Cong
Lambert to Sen. Ellender
9-13

PROPOSED COMMENTS TO BE INCLUDED IN THE TREASURY, POST OFFICE AND GENERAL GOVERNMENT APPROPRIATIONS SUBCOMMITTEE CONFERENCE REPORT REGARDING THE FUTURE ROLE OF THE OTP

The Conference notes that there is confusion in the Congress as to OTP's relationships to other Government entities, particularly the White House, the Department of Commerce and the Federal Communications Commission. There is concern that OTP is unduly influenced by political considerations because of its location in the Executive Office in carrying out its broad-guaged responsibilities, which range all the way from allocating frequencies for Government use to proposing changes in broadcast regulation. With respect to the Department of Commerce and the FCC, there is also concern about overlap and duplication in the area of research and analysis regarding telecommunications issues.

Both the House and the Senate reports pointed to apparent duplication in the research budgets between OTP and the Office of Telecommunications of the Department of Commerce,

and the Senate advised that consideration be given to consolidating that portion of the Department of Commerce's budget with the OTP budget.

The Conference Committee shares these concerns and urges that OTP consider steps that would clarify many misunderstandings regarding its role in the Executive Branch. OTP should also review the budgetary and organizational issues regarding its relationship to the Department of Commerce. OTP should make recommendations to the authorizations committees and appropriations committees of the Congress with respect to the full range of our concerns prior to submitting its next budget request.

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

April 2, 1974

DIRECTOR

Honorable John O. Pastore
Chairman
Subcommittee on Communications
Committee on Commerce
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As we have discussed, the Office of Telecommunications Policy will soon introduce amendments to update the Communications Satellite Act of 1962 to reflect changed conditions in international satellite communications.

Most of these amendments relate to the Communications Satellite Corporation (Comsat) and reflect the successful implementation of the INTELSAT system and the emergence of Comsat as an established and mature corporation.

In 1962, there were a number of technical and operational uncertainties regarding the creation of a new corporation to serve as the chosen instrument of the United States in a global system. These uncertainties gave rise to the inclusion of several special provisions in the Act relating to the corporation's ownership and the conduct of its affairs; provisions not normally associated with a private communications common carrier enterprise. Now that these uncertainties have been resolved, it is appropriate to remove a number of these special provisions.

These amendments would eliminate the requirement that Comsat incorporate in the District of Columbia, repeal the provision calling for Presidentially-appointed and common carrier-elected directors, eliminate the special class of common carrier stock, reduce permissible common carrier shareholdings to five percent, and permit Comsat to issue par value stock.

The amendments would also repeal the provision requiring Comsat to obtain FCC approval prior to obtaining additional capital. The FCC does not exercise similar financial control over other common carriers, and the technological and operational uncertainties which originally warranted this departure from normal procedures are no longer present. This change would, of course, leave intact current FCC procedures regarding the licensing of Comsat's facilities and regulation of its common carrier activities.

In addition to updating the Act as discussed above, the amendments also deal with the possible emergence of specialized international satellite systems that would be separate from the INTELSAT system. Discussions have been taking place among various foreign governments and the United States regarding the possibility of implementing such specialized systems for aeronautical and maritime communications purposes.

One provision would make explicit that Comsat could participate in any such new international systems, albeit on a non-exclusive basis, thus legislatively affirming an FCC rule-making decision to the same effect in the context of domestic satellite systems.

Another amendment relates to the clarification of the Executive Branch role in the planning, implementation and operation of new international satellite systems that are developed pursuant to intergovernmental agreements to which the United States is a party. Specifically, the Presidential responsibilities set forth in Sections 201(a)(1) through 201(a)(7) of the present Act, and the State Department role specified in Section 402 of the Act, would be made applicable to such systems.

As you know, the 1962 Act spells out the following seven responsibilities for the Executive Branch with regard to Comsat and the INTELSAT system:

1. Aid in the planning and development of the system;

2. Provide for continuous review of the development and operation of the system;

3. Coordinate the activities of government agencies with responsibilities in the field of telecommunications;

4. Supervise the relationships of Comsat with foreign governments or international bodies;

5. Insure timely arrangements for foreign participation in the system;

6. Insure availability of the system for governmental purposes; and

7. Assist in attaining coordinated and efficient use of the spectrum.

In addition, Section 402 requires Comsat to notify the State Department whenever it enters into negotiations with a foreign entity, and authorizes the Department to advise Comsat of relevant foreign policy considerations.

The two principal reasons for seeking a statutory designation of Executive Branch functions with regard to non-INTELSAT international systems are: (1) the foreign policy aspects of such systems and (2) the existence of uncertainty regarding present Executive Branch authority with respect to such systems.

It is clear from the legislative history of the Communications Satellite Act of 1962 that the multi-national character of the global system, and its critical foreign policy implications, were among the major factors underlying a statutory delineation of the role of the Executive Branch. The foreign policy implications of a system serving the interests of a large number of countries called for clearly defined Executive responsibility.

The multi-national character of emerging non-INTELSAT systems is no less evident. For example, current discussions relating to a pre-operational aeronautical satellite system have involved about 15 nations, and an operational follow-on to such a system could involve as many as 120 nations.

Moreover, the foreign policy implications of international communications and the attendant role of the Executive have long been statutorily recognized irrespective of the number of nations involved. The Cable Landing License Act of 1921, 47 U.S.C. Sections 34-39, for example, conferred authority on the President to grant or deny applications by international carriers to establish communications links with other countries by means of submarine cables. Although Presidential authority to grant cable landing licenses was delegated in large measure to the FCC by Executive Order No. 10530, ultimate authority over international cables is retained by the Executive Branch in that such licenses may be granted by the Commission only with the prior approval of the Secretary of State.

The express statutory grant of Presidential authority in the INTELSAT situation on the basis of foreign policy considerations, as well as the express recognition of Presidential authority in the matter of international submarine cables, provide clear precedents for the grant of comparable authority in the area of international satellite systems separate from INTELSAT. Moreover, if the proposed amendments are not enacted, there will be a major gap in the legislative recognition of Executive Branch responsibilities in the area of international telecommunications.

A second reason for proposing this amendment is that the scope of existing Executive Branch authority over non-INTELSAT international satellite systems may be open to question in several respects, thereby necessitating clarifying legislation.

It is, without doubt, true that the Executive Branch's plenary authority over foreign affairs is sufficient to encompass the negotiation of international agreements leading to such systems. However, this existing authority would only cover the first and fifth Presidential functions as set forth in the 1962 Act and enumerated above; there are questions as to whether the Executive could perform all of the enumerated functions without specific statutory authority.

For example, Section 201(a)(3) authorizes the President to coordinate the activities of government agencies involved in telecommunications. Effective coordination was necessary with respect to the INTELSAT system so that the United States could present a consistent policy position in international deliberations. It is no less necessary in the context of new specialized international systems.

Another question relates to the authority conferred by Section 201(a)(4) authorizing the Executive to supervise the relationships of Comsat with foreign governments. It is anticipated that the United States operating participant in a specialized international satellite system would be a nongovernment entity. Such an entity would be required to deal on a regular basis with the international organization composed of all the nations using the system. The foreign policy implications are obvious, yet we have found no provision of existing law authorizing the President to provide foreign policy direction or telecommunications policy guidance to a private corporation in its conduct of business with foreign governments.

Similarly, the authority conferred on the State Department by Section 402 appears to have no counterpart in existing law. Yet it is essential that the United States participant in an international satellite system be required to seek and obtain the State Department's foreign policy guidance prior to entering into negotiations with foreign countries.

