, Mr. Chairman.
[The information follows:]

OTP RENTAL OF SPACE, FISCAL YEAR 1975 BUDGET

Location: 1800 G Street NW., Washington D.C.

Amount of space: Approximately 22,000 sq. ft.

Reimbursement to GSA: \$142,921.

NOTE.—As best we can determine, these charges are comparable to commercial charges for similar space.

Senator MONTTOYA. Also, please provide similar data for the commerce support portion of your budget.

Mr. WHITEHEAD. I would be pleased to do that.
[The information follows:]

RENTAL OF SPACE INCLUDED IN DEPARTMENT OF COMMERCE SUPPORT PROGRAM, FISCAL YEAR 1975 BUDGET

Location	Amount of square feet	Estimated reimbursement to GSA
Washington, D.C.	15,415	\$94,352
Suburban Maryland	9,140	61,638
Total	24,555	156,050

Note: As best we can determine, these charges are comparable to commercial charges for similar space.

PRESIDENT'S 16-POINT PROGRAM

Senator MONTTOYA. To what extent has the Office complied with the President's 16-point program and what are you doing to encourage the employment of multilingual persons, specifically Spanish-speaking Americans?

Mr. WHITEHEAD. We have had underway for some time an effort to increase our minority representation in the office, including the Spanish-speaking and to some extent the Chinese-speaking. This is a particularly important area in communications, as you can appreciate.

Being a small agency, requiring such highly specialized professional personnel, we have, I think, a rather more difficult time of it than many agencies in meeting the sometimes conflicting requirements of increasing that kind of representation in our agency and at the same time maintaining the kinds of specific talent that we need.

Most of our efforts in that regard I have to say have been directed at focusing the attention of other agencies on this problem and through

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June 18, 1974
Senate Judiciary Subcommittee

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On page 12 I stated that discussions concerning the New Equipment Project were held with the Department of Treasury, Bureau of Customs, personnel. Also, I stated that they were advised of the potential use in the future if it met their requirements. I have subsequently discovered that this topic also appeared in correspondence from GSA to the Department of Treasury dated July 18, 1973. Enclosed for your information is a copy of that correspondence.

If I can be of further assistance, please let me know.

Sincerely,

ARTHUR F. SAMPSON, *Administrator.*

Enclosure.

JULY 18, 1973.

HON. WARREN F. BRECHT,
Assistant Secretary for Administration, Department of the Treasury, Washington, D.C.

DEAR MR. BRECHT: Based on the justification appearing in your letters of April 5, April 20, May 21, and June 11, 1973 and staff conferences, we are granting you a delegation of procurement authority (DPA) in respect to the purchase of four minicomputers with option for an additional six minicomputers and for necessary Adapter Clusters and Adapters for use in connection with the Treasury Enforcement Communications System (TECS).

The four minicomputers authorized for procurement at this time shall be located in San Diego, California. The relocation of said minicomputers or the exercise (in whole or in part) of the option for additional minicomputers shall be accomplished only after prior approval by General Services Administration.

A plan for implementation of an extensive telecommunications data network is being developed in conjunction with the Department of Agriculture and is expected to be in operation in 1975. It is believed that this network will accommodate your expanded data communications requirements and should be given consideration in your planning.

This DPA is subject to the limitations set forth in Enclosure 1. Failure to operate within the established limitations renders this DPA voidable.

Any future reference to this DPA should cite Case Number CDP-3-245.

If we can be of assistance at any stage of this procurement, please feel free to call upon us.

Sincerely,

GEORGE W. DODSON, Jr.,

Assistant Commissioner for Automated Data Management Services.

Senator PERCY. The Chair will call now Mr. Clay Whitehead, Director of the Office of Telecommunications Policy.

Mr. Whitehead, we can go right ahead.

Could we have order in the hearing room, please?

As I understand it, you do not have a prepared statement?

Mr. WHITEHEAD. That is correct.

Senator PERCY. You will give a short summary statement. About how long would that be?

Mr. WHITEHEAD. Just a very few minutes.

Senator PERCY. Go ahead.

JUNE 18, 1974

STATEMENT OF HON. CLAY WHITEHEAD, DIRECTOR, OFFICE OF
TELECOMMUNICATIONS POLICY

Mr. WHITEHEAD. We are not prepared today to testify on all the bills under consideration. We came principally to address certain aspects of GSA's FEDNET procurement and our role in it.