The proposed amendment does not attempt to assign responsibilities within the Executive Branch, nor do I believe that it should. The Presidential authority conferred by Sections 201(a)(1) through 201(a)(7) of the 1962 Act was delegated to OTP and the State Department by a subsequent Executive Order. The authority conferred by this amendment would be delegated in a similar fashion.

If you require any additional information, please let me know.

Sincerely,

Clay T. Whitehead

SEP 12 1973

Honorable Henry Bellmon
United States Senate
Washington, D.C. 20510

Dear Senator Bellmon:

As we discussed, I have reviewed the draft bill "To provide for legislative budget review by the General Accounting Office" on which you asked my comments. Although it has been several years since I was deeply involved in budget matters, it is my personal opinion that this is an idea well worth pursuing.

Most people I know who have been involved in or studied the Federal budgeting process agree that the Congress needs to improve its capability for analyzing the President's budget proposals and making whatever changes it deems appropriate. Suggestions for change have focused on new mechanisms, such as a Budget Committee, or on bigger staffs for authorizing and appropriating committees. For reasons you know better than I, neither of these approaches has succeeded or appears likely to do so in the foreseeable future.

By giving GAO responsibility for providing budget review information, your draft bill seems not only to avoid the pitfalls of earlier efforts but also builds on the shifting emphasis of GAO's reviews over the past few years. In short, it is my personal view that your approach is a good one and would greatly help the Congress deal with its

budgetary responsibilities. For what they may be worth, I offer the attached comments and suggestions that may be helpful.

I appreciate the time you took for our talk last week and your willingness to help OTP with its budget problems. If I can be of any further assistance, please let me know.

Sincerely,

Clay T. Whitehead

Enclosures

cc:
DO Records
DO Chron
Mr. Whitehead
Eva
Mr. Lamb
Mr. Goldberg
Mr. Eagle

CTWhitehead:mlf:9-11-73

1. Section (2)(b)(1) appears to duplicate existing GAO authority and separate legislative mandates for separate parts of GAO to do the same thing may cause problems.

2. Section 2(b)(2) could be interpreted as an unwarranted intrusion into the internal workings of the Executive Branch; most information of this type could be gained informally or in other ways without raising this awkward point.

3. Section 2(b)(4) as written has two problems: it does not specify how the new GAO offices are to work with the appropriations committees and subcommittees, and it empowers GAO to use its own discretion as to the program levels and priorities that go into its budget estimates. It might be better to revise this section to include two provisions: (a) direct each office in the new division to make its own comparative budget estimates based both on existing legislation and program levels and on such changed legislation or levels as the President may have proposed; and (b) prepare alternative budget estimates based on new legislation, changed program levels, or other criteria as the pertinent Congressional committees may direct. This would help the appropriations committees develop alternative budget priorities and enable the new GAO division to be helpful to the appropriations subcommittees as well.

4. Section 2(b)(6) could be changed to direct GAO to analyze and prepare information necessary for the appropriate committees to make the actual determination.

5. Section 3(a) probably need not specify where "substantially all of the personnel" of each division office are to be located. Moreover, this section could be made much more palatable to the executive by adding to the last sentence the phrase: "as agreed by the Comptroller General and the head of the agency."

6. Section 3(b) should include exceptions for privileged Presidential communications, classified information, and information on individuals that would infringe on their privacy, as elsewhere provided for in law.

7. Section 5 might also include a limitation "and not more than 10% of GAO's total funds" to allay fears that GAO would become a "super-OMB."

SURVEY OF RECENT PROPOSALS TO REFORM
LEGISLATIVE BUDGET PROCEDURES

Under the Constitution, Congress has primary responsibility for controlling the budgetary process -- for authorizing the spending and raising the revenues. In recent decades, it has become increasingly more difficult for Congress to carry out fully its constitutional mandate, due largely to the gigantic size of the Federal budget and to what many consider the outdated congressional machinery for budget oversight.

In the last ten years, a number of proposals have been advanced and, in a few cases, implemented. This brief survey will examine these proposals.

I. Consolidation of Committees

Prior to the Civil War, each House of Congress had single committees which considered Federal budgetary matters on an overall basis.[1/] In the House, it was the Ways and Means Committee; in the Senate, the Finance

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1/ See U.S. Congress. Joint Study Committee on Budget Control. Report. April 18, 1973. pp. 8-9.

Committee. Due to the great amount of financial activity generated by the Civil War, however, both committees had to shed some of their functions to newly-created committees with their own jurisdictions. The Ways and Means Committee retained its taxation jurisdiction, but gave the control over spending jurisdiction to the new Appropriations Committee. Two years later, the Senate also created an Appropriations Committee separate and distinct from the Finance Committee.

This separation in jurisdiction between the taxing and spending activities has continued to this day. All tax bills are considered by the Ways and Means and Finance Committees; while expenditure activities are deliberated on by the Appropriations Committees in the House and Senate. In addition, the appropriation proposals are not considered by Congress in a single bill. Rather, they are divided up into a number of measures and considered separately by fourteen appropriations subcommittees whose work is finished and submitted to the full committee at different times.

This lack of a unified approach to budget oversight has generated reform movements to consolidate the taxing and appropriations functions either in one single committee in each house, as it was done in the pre-Civil War period, or consolidation in the form of a joint budget committee between two houses.

A. Single Budget Committees

The two major proposals presently pending before the Congress dealing with reform of the legislative budget machinery both call for single budget committees in both houses.

Public Law 92-599, enacted in the closing days of the 92d Congress, created a Joint Study Committee on Budget Control which was charged with the task of proposing "procedures for improving congressional control over budgetary outlay and receipt totals and to assure full coordination of an overall view of each year's budgetary outlays with an overall view of the anticipated revenues for that year." 2/ On April 18, 1973, the Joint Committee

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2/ U.S. Congress. Joint Study Committee on Budget Control. Report. April 11, 1973. p.1.

issued its report which eventually was introduced in the Senate as S.1641 (House Companion Bill H.R. 7130), the "Budget Control Act of 1973."

A week prior to the introduction of the above bill, another budget reform bill, called the "Congressional Budgetary Procedures Act of 1973," was introduced by Senators Ervin, Metcalf, Percy, Nunn, Brock and Cranston.

Both of these bills would set up special committees on the budget in both houses solely for the purpose of reviewing the Federal budget on an overall basis. Under both of these bills, budget committees would submit to each house early in the session overall spending ceilings for the coming fiscal year, subdivided into ceilings for each major spending category. Federal revenues and debt limit would also be fixed. Once approved by both houses in an omnibus resolution, the ceilings would be binding, subject to breach only by a two-thirds vote of Congress. Near the end of each session, the budget committees would submit a second omnibus resolution which could adjust the earlier ceilings on total spending or any of its components.[3/]

3/ Washington Post. September 9, 1973. p. C-1.

Hearings have been held by the Senate Government Operations Committee on S.1541 and S.1641 in April and May and the bills have been reported to the full committee with amendments. [4/] The House is still holding hearings on companion bill H.R. 7130 with another hearing scheduled for September 13.

B. Joint Budget Committee

Since 1950, almost every Congress has seen a bill introduced calling for a Joint Committee on the Budget; in fact, the Senate consistently passed such a bill in every Congress between 1952 and 1963, only to see the bill eventually die in the House.

Presently pending before the Senate are bills offered by Senators Percy (S.846) and Brock (S.40) to create such a Joint Budget Committee. Under Senator Percy's bill, the Joint Committee would function as follows:

4/ U.S. Congress. Senate. Hearings Before the Committee on Government Operations.. Subcommittee on Budgeting, Management, and Expenditures. Parts 1 and 2. April and May 1973.

1. The Committee would consist of 28 members, seven from each of the four Committees -- House and Senate Appropriations, House Ways and Means Committee and the Senate Finance Committee.

2. At the beginning of each session, the Joint Committee -- taking into consideration the President's budget recommendations, the Economic Report of the President, and the general economic conditions -- would recommend to each house by March 30 the maximum amount to be appropriated or authorized for outlays in the coming fiscal year.

3. The recommendation would be accompanied by a joint resolution which would fix an amount for all outlays and budget authority for the coming fiscal year. If the recommended outlay total exceeds the estimated receipts, the joint resolution would authorize an increase in the public debt.

4. The joint resolution would also provide for a division of the total amount of outlays among the sub-committees of the Appropriations Committees and all other committees having the authority to authorize outlays.

C. Joint Committee on Fiscal Policy

John S. Saloma III in his book, The Responsible Use of Power[5/] recommended a joint committee whose membership would be based on experience and interest rather than seniority and rank. The major function of the Joint Committee would be to provide a fiscal policy framework and develop budgetary guidelines to assist the fiscal committees. "Primarily it should provide," Saloma wrote, "a form for continuing congressional consideration of the budget, changing economic and political assumptions on which the budget is based, and the status of authorizations, appropriations, and revenue measures."[6/]

5/ John S. Saloma III, The Responsible Use of Power, American Enterprise Institute, 1964, Reprinted in U.S. Senate. Committee on Government Operations. Compendium of Materials on Improving the Congressional Control Over The Budget. March, 1973. pp. 543-563.

6/ Ibid, p. 561.

II. More Comprehensive Budget Review

The Federal budget is reviewed in Congress by fourteen separate appropriations subcommittees. All of these subcommittees finish their work at different times and the full Congress ends up voting on these budget figures as they come out of the full Appropriations Committee, not in a single bill.

This lack of any overall comprehensive study of each year's budget by Congress has to some extent been remedied (or at least a beginning made) by passage of the Legislative Reorganization Act of 1970 (Public Law 91-510, October 26, 1970; 84 Stat. 1140). Section 242 of this Act requires the House Appropriations Committee to hold hearings on the budget as a whole "with particular reference to (1) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and (2) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts." 7/

7/ See Louis Fisher, "Proposals to Reform Legislative Budget Procedures," Library of Congress. Legislative Reference Service Report. November 2, 1970.

III. More Time for Deliberation

One of the most recurrent problems in the congressional budget oversight process is the work backlog. Congress has been unable in recent years to complete action on appropriations bills before the start of the next fiscal year. As a result, adequate time for examination and study of funding levels and program objectives has not been found. Several proposals have been advanced to remedy this problem.

A. Multi-Year Budget

This proposal, advocated by Alice Rivlin and Charles Schultze [8/] of Brookings Institution, would require the Administration to submit to Congress an updated three-year budget proposal every January. Last January, under this proposal, the President would have submitted estimates for fiscal years 1974, 1975, and 1976. Congress would then deal first with changes in the coming fiscal year budget. Although the basic decisions in that

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8/ Washington Post. September 9, 1973. p. C-1.

fiscal year budget would have been made two years earlier, re-evaluation would most likely be necessary, in view of a changed economic outlook, natural disasters, or the need to revise specific programs.

The benefit of such a multi-year budget process would be that the specific authorizing and appropriating committees would normally only do their authorizing every two or three years. In the intervening years, they would consider the appropriation levels for programs they had authorized, and use some time to find out how the programs were working.

B. Change to Calendar Year

A number of bills have been introduced over the years to change the United States fiscal year to coincide with the calendar year. The fiscal year would begin, under this proposal, on January 1 rather than July 1. This would give Congress more time to consider appropriation bills and eliminate, in most cases, the need to resort to continuing resolutions once the June 30 deadline is passed.

C. Separate Fiscal and Legislative Sessions

Senator Magnuson and others have proposed that, in addition to changing the United States fiscal year, Congress divide its annual session into two separate periods -- legislative and fiscal. Only regular legislation and authorization measures could be considered during the "legislative period" and only appropriation bills could come before the Congress during the "fiscal period." [9/] Such a division would assist Congress in providing for an orderly and expeditious consideration of the budget estimates.

IV. Greater Staff Assistance

Congressional oversight of a burgeoning Federal budget is a highly staff-intensive operation. Recognizing this fact, the Legislative Reorganization Act of 1970 provided, in Section 301, for an increase in professional staff members for the committees, raising the total to six members for each standing committee.

9/ American Enterprise Institute. Legislative Analysis Number 8. June 25, 1971, p. 12.

A. GAO Analysts

Section 204 of the Legislative Reorganization Act of 1970 provided to all congressional committess and joint committees cost-effectiveness analysts from the General Accounting Office. These analysts evaluate cost benefit studies furnished by executive agencies, or conduct cost benefit studies of programs under the jurisdiction of the committee.[10/]

V. Expenditure Ceilings[11/]

In recent years, Congress has imposed a limit on the amount of outlays allowable in a single year as a means of imposing some semblance of control over the budget.

The Revenue and Expenditure Control Act of 1968 imposed ceilings on both outlays and new obligational authority for fiscal year 1969. Expenditures were to be held to $180.1 billion, $6 billion less than the total estimated in the President's budget. Four categories were

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10/ Fisher, supra note 7, at 8.

11/ See Allen Shick in Compendium, supra note 5, at 217.

exempted from the limits: Vietnam costs, interest on the public debt, veterans' benefits, and social security payments.

The Second Supplemental Appropriations Act (1969) set a $191.9 billion limit on outlays for fiscal 1970 but imposed no lid on obligations. This was $1 billion below the revised budget submitted by President Nixon in April 1969. The ceiling was to be adjusted if the Congress took action at variance with the Administration's budget.

The Second Supplemental Act (1970) raised the limitation on fiscal 1970 spending to $197.8 billion and established a $200.7 billion maximum for fiscal 1971 outlays. Congressional action was exempted from the limitations.

For fiscal 1973, President Nixon proposed to Congress the establishment of a ceiling of $250 billion, $6-8 billion below estimated spending for the year. The bill implementing the proposal of the President failed to pass, however, owing to the lack of an agreement between House and the

Senate on the type of restrictions to be placed on the President so as to preserve some semblance of Congressional authority over spending.

Cong

93rd CONGRESS

1st SESSION

S. .....

(NOTE.—Fill in all blank lines except those provided for the date, number, and reference of bill.)

IN THE SENATE OF THE UNITED STATES

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Mr. Bellmon .....

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.....

introduced the following bill; which was read twice and referred to the Committee on .....

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A BILL

To provide for legislative budget review by the General Accounting Office.

(Insert title of bill here)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of this Act--

(1) "Executive agency" has the same meaning given that term by section 105 of title 5, United States Code; and

(2) "Budget" means the Budget of the United States Government transmitted to Congress by the President under the Budget and Accounting Act, 1921.

SEC. 2. (a) There is established within the General Accounting Office a Division of Legislative Budget Review. The Division shall be headed by such individual as the Comptroller General of the United States may designate, and that individual shall be directly responsible to the Comptroller General.