OTP, of course, has been involved in the privacy issue since its founding in 1970. And as you and other people have commented, technology seems to be rapidly outpacing our understanding and grasp of what it is doing to the privacy interests of individuals.

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It has been coming upon us very rapidly. For example, as recently as 1968, a major Presidential review of communications issues could be submitted to the President without delving at all into the privacy question.

In the last year, OTP has taken a number of actions in the privacy area. We began a major study to define the scope of privacy interests and the ways in which the Federal Government could come to grips with the problem. We have prepared a report to the President on cable television with a section on privacy and are now drafting legislation to send to the President, as referred to in the Vice President's letter to Senator Ervin.

Last year, we instituted a Government-wide communications planning process under OTP Circular No. 12. For the first time there will be a focal point within the Federal Government for advance planning of all the Government agencies' proposals for communications networks tying together information data banks in one place.

We made a recommendation to the President last year that he include in the state of the Union message—which he subsequently did—a new initiative on privacy, which led to the establishment of the Domestic Council Privacy Committee under the chairmanship of the Vice President.

GSA's FEDNET proposal first came to OTP's attention in December of last year as part of our oversight of agency communications plans. You have the correspondence between OTP and GSA, and I think it adequately reflects our concerns and our actions. It is important to note that GSA has reduced the scope of its plans and has adopted a more stretched-out procurement schedule which gives more opportunity for review.

In my judgment, however, there is still reason to be concerned. The deferral of the DCN aspect of the GSA proposal satisfies our major concerns on communications procurement, but it does not address the privacy question. The scaled-down computer procurement to be used with the existing communications line does not substantially change the character of the system. We are still talking about an interconnected information system owned and operated by the Federal Government, involving a rather substantial increase in scale over anything we have seen before. OTP, OMB, and, of course, the Congress should continue to be concerned about the privacy aspects of what GSA is doing.

However, I am confident that the planning process that GSA has agreed to does give opportunity for OTP, OMB, and the Congress to oversee GSA's actions and to review its implications from a privacy and procurement standpoint before system implementation begins. I do not need to tell this committee that I think such oversight will remain very important.

Senator Percy. Thank you very much, Mr. Whitehead.

I just have one question for you.

Earlier in these hearings, Vice President Ford's written testimony made reference to efforts by the administration to develop legislation to prevent snooping and other abuses of personal privacy by cable television. I understand that the Office of Telecommunications Policy will soon propose a Cable Communications Act of 1974 with certain privacy provisions.

Can you tell us what they could do or would do?

Mr. WHITEHEAD. This bill which is now in the final stages of drafting would preclude certain kinds of information from being collected without the consent of the cable subscriber. It would also assure that the citizen has ample opportunity, through technical standards set by the FCC and through other measures, to control what information comes into his home. The cable subscriber could control access to information regarding the manner in which he is using the cable system, what kind of programing he is watching, and using the content of his communications. The cable operator would be precluded, as a matter of Federal law, from disseminating any of that information to anybody else without the cable subscriber's actual consent.

Senator PERCY. Right now we have such market research organizations such as A. C. Nielsen who work out arrangements with television viewers to put monitors on their sets. They compensate them for this. They try to pick a representative cross section. They provide very valuable data to advertisers, the general public, and so forth.

Is it possible, however, with cable television, without adequate legislation to prevent it, for someone to just go in and monitor what programs a family views and watches, how long they look at them, when they change, without that individual knowing it, and sell that information?

Would this be, in your judgment, an invasion of privacy that should be protected against?

Mr. WHITEHEAD. It certainly is possible. I think it is important to note, though, that that same thing is now possible with over-the-air broadcasting. There have been commercial proposals to set up a service similar to Nielsen, but using a truck that merely drives up and down the streets monitoring the radiation from television sets and keeping track of which homes are tuned to which channels at which time.

In my view, that would be an invasion of privacy, whether it is done with the current technology or whether it is done with cable. We should have laws that clearly prohibit those kind of surveys, unless, of course, as with Nielsen, the home owner gives his consent.

Senator PERCY. Thank you very much for being with us this morning.

I have no further questions.

Mr. WHITEHEAD. Thank you.

Senator PERCY. Our next witness, Donna Schiller, the President of the League of Women Voters. And she will be accompanied, as I understand, by Ms. Doris Bernstein.

It is a particular pleasure to welcome my own constituents. I am happy to say that I am the first male member of the Chapter of League of Women Voters in Willamette, Ill., last Sunday on its 50th anniversary, to become a member, I think the first male member.

Ms. SCHILLER. Senator Percy, I had planned in my remarks to welcome you on behalf of the League of Women Voters of Illinois as one of our new members. It is a pleasure to have you.

Senator PERCY. I would like to say it is just simply a reaffirmation of my close affiliation with and devotion to the League for better than 20 years. I worked with them back in the '50's in the implementation of the passage of trade legislation, always urging that they somehow enlighten their protectionist husbands at the dinner table to the necessary national policy which I thought their wives far better understood than they did. And it is national policy.

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REMARKS BY VICE PRESIDENT GERALD R. FORD
AT THE
NATIONAL COMPUTER CONFERENCE
CHICAGO, ILLINOIS
May 9, 1974

FOR RELEASE IN THURSDAY P.M.'S

I thank you for this opportunity to address the 1974 National Computer Conference and Exposition.

The invitation extended by the American Federation of Information Processing Societies was timely. I am learning about computer technology and data processing from the viewpoint of my new responsibilities as Chairman of the Domestic Council Committee on the Right of Privacy.

I am aware that the notion of leaving the protection of individual privacy to Government officials has been compared to asking the fox to protect the chicken coop. But five months ago -- when the most intense investigation ever focused on a nominee for the Vice Presidency was directed at me -- I awakened to the privacy issue in a very real and personal sense. I was one of the chickens.

On a previous visit to Chicago, I had occasion to refer to some foxes who passed themselves off as elephants in the 1972 election. I am speaking of some characters in the CREEP organization and CREEP'S invasion of the privacy of political opponents. This made me more aware of what could happen to our sacred right to privacy. I deplore such violations of traditional standards of honesty and decency in our political life.

I told President Nixon of my concerns, and he appointed me chairman of the Committee on the Right of Privacy. I welcome the challenge.

I know that there have been previous commitments, previous studies, and previous recommendations to deal by legislation with privacy problems. It is too early to forecast the outcome. I realize that too many findings have been ignored and too little actually done. The time has come for action. I will do all in my power to get results.

My first act as chairman involved complaints about an Executive Order of the President that permitted the Department of Agriculture to review the income tax returns of farmers to obtain data for statistical purposes. The President asked me to look into the matter. I immediately discussed the Executive Order with Secretary Butz and recommended that it be withdrawn. The President accepted my recommendation.

(more)

Let me tell you about the development of the Committee that I head. I wanted to chair this Committee with a staff of our own selection. I asked my former law partner, Philip Buchen — a distinguished advocate of personal freedom — to come to Washington as the Committee's Executive Director.

Interagency task forces were formed to make recommendations. Contributions have come also from the Congress, State governments, industry, citizens' groups, private individuals, academic experts, and some Federal agencies not represented on the Committee. We wish to invite our hosts, the American Federation of Information Processing Societies, and all constituent groups to become involved.

Today I would like to cite an example of a development that concerns our committee. The Government's General Services Administration has distributed specifications for bids on centers throughout the country for a massive new computer network. It would have the potential to store comprehensive data on individuals and institutions.

The contemplated system, known as FEDNET, would link Federal agencies in a network that would allow GSA to obtain personal information from the files of many Federal departments. It is portrayed as the largest single governmental purchase of civilian data communication equipment in history.

I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals.

Before building a nuclear reactor, we design the safeguards for its use. We also require environmental impact statements specifying the anticipated effect of the reactor's operation on the environment. Prior to approving a vast computer network affecting personal lives, we need a comparable privacy impact statement. We must also consider the fall-out hazards of FEDNET to traditional freedoms.

I can today make known that the Privacy Committee staff is proceeding with a project to develop recommendations for assuring that personal privacy rights are given systematic and careful consideration in the planning, coordination, and procurement of Federal data processing and data communications systems.

Our objective is to formulate an action plan by June 30. An interagency task force has been given the assignment.

Assignments have also been made for other task forces to work on problems involving

- . Social security numbers;
- . Protection of personal privacy interests of consumers;

(more)

- . Preserving confidentiality of personal records used for statistical and research purposes;
- . Ways of notifying people of their rights with respect to various types of information they are asked to provide to Federal agencies;
- . Mailing list practices of the Federal government; and
- . Legislative proposals aimed at protecting the personal privacy interests of individuals on whom Federal records are maintained.

In addition, staff work and outside research are under way or planned on problems such as:

- . Development of basic legal concepts for articulating privacy rights;
- . Confidentiality of personal tax returns submitted to the I.R.S.;
- . Personal privacy rights of Federal employees;
- . Types of personal information that should not be collected;
- . Administrative procedures that would enable individuals to know about, and to correct errors in personal data files maintained by Federal agencies; and
- . Means for limiting the range and volume of personal data collected by the Federal Government.