(b) Within the Division there shall be a separate office for each Executive agency which shall--

(1) continuously observe and study the operation of the agency to determine the efficiency and effectiveness of the agency in the utilization of appropriated funds;

(2) review and analyze the budget estimates submitted by that agency for inclusion in the Budget and in supplemental and deficiency requests;

(3) review and analyze budget requests for that agency included in the Budget and in supplemental and deficiency budget requests submitted to Congress; and

(4) ~~make~~ its own present and future budget estimates with respect to that agency, based upon observations of the agency's operations, specifying the differences between its estimates and the estimates of that agency and those estimates and requests submitted to Congress with respect to that agency with the reasons for such differences;

(5) develop, establish and maintain an up-to-date inventory of executive branch fiscal, budgetary, and program related information; and

(6) review these agency operations on a continuing basis and ~~determine whether~~ the agency is satisfying Congressional intent and requirements.

(c) The Comptroller General shall transmit to Congress, as soon as practicable, each review, analysis, and estimate of each such office.

SEC. 3. (a) Substantially all of the personnel of the office for each Executive agency shall be located in the main office building of that agency. That Executive agency shall provide to the office such space within its main building as the Comptroller General considers appropriate to enable the office to carry out its duties under this Act.

(b) Each office for an Executive agency is authorized to request and obtain such information, with respect to such agency, from any Executive agency as the Comptroller General considers necessary to carry out the duties of that office under this Act. Any information so requested shall be provided by any such agency. Except priv. info. IT + matters of indiv. priv. as elsewhere provided

SEC. 4. An officer or employee in the office for an Executive agency shall not serve in that office for more than 36 consecutive months. Upon termination of service in that office, such officer or employee shall not be appointed, detailed, assigned, or otherwise made available to perform duties with respect to that same agency unless at least 6 years have elapsed since the date of such termination of service.

SEC. 5. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not more than 10% of the funds utilized by the various agencies of the Executive Branch in the formulation, presentation, and justification of agency estimates within the various agencies and departments; presentation and justification to the Office of Management and Budget; and presentation and justification to Congress.

& not more than 10% total funds GAO.

Blackout
Cong

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

August 1, 1973

DIRECTOR

Honorable John O. Pastore
United States Senate
Washington, D.C. 20510

Dear Senator Pastore:

This is in response to your letter of July 17 requesting the views and recommendations of the Office of Telecommunications Policy concerning the application of S. 1361, the proposed general revision of the copyright law, to cable retransmissions of professional sports broadcasts.

The Federal Communications Commission (FCC) rules contemplate that new copyright legislation will provide for compulsory licensing of the distant signals retransmitted by cable systems, to complement the various degrees of program exclusivity protection afforded by the rules. Although the FCC's initial cable rules did not include specific provisions as to sports programming, the Commission recognized that sports programs stood on a different footing from other television fare. Accordingly, the FCC proposed rules designed to prevent cable systems from circumventing the sports broadcast practices, particularly the so-called home game blackout, which are sanctioned by the antitrust exemption granted by Public Law 87-331.

Although the proceeding in which the proposed cable-sports rules are being considered is still pending, the Commission has stated the underlying principle that cable systems should not be allowed to circumvent the national policy respecting broadcast rights for sports events through their retransmissions of sports telecasts. OTP supports this principle. We also agree with Senator McClellan's expressed desire that Section 111 of the copyright revision be modified to eliminate all provisions that may be regarded as primarily regulatory and that the copyright bill simply implement whatever statutory policy governs sports broadcasts and cablecasts at the time the bill is enacted.

While the present language of Section 111 accomplishes the objective of implementing the policy on sports presentations, it appears to go further by depriving a cable system of a compulsory license for retransmission of distant sports broadcasts whenever the broadcast stations in the cable system's local area have not, for whatever reason, received authorization for broadcast of such games.

For example, while public policy might permit a team or a league to black out certain games to protect home game gate receipts, Section 111 would prevent the cable retransmission of any game not locally televised even where no home game is being played or where the system is not located within the home territory of any professional team.

Moreover, under the professional football league contracts with the television networks, when home games are blacked out, the network provides the local affiliate with another game that is presumed to be of regional or local interest. Section 111 would operate to preclude the cable system in that area from offering another football telecast from a distant broadcast station, thereby confining cable subscribers to the choice of games made available for them by the network.

Finally, Section 111 would even prevent the retransmission of a game into a market where a team or league had not sought to make that game available to broadcast stations because of anticipated lack of viewer interest.

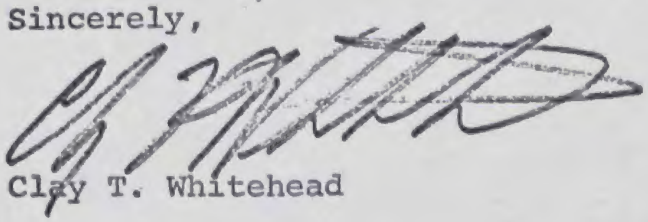
In situations such as these, cable systems would be precluded from offering sports presentations to their subscribers solely by operation of Section 111(c)(4)(C) and not as a means of preventing circumvention of the public policy regarding sports broadcasts, whether reflected in Public Law 87-331, S. 1841, or any other legislative provision.

Therefore, if Section 111 is intended only to preserve intact public policy regarding sports broadcasts, which pertains at the time the copyright revision is enacted, it should be modified. It should be more narrowly drawn so as to remove from compulsory licensing only those professional sporting events whose retransmission by cable systems would result in a departure from legally sanctioned sports broadcast practices.

This still leaves a question of whether professional sports leagues, which enjoy the benefits of a statutory antitrust exemption, should be allowed to deprive millions of fans in cities throughout the Nation of the opportunity to watch their home team even when seats to the game are sold out in advance. I would like to take this opportunity to state that the Administration wholeheartedly favors legislation which would prohibit such sports leagues from blacking out sold-out home games.

Should you require any additional information, I would welcome the opportunity to provide it.

Sincerely,



Clay T. Whitehead

April 9, 1973

Honorable Sam J. Ervin, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Ervin:

I appreciate your taking the time to meet with me today to discuss the Administration's proposals regarding broadcasting, particularly the First Amendment implications. I have enclosed a copy of the speech I gave last December.

I want to reassure you again that this Administration has never had intentions of using or expanding any Federal power over content of broadcasting, including the news. To the contrary, we feel that the requirement of a government license to engage in the broadcasting business has been too convenient an excuse for expansion of governmental powers over what is and is not broadcast on our electronic media. It is our intention to seek a reduction of such controls, something we view as very much necessary to maintain the spirit of the First Amendment in this electronic age.

I also enclose for your information the Administration's proposed legislation and the accompanying explanatory materials which discuss in more detail how we view the sensitive balance between necessary government regulation and the protections of the First Amendment in broadcasting. However, because of the critical involvement of constitutional issues and your leadership in promoting constitutional freedoms, I would be most appreciative of any comments you have to offer.

As I mentioned, we will be more conscientious in keeping you informed of our activities, and I would welcome the opportunity to discuss either the issues or our activities with you at any time.

Best personal regards.

Sincerely,

/s/

Clay T. Whitehead

cc:
DO Records
DO Chron
Mr. Whitehead
Eva

CTWhitehead:mlf:4-10-73

corg

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

March 13, 1973

DIRECTOR

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

I am submitting herewith for the consideration of the Congress, a proposed revision of section 307 of the Communications Act of 1934, as amended, which pertains to the term of broadcast station licenses.

The basic concept of the American system of broadcasting is that of localism. It means that broadcasting will be rooted in private enterprise at the community level, with many autonomous and independent local broadcasters throughout the country seeking to construct program schedules in accordance with the tastes, desires, needs, and interests of the public in the area which they serve. This principle reflects the American tradition of having a multitude of diverse local voices serving both local and national purposes in many communities and areas throughout the country.

The broadcast media, however, are unique among our many outlets for expression, in that only they are licensed by the Federal Government. Our system of broadcasting presents this country with a unique dilemma that goes back to the basic policy embodied in the Communications Act of 1934. On the one hand, the Act requires a government agency -- the Federal Communications Commission -- to grant applications for broadcast licenses only if the public interest, convenience, and necessity will be served thereby. This necessarily means that, to some extent, the government will be involved in passing judgment on the heart of that broadcast service, which is the broadcasters' programming. On the other hand, the First Amendment, which applies fully to radio and television broadcasting, denies government the power of censorship and the power to interfere with our most valued rights of free press, free speech, and free

expression. It is within the system of government licensing that these two somewhat contradictory objectives must be balanced. And, within the system of licensing, the most important aspect is the license renewal process. It is the pressure point of the system, because the manner in which renewals are treated goes to the core of the government's relationship to broadcasting.

The requirement to seek government permission to continue in business and the threat of nonrenewal affect the licensee throughout the license term not just at renewal time. Renewal procedures and the factors to be considered by the government at renewal time have a substantial impact upon the daily operations of broadcast stations and the manner in which broadcasters exercise their public responsibilities. Therefore, these procedures and factors could have a stifling effect on the free flow of information, which is so vital to the interests of a free society.

The First Amendment should guarantee broadcasters the right to disseminate ideas, popular and unpopular, and without regard as to whether they are consistent with the views of government. Yet, the role of the broadcasters, not as free agents, but as agents authorized to act only so long as they espouse views consistent with government views, is a possibility under current license renewal procedures. That danger exists when broadcasters, affected by the uncertainty and instability of their business and lacking assurance that they will be able to continue to exercise their local responsibilities, seek safety by rendering the type of program performance necessary to obtain renewal. If the government encourages this type of compliance by setting detailed criteria to determine such performance, the effect could be to turn broadcasters away from the communities that they are licensed to serve and to cause them to seek to serve the government that charts the course for them.

Counterbalancing the goal of stability in the renewal process, however, is the clear public interest mandate of the Communications Act and its prohibition against anyone acquiring a property right in the broadcast license. The license is and must continue to be a public trust; an opportunity to render service; and a privilege to use a scarce public resource to speak to and on behalf of the public. No licensee who fails to exercise the responsibility to his local audience can have any assurance of renewal. Accordingly, the threat of nonrenewal and the spur of competition in broadcasting are important parts of the overall statutory plan.

At present the license renewal process is conducted in an unstable environment. The bill submitted with this letter would restore balance and stability to the license renewal process and enable the private enterprise broadcasters, operating within the rights and the responsibilities of the First Amendment, to serve the public's paramount right in the broadcast media.

The Administration bill would change the present practice and procedures with respect to license renewals in the following four essential ways:

1. License terms for radio and television stations would be extended from three to five years. When the Communications Act was prepared in 1934, the relatively brief three-year license term was a reasonable precaution in dealing with a new and untested broadcast industry. A five-year term, however, seems to be more reasonable at this stage in broadcasting's development. It would inject more stability into broadcast operations and would allow more time for the licensee to determine the needs and interests of his local community, and plan long-range programs of community service.

2. The bill would eliminate the present requirement for an automatic, lengthy, and costly comparative hearing whenever a competing application is filed for the same broadcast service. The FCC would be able to exercise its independent judgment as to whether a comparative hearing is necessary. The renewal challenger would bear the burden of demonstrating that the renewal applicant has not met the criteria of the Act. If the incumbent licensee had performed in the public interest, he would be assured of renewal. A hearing would be required only if the Commission were unable to conclude that the broadcaster's performance warranted renewal.

3. The bill would preclude the FCC from restructuring the broadcast industry through the renewal process. Presently, the FCC can implement policies relating to broadcast industry structure -- such as a policy restricting newspaper ownership of broadcast stations -- through the criteria it uses to decide renewal hearings. This allows for the restructuring of the broadcast industry in a haphazard, highly subjective, and inconsistent manner. The bill would establish that if these industry-wide policies affecting broadcast ownership are imposed or changed, only the general rulemaking procedures of the FCC would be used, with full opportunities provided to the entire broadcast industry and to all interested members of the public to participate in the proceeding.

4. The license renewal bill would also forbid FCC use of predetermined criteria, categories, quotas, formats, and guidelines for evaluating the programming performance of the license renewal applicant. There has been an increasing trend for the FCC to dictate to the broadcasters as to what "good" or "favored" program performance is from the government's point of view. The bill, therefore, would halt this trend toward an illusory quantification of the public interest in broadcast programming and would remove the government from the sensitive area of making value judgments on the content of broadcast programming. The bill would make the local community the touchstone of the public service concept embodied in the Communications Act. Serving the local communities' needs and interests instead of the desires of government would become the broadcasters' number one priority.

The Office of Management and Budget advises that enactment of the proposed legislation would be in accord with the program of the President.

A similar letter is being sent to the President of the Senate.

Sincerely,

Clay T. Whitehead

Enclosure

A BILL

To amend the Communications Act of 1934 to provide that licenses for the operation of a broadcast station shall be issued for a term of five years, and to establish orderly procedures for the consideration of applications for the renewal of such licenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 of the Communications Act of 1934 shall be amended by striking subsection (d) of said section, and inserting in lieu thereof the following:

"Sec. 307(d) (1) No license granted for the operation of any class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for an additional term of not longer than five years, if the Commission finds that the public interest, convenience, and necessity would be served thereby.

(2) With respect to any application for the renewal of a broadcasting license, the Commission shall grant such application if it finds that the applicant is legally, financially, technically, and otherwise qualified to hold such a license under the provisions of this Act and the rules and regulations of the Commission, and that the applicant:

(A) is substantially attuned to the needs and interests of the public in its service area, and demonstrates, in its program service and broadcast operations, a good faith effort to be responsive to such needs and interests; and

(B) affords reasonable opportunity for the discussion of conflicting views on issues of public importance;

Provided, however, that in applying subparagraph (A), the Commission shall not consider any predetermined

performance criteria, categories, quotas, percentages, formats, or other guidelines of general applicability respecting the extent, nature, or content of broadcast programming; and that in applying subparagraph (B), the Commission shall consider only the overall pattern of programming provided by the applicant on particular public issues.

(3) Notwithstanding any other provision of this Act, the procedure to be followed in the event that an application for the renewal of a broadcasting license is challenged by a petition to deny or by a competing application for the same broadcast service is as follows:

(A) The petitioner or party filing such competing application shall make specific allegations of fact sufficient to show that grant of the application for renewal would be prima facie inconsistent with paragraph (2) of this subsection. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant for renewal shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(B) If the Commission finds on the basis of the application, the pleadings filed, and other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application to renew the license would be consistent with paragraph (2) of this subsection, it shall grant such application, terminate the proceeding, and issue a concise statement of the reasons for its findings. If a substantial and material question of fact is presented, or if the Commission for any reason is unable to find that grant of the application would be consistent with paragraph (2) of this subsection, it shall proceed with the hearing

provided in subsection 309(e) of this Act to determine whether grant of the application would be consistent with paragraph (2) of this subsection. If, in such hearing, the Commission finds that a grant of the application would be consistent with such paragraph, it shall grant such application, terminate the proceeding and issue a concise statement of the reasons for its finding. If the Commission for any reason is unable to make such a finding, it shall either deny the renewal application or consider it together with any competing application or applications for the same broadcast service, then on file or later timely filed, and shall grant the application that will best serve the public interest, convenience and necessity.