In dealing with troublesome privacy problems, let us not, however, scapegoat the computer itself as a Frankenstein's monster. But let us be aware of the implications posed to freedom and privacy emerging from the ways we use computers to collect and disseminate personal information.

A concerned involvement by all who use computers is the only way to produce standards and policies that will do the job. It is up to us to assure that information is not fed into the computer unless it is relevant.

Even if it is relevant, there is still a need for discretion. A determination must be made if the social harm done from some data outweighs its usefulness. The decision-making process is activated by demands of people on the Government and business for instant credit and instant services. How can we offer service to people without doing disservice to their privacy?

Computer technology has made privacy an issue of urgent national significance. It is not the technology that concerns me but its abuse. I am also confident that technology capable of designing such intricate systems can also design measures to assure security.

There is no mention of the "right of personal privacy," as such, in the United States Constitution. But, as far back as 1928, Justice Brandeis expressed the idea that the right of individual privacy is broadly protected by the Constitution. For example, illegal searches and seizures are explicitly forbidden in the Constitution. Moreover, the general right to privacy certainly can be regarded as one of the unenumerated rights that the Tenth Amendment reserves to the people.

(more)

There will evolve a more comprehensive body of law on privacy from issues to come before the courts. But much can be done through executive and administrative actions — both in government and in business — to meet the growing public desire for protection of each individual's right of privacy.

Sensitivity was shown by planners of this conference to the right of privacy as affected by personal data collection and processing. I am pleased that five of your scheduled work sessions concentrated on privacy problems. I wish my time had permitted me to attend these sessions, including the meeting on Humanization of Information Systems.

The need to humanize information systems best expresses how we should approach the privacy issue.

People feel threatened by big information systems just as they are troubled by the growth of big government, big business, big unions, and by big institutions generally. Anxiety is experienced because big systems and big organizations seem inhuman in that they appear not to respect a person as an individual but treat him as just another unit in a broad category of persons.

As one processor of mail for a large organization said: "The saddest thing of all is reading letters that begin, 'Dear Computer, I know there are no humans there.'"

For 25 years I served in the Congress and watched the social planners. One huge program after another was enacted. Rigid categorical standards were applied to people with a sweeping brush. We began the programming of people before computers were invented.

It is my conviction that the time has come to show greater respect for individual differences and to cease programming people as though they were objects.

We are approaching the celebration of this country's bicentennial. A major commitment we should all make for America's third century is to work together to humanize the operations of our computers, our institutions, and our government. As Theodore Roosevelt put it very simply 70 years ago: "The government is us; we are the government, you and I."

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

June 21, 1974

OTP CIRCULAR NO. 13

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Federal Use of Commercial Telecommunication Service

1. Purpose. This Circular establishes guidelines designed to clarify the normal Federal role as a user, rather than a provider, of telecommunication service. The policy emphasizes the need to place maximum reliance on the private sector in providing telecommunication services to the Federal Government.

2. Background. It is a long-standing policy of the Federal Government to rely on the private enterprise system to satisfy its needs. In the area of telecommunications, this policy has generally been followed. However, in the absence of further guidance, agencies have been free to choose between two different approaches: the procurement or lease of telecommunication facilities (which are then used to produce a service), or the direct purchase of telecommunication service. Both approaches depend on the private sector, but the nature of dependence is distinctly different.

Agencies which procure facilities, rather than services, are forced to maintain staffs with all of the expertise necessary to develop the detailed system design. The service approach, while not eliminating the need for in-house telecommunication staffs, will shift more of the burden for system design and detailed equipment specification to the private sector. The level of in-house design-oriented expertise necessary to insure that proposed service offerings are sound depends on type and frequency of procurement actions in which the agency is engaged.

The following statement of policy is designed to distinguish between these two approaches and to emphasize that purchasing service directly is preferred.

3. Policy. The Federal Government places heavy reliance on the private sector in providing telecommunication service for its own use. This means that all functions normally associated with providing the service shall be performed by the private sector. These functions include design, engineering, system management and operation, maintenance and logistical support.

In order to emphasize the government's proper role as a user, any proposal designed to provide needed telecommunication service, which requires the Federal Government to perform any of the "provider" functions such as those listed above, shall be adopted only if commercial service is:

- 1) not available to the user during the time needed;
- 2) not adequate from either a technical or operational standpoint; or
- 3) significantly more costly.