(4) In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to Section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action."

EXPLANATION AND SECTIONAL ANALYSIS

REGULATORY BACKGROUND

Twelve years ago, the Federal Communications Commission (FCC), in its "Report and Statement of Policy Re: Commission En Banc Programming Inquiry," 20 P&F Radio Reg. 1901 (1960), sought a delicate balance between the public interest performance of broadcast licensees and minimal governmental interference with program decisions. In doing so, the Commission stressed the same principle that underlies the proposed legislation, namely the separation of government from broadcasting.

This principle is consistent with the intent of the Communications Act of 1934 and Congress' continual refusal to impose, or to permit the FCC to impose, affirmative programming requirements or priorities. For example, in the face of "persuasive arguments" that the Commission require licensees to present specific types of programs, the Commission stated that:

> "[W]e are constrained to point out that the First Amendment forbids governmental interference asserted in aid of free speech, as well as governmental action repressive of it. The protection against abridgement of freedom of speech and press flatly forbids governmental interference, benign or otherwise."

Id. at 1907.

The Commission noted that, while it may inquire of licensees what they have done to determine community needs, it cannot impose its own notions of what the public should see and hear, stating:

> "Although the Commission must determine whether the total program service of broadcasters is reasonably responsive to the interests and needs of the public they serve, it may not condition the grant, denial or revocation of a broadcast license upon its own subjective determination of what is or is not a good program."

Id. at 1907.

Finally, in summarizing the obligations and responsibilities of broadcast licensees, the Commission stated that:

> "The confines of the licensee's duty are set by the general standard 'the public interest, convenience or necessity.' The initial and principal execution of that standard, in terms of the area he is licensed to serve, is the obligation of the licensee. The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility."

Id. at 1912.

Yet, during the past decade, there has been a trend toward a more expansive view of the government's power to require licensees to present certain types of programs. Recently, this has led the Commission to propose various quantitative criteria for such program types.

It is, therefore, appropriate that the Congress reaffirm its views regarding the relationship between government and the broadcast media that it must license. The proposed revision of section 307(d) of the Communications Act of 1934 enables the Congress to reaffirm the independence, freedom and responsibility of the broadcast licensee by making the following changes in the Communications Act, which would apply to all pending and future broadcast license renewal applications.

DISCUSSION OF THE PROPOSED LEGISLATION

A. Section 307(d)(1): License Term

The proposed legislation would lengthen the term of broadcast licenses from three to five years; thereby reducing the frequency of government intervention and enhancing the free enterprise character of the broadcast media.

In 1934, when the Communications Act was enacted, a three-year license term was a reasonable precaution in dealing with a new industry. A five-year license at this

stage in the development of broadcasting, however, is reasonable since the longer term enables licensees to render high quality service, by injecting more stability into the license renewal process.

The Commission's power to protect the public by use of forfeitures, "early" renewal applications, and license revocations is in no way diminished by the extended license term. Moreover, the longer term would enable the Commission to give closer scrutiny to each renewal application, since the number of renewal applications to be processed annually would be reduced from 2,700 to 1,600. Further, this closer scrutiny would allow the Commission to resolve problems without deferring the grant of as many renewal applications as is now the case. Curent estimates, for instance, are that some 140 applications are in deferred status.

It should be noted that this provision would apply prospectively to any original broadcast license or to any existing license which the FCC renews after the enactment of the bill.

B. Section 307(d)(2): Renewal Standards

The proposed legislation clarifies the Communications Act's broad "public interest" criterion as it applies to renewal applications.

As a starting point, the proposed legislation specifies that the renewal applicant must be qualified, under the Act and the rules and regulations of the Commission, to hold a license. This requirement goes beyond minimal legal, technical and financial qualifications. The applicant's broadcast record must be free of serious deficiencies in compliance with the Act and with the rules and regulations of the Commission, such as a pattern of failure in making sponsorship identification announcements, violation of the equal employment opportunity rules, fraudulent practices in keeping logs or in reporting changes in owership information, and the like.

However, with the exceptions noted below, policies developed by the Commission could not be enforced against the applicant at renewal time unless reduced to rules.

Thus, Commission policies applicable to initial licensing, such as local ownership, integration of ownership and management, and diversification of media control, would not be applicable to renewal applicants, unless the Commission had decided that the applicant did not satisfy the renewal criteria of the proposed subsection 307(d)(2) (see p. 12 infra). The proposed legislation, however, would not prevent these or similar industry structure policies from becoming rules that would be applicable to all licensees on an industry-wide basis.

Some policies, however, could not be reduced to rules, since they would fall within the category of predetermined performance criteria prohibited by the proviso contained in paragraph (2) of section 307(d). Such current policies as the over-commercialization policy would fit within this category, since it substitutes a government-imposed quota for the judgment of the licensee as to what limits on commercial matter would best serve his community's needs, as well as his own needs. In addition, any future policies regarding statistical program performance criteria, such as those being considered in the pending Commission proceeding on license renewals (Docket No. 19154), would also fall within this forbidden category.

The only policies that would apply directly to the renewal applicants without having been reduced to rules would be the ascertainment and fairness policies incorporated in subsections (A) and (B) of section 307(d)(2). The overall fairness policy would include attendant rules, such as the personal attack and editorial endorsement rules, and policies such as the Cullman doctrine (free time to respond to controversial issues) and the Zapple ruling ("quasi-equal" time to respond to an authorized spokesman of a political candidate). The Commission would be free to determine which aspects of its ascertainment or fairness policies would best be reduced to rules; however, whether in the form of rules or not, they would be applicable to renewal applicants directly through operation of the proposed subsections (A) and (B).

In addition to acknowledging that a renewal applicant must comply with the requirements of the Communications Act and the general rules and regulations of the Commission, the proposed legislation sets out two criteria for evaluating past and proposed programming performance of the incumbent licensee. These criteria in turn are based upon the two

critical obligations of the broadcaster in serving his local public. They are the responsiveness of the licensee to the needs and interests of the public in the communities and areas served by the broadcast station (ascertainment obligation), and the licensee's performance in affording reasonable opportunity for the discussion of conflicting views on issues of public importance (fairness obligation).

As noted above, these two obligations are of long standing. The enactment of the proposed legislation would amount to an explicit confirmation by the Congress that the Commission has authority to review and evaluate the programming performance of the renewal applicant. But, consistent with the First Amendment and with the anti-censorship provision of the Communications Act (section 326), the Commission's role would be limited to an evaluation and review of the licensee's good faith and reasonableness in meeting the community needs and interests, conducting his broadcast operations, and providing a program service.

As the Commission has stated:

> "In short, the licensee's role in the area of political broadcasts is essentially the same as in the other programming areas -- to make good faith judgments as to how to meet his community's needs and interests."

"Obligation of Licensees to Carry Political Broadcasts," 25 P&F Radio Reg. 1731, 1740 (1963) (emphasis added).

A similar standard applies specifically with respect to the Commission's review of the licensee's performance under the fairness obligation:

> "In passing on any complaint in this [fairness] area, the Commission's role is not to substitute its judgment for that of the licensee...but rather to determine whether the licensee can be said to have acted reasonably and in good faith."

"Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 2 P&F Radio Reg. 2d 1901, 1904 (1964) (emphasis added).

The Commission's review of licensee programming performance under the proposed subsections (A) and (B) would be similar to an appellate court's review of an administrative agency. The FCC would not decide the facts anew from its own perspective and substitute its own judgment, but would simply determine whether the licensee's determinations were reasonable and made in good faith.

1) Section 307(d)(2)(A): Ascertainment

The public interest standard of the Act requires licensees to make a "diligent, positive, and continuing effort...to discover and fulfill the tastes, needs and desires of [the]...community or service area, for broadcast service." "Report and Statement of Policy Re: Commission En Banc Programming Inquiry," 20 P&F Radio Reg. 1901, 1915 (1960). This has been explained as consisting in part of eliciting information concerning the community's needs, interests, problems and issues. Ascertainment, which is a continuing process through the license period, requires the broadcaster to consult with a representative range of community leaders and members of the general public. The broadcaster must not only seek out and determine the nature of significant public issues, he must respond to them specifically. In television, this most usually means news, public affairs discussions, and other informational programming.

The ascertainment standard in the proposed bill incorporates this FCC precedent, although it would require the present renewal application to be changed, since the present application relates ascertainment only to the applicant's proposed programs and not his past program service. With this change in the form and evidence of a continuing

record of ascertainment and programming responsive to that ascertainment, the Commission would have sufficient information before it to hold the applicant to a so-called "promise v. performance" test. This means nothing more than the Commission holding the licensee to the programming standards he sets himself, based on his objective judgment as to the nature of community needs and interests.

The term "substantially attuned" to the public's needs and interests as used in subsection (A) of section 307(d)(2), is the same term that was used in the FCC's "Policy Statement On Comparative Hearings Involving Regular Renewal Applicants," 18 P&F Radio Reg. 2d 1901 (1970); i.e., the renewal applicant must show that its service during the preceding license period "has been substantially attuned to meeting the needs and interests of its area." In the context of the proposed legislation, however, there is special emphasis on ascertainment.

Moreover, the proposed legislation would require that the applicant demonstrate a "good faith" effort to be responsive to the needs, interests, problems and issues he ascertains. The "good faith" standard is an objective standard of reasonableness as it is often used in the law. It is also the standard that the Commission usually uses to describe the essential responsibility of the licensee (i.e., "to make good faith judgments as to how to meet his community's needs and interests").

As a rule of reason, the standard would not obligate the licensee to present programs to deal with every problem or issue facing the public, or meet every need or interest. In responding to the significant matters that have been ascertained, the broadcaster may take into account the composition of his audience; the other stations serving the community, a factor especially relevant in radio; and his own judgments as to his programming format. Thus, this objective standard of reasonableness would allow flexibility for the FCC to recognize the need for differences in treatment between radio and television stations, AM and FM radio stations, VHF and UHF television stations, profitable and unprofitable stations, and similar reasonable distinctions among classes and types of broadcast stations.

This standard would in no way preclude the Commission from using its authority under the Communications Act, including the full extent of its experimental authority under section 303(g), to deregulate radio broadcasting. If, however, the FCC and the Congress were to decide that the virtually total deregulation of radio would be in the public interest, this proposed legislation, along with many other existing provisions of the Act, would have to be amended accordingly.

2) Section 307(d)(2)(B): Fairness

The "fairness" obligation is a statutory policy relating to the broadcaster's programming performance and is a necessary corollary to the ascertainment standard of subsection (A).

Use of the fairness obligation as a standard for license renewal is fully consistent with the law and the established practice of the Commission. The Supreme Court, in the Red Lion case, specifically stated:

> "To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press."

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 394 (1969).

Inclusion of the fairness obligation in the renewal standards would also serve as a Congressional expression of intent as to the preferred method for fairness obligation enforcement. The obligation was initially enforced by reviewing the overall performance of the licensee at renewal time. For example, the 1960 "Programming Inquiry" report stated that:

> "This responsibility usually is of the generic kind and thus, in the absence of unusual circumstances, is not exercised with regard to particular situations but rather in terms of operating policies of stations as viewed over a reasonable period of time. This, in the past, has meant a review, usually in terms of filed complaints, in connection with the applications made each three-year period for renewal of station licenses."

20 P&F Radio Reg. 1901, 1910 (1960) (emphasis added).

By the mid-1960's, however, the Commission began to assess the performance of this obligation on an issue-by-issue basis. It undertook to inquire, with respect to each issue, whether various sides were presented; and effectively to compel adjustment or redress when it determined that a particular point of view was inadequately represented. As this method of enforcement -- or the Fairness Doctrine -- has escalated, the government has been injected with increasing frequency into the licensee's responsibility to make reasonable fairness judgments.

Although the proposed legislation does not eliminate issue-by-issue enforcement of the fairness obligation, there is a need for the Congress to clarify that the appropriate way for the government to evaluate what is essentially a journalistic and private responsibility is by overall review of licensee fairness performance at renewal time.

Here again, the rule of reason would apply, in that the broadcaster would not jeopardize his license by occasionally failing to achieve perfect "fairness" and "balance," as long as he had made good faith efforts to cover issues in a balanced manner, and, when appropriate, selected responsible spokesmen for conflicting viewpoints, and offered them reasonable amounts of time with respect to problems and issues dealt with by the broadcaster.

3) Section 307(d)(2): Proviso

The proviso makes clear that, in applying subsection (A)'s ascertainment standard, the Commission may not consider any predetermined performance criteria, categories, quotas, percentages, formats, or other such guidelines of general applicability with respect to the licensee's broadcast programming. Thus, the legislation would establish the local community as the point of reference for evaluating a broadcaster's performance. In effect, it would place the responsibility and incentive for superior performance in the hands of the local licensee and the public he undertakes to serve, without the convenient crutch of government specifications as to the kind of program performance that will satisfy the statutory standard.

At present, the Commission's programming policy categorizes programming by type (i.e., agricultural, entertainment, news, public affairs, religious, instructional and sports) and by source (i.e., local, network and recorded, which means only non-local non-network). Although enforcement of program standards, quotas and the like is not made explicit or formal, broadcasters, especially television broadcasters, are expected to provide a "well-rounded" program service consisting of programming in each of the categories, which respectable showings in the most favored categories of news and public affairs.

Moreover, the Commission has proposed the establishment of program quotas in certain categories as representing a prima facie showing of "substantial service" to be used in evaluating a television applicant's program performance in the context of a comparative renewal hearing.*/

*/"With respect to local programming, a range of 10-15% of the broadcast effort (including 10-15% of the prime-time period, 6-11 p.m., when the largest audience is available to watch).

"The proposed figure for news is 8-10% for the network affiliate, 5% for the independent VHF station (including a figure of 8-10% and 5%, respectively in the prime-time period).

"In the public affairs area, the tentative figure is 3-5% with, as stated, a 3% figure for the 6-11 p.m. time period."

Notice of Inquiry in Docket No. 19154, 2 Current Service P&F Radio Reg. 53:429,431 (1971).

Although the percentage quotas are expressly limited to use in such hearings, it is only the foolhardy broadcaster who does not treat them as minimum standards in creating his program service and preparing his renewal application.