A non-commercial service approach is acceptable if such an approach will result in significant savings over an otherwise acceptable commercial service offering. To be considered significant the savings must exceed 10% of the cost of the commercial service. The cost estimate of the non-commercial approach must include, as a minimum, all of the factors called out by OMB Circular A-76. If the proposed approach involves heavy investment, rapid obsolescence or uncertain requirements, the minimum savings threshold should be increased to reflect these factors.

4. Administration and Scope. This policy applies to the telecommunication activities of the Executive Branch which take place in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico.

Agency heads are responsible for the implementation of this policy within their own organization. However, in the case of requirements which, under current authorities, must be submitted to the General Services Administration, it is the responsibility of GSA to determine the appropriate use of commercial service in accordance with this Circular. A report describing the implementation of this Circular shall be provided to OTP by each agency within six months of the policy issuance date.

5. Authority. This Circular is issued pursuant to the responsibilities set forth in Executive Order 11556.

Clay T. Whitehead
Director

GSA Attempt to Revive Fednet Thwarted by Irate Legislators

By Nancy French
Of the CW Staff

WASHINGTON, D.C. - In what appeared to be a breach of a commitment made by General Services Administrator Arthur Sampson, the General Services Administration (GSA) requested bids on Fednet again last week without notifying members of Congress or the Executive Branch.

Although the move caught everyone by surprise, angry congressmen reacted quickly, framing legislation that five days later effectively killed the proposed federal teleprocessing network.

Sources in the Office of Telecommunications Policy (OTP) and Congress who thought they had an understanding with GSA on Fednet said they heard the news "with utter disbelief."

"Sampson had a verbal agreement with Office of Management and Budget (OMB) director Roy Ash and OTP director Clay Whitehead saying they would be notified before GSA purchased any more data processing systems to handle personal information," one congressional staff member pointed out.

And on June 20, Sampson promised a joint Senate committee, hearing testimony on proposed privacy legislation, that no further procurement would be initiated for DP equipment for Fednet without first informing Congress.

"It sure looked as though they were trying to sneak this one by us," an OTP staff member commented.

Under fire since February when the project was first offered for bids, Fednet was seen by critics from the beginning as

(Continued on Page 4)

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Burnham entered?

Attempted Fednet Revival Thwarted by Congress

(Continued from Page 1)

a serious threat to privacy. These critics feared that the proposed data communications network would have allowed computer centers all over the U.S. to be interfaced into a single massive data system.

GSA responded to the criticism by renaming the project "the new equipment project" and adding amendments that scaled down the system considerably.

On May 16, GSA gave notice to prospective bidders that the project had been reduced to a maximum of six CPUs, that the data communications network had been canceled and that a new request for proposal (RFP) would be issued within 60 days.

The RFP sent out on July 15 included four computer sites for the Department of Agriculture and one optional site for GSA, according to a GSA spokesman.

"It wasn't a new procurement — it was the one we promised would be out within 60 days back on May 16," he explained. The GSA official claimed the whole thing was a "misunderstanding." He said the RFP, tied up in the print shop since June 21 and issued on July 15, was the one issued in February reprinted to clear up confusion created by all the amendments.

Since it was not a "new procurement," but merely the same Fednet proposal with amendments, "prior notice" to members of Congress was not necessary, he said.

Congressional and Executive Branch officials disagreed. When news about the RFP "hit the street," according to an OTP spokesman, one by one officials in OMB, OTP and various congressional offices started to spread the word by phone.

Congressional committees took action immediately. The House of Representatives had already included in GSA's appropriations bill for fiscal year 1975 a

clause forbidding GSA to use any of the funds appropriated to purchase "anything resembling Fednet," according to one House source.

By July 18, the Senate added the House language to its appropriations bill for GSA.

The same day, GSA officials received notice from OMB that the ADP Revolving Fund, provided to GSA under the Brooks Bill, had been apportioned for other use and that the money "would not be available" for Fednet.

On July 19, GSA pulled out of Fednet entirely by dropping the optional GSA

site "in view of the concern expressed over the protection of privacy . . ."

"Despite the merits inherent in the proposed joint proposal," the GSA release said, it would be "in the best interest of the government to fill GSA's needs separately."

What remains of the Fednet proposal is four computer installations for the Department of Agriculture.

GSA said it has "no plans for a separate GSA procurement," and if and when it does, "full consultation with the Congress and the Executive Branch" will be undertaken.

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