Government guidelines respecting the extent and content of television programs are inappropriate to the statutory scheme for broadcasting. The existence of such guidelines changes the character of the broadcast license. Instead of reflecting a public trust to be carried out by an independent, private licensee, the license merely becomes a government contract, under which the licensee performs in accordance with government specifications regarding the quantity and content of program service. Thus, the proviso would take from the FCC's hands the authority to create and enforce such specifications. It would stress that the proper role for government in the program area is as arbiter in the ascertainment and programming dialogue between the broadcaster and the public, without injecting its own judgments into this dialogue.

Accordingly, under the proposed legislation, the Commission's review of program performance would be based upon considerations such as:

(1) the mechanics, quantity and quality of the applicant's ascertainment efforts;

(2) an evaluation of the applicant's past, present, and proposed programming in light of the ascertained needs, interests, problems and issues, i.e., the community's standards of program performance and not the FCC's program standards;

(3) the "promise v. performance" aspects of the broadcaster's programming showing; and

(4) various "content neutral" aspects of the applicant's programming, such as programming expenditures; equipment and facilities devoted to programming; policies regarding preemption of time to present special programs; and the like.

In addition, the proviso also makes clear that, in applying the "fairness" standard of subsection (B), the Commission may consider only the overall pattern of programming on particular public issues, as explained above.

C. Section 307(d)(3): Procedure for Competing Applications

The proposed legislation would not change the current procedures for Commission consideration of petitions to deny license renewal applications.

FCC records show that during fiscal year 1972, 68 petitions to deny were filed against the renewal applications of 108 broadcast stations. Most petitions were filed by minority and special interest groups in the broadcasters' communities and contained allegations directed toward the licensees' ascertainment efforts, programming for minority groups, and employment practices. Nothing in the proposed legislation would adversely affect the ability of these groups to file such petitions.

The proposed bill, however, would change the procedures for dealing with competing applications for the same broadcast service. It would require the competing applicant to show that a grant of the renewal application would be inconsistent with the legislation's criteria for renewal. If this burden could not be met, the Commission would grant the renewal application and dismiss the competing application. If, however, the Commission were unable to make the requisite finding, or if there were a material factual question presented, the renewal application would be set for hearing.

The first issue to be resolved in the hearing, with the full participation of the competing applicant, would be whether the renewal applicant has, in fact, met the criteria set out in section 307(d)(2). If so, the hearing would be terminated, the renewal application granted, and the competing application dismissed. If it is found, however, that the renewal applicant does not meet the criteria, the Commission would have the choice of dismissing the renewal application, or, if appropriate, entering the second phase of the hearing by considering it together with the competing application or applications. The criteria to be used in such an eventuality would be based upon the showings of all the applicants with respect to the section 307(d)(2) standards

i.e., the applicants' qualifications and their programming proposals, as well as the standard comparative issues.

This change in the competing application procedures is needed because a licensee seeking renewal should not be put to the same tests used for applicants seeking original licenses. An incumbent licensee should not be deprived of the broadcasting privilege unless clear and sound reasons of public policy demand such action. This does not give the incumbent an unfair advantage solely by reason of its prior operations. The proposed legislation would simply require the FCC to exercise its independent judgment on the question of whether the incumbent licensee has rendered meritorious service. The legislation would thus balance the interest of using renewal process to spur licensee performance with the equally important interest of injecting more predictability and stability into broadcast operations.

The goal of fostering competition in broadcasting is fundamental to the Communications Act, but the present procedures for competing applications are not the most appropriate means of serving this goal. The competition fostered by current procedures is not competition in the marketplace of programming and services offered to the public. It amounts to no more than one applicant vying with another before a government agency for the license privilege. It does not result in a net increase in competition in the offering of community broadcast services, but simply operates to substitute one licensee for another. There is a need for increased competition among broadcasters, but this need should be met by government policies that expand broadcast outlets and reduce economic concentration among existing broadcasters.

D. Section 307(d)(4): Miscellaneous Provisions

This section of the proposed legislation simply incorporates the portions of the present section 307(d) that would remain unchanged by the bill.

MARKUP OF SUBSECTION 307(d) OF
THE COMMUNICATIONS ACT OF 1934

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years; and any license granted may be revoked as hereinafter provided. Upon the expiration of any license; upon application therefor; a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses; and not exceed five years in the case of other licenses; if the Commission finds that public interest; convenience and necessity would be served thereby. In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals; the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to Section 405; the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection; the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations; but the Commission may not adopt or follow any rule which would preclude it; in any case involving a station of a particular class; from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment; public interest; convenience; or necessity would be served by such action.

"Sec. 307(d) (1) No license granted for the operation of any class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for an additional term of not longer than five years, if the Commission finds that the public interest, convenience, and necessity would be served thereby.

(2) With respect to any application for the renewal of a broadcasting license, the Commission shall grant such application if it finds that the applicant is legally, financially, technically, and otherwise qualified to hold such a license under the provisions of this Act and the rules and regulations of the Commission, and that the applicant:

(A) is substantially attuned to the needs and interests of the public in its service area, and demonstrates, in its program service and broadcast operations, a good faith effort to be responsive to such needs and interests; and

(B) affords reasonable opportunity for the discussion of conflicting views on issues of public importance;

Provided, however, that in applying subparagraph (A), the Commission shall not consider any predetermined performance criteria, categories, quotas, percentages, formats, or other guidelines of general applicability respecting the extent, nature, or content of broadcast programming; and that in applying subparagraph (B), the Commission shall consider only the overall pattern of programming provided by the applicant on particular public issues.

(3) Notwithstanding any other provision of this Act, the procedure to be followed in the event that an application for the renewal of a broadcasting license is challenged by a petition to deny or by a competing application for the same broadcast service is as follows:

(A) The petitioner or party filing such competing application shall make specific allegations of fact sufficient to show that grant of the application for renewal would be prima facie inconsistent with paragraph (2) of this subsection. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge

thereof. The applicant for renewal' shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(B) If the Commission finds on the basis of the application, the pleadings filed, and other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application to renew the license would be consistent with paragraph (2) of this subsection, it shall grant such application, terminate the proceeding, and issue a concise statement of the reasons for its findings. If a substantial and material question of fact is presented, or if the Commission for any reason is unable to find that grant of the application would be consistent with paragraph (2) of this subsection, it shall proceed with the hearing provided in subsection 309(e) of this Act to determine whether grant of the application would be consistent with paragraph (2) of this subsection. If, in such hearing, the Commission finds that a grant of the application would be consistent with such paragraph, it shall grant such application, terminate the proceeding and issue a concise statement of the reasons for its finding. If the Commission for any reason is unable to make such a finding, it shall either deny the renewal application or consider it together with any competing application or applications for the same broadcast service, then on file or later timely filed, and shall grant the application that will best serve the public interest, convenience and necessity.

(4) In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to Section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action."

Copy

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

DIRECTOR

February 19, 1973

Honorable Torbert Macdonald
Chairman, Subcommittee on
Communications and Power
Committee on Interstate and
Foreign Commerce
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The Office of Telecommunications Policy has reviewed the structure and regulation of the international communications industry, and I am enclosing a copy of the Administration's policy proposals which have resulted from that review.

Over the past two years, OTP has conducted studies and discussions with U.S. international carriers, interested government departments, and foreign entities. We have found that our international communications industry has consistently been able to provide valuable, reliable, and high quality services. We also have found a complex industry structure, in part the result of Federal legislation and regulatory action, that is strained by new technologies and new services.

We believe that our policy proposals provide a definitive framework within which legislative and other changes can be made in the future as necessary or appropriate to the expected rapid expansion of our international communications industry.

I am looking forward to further discussions with you and your Subcommittee on this important matter.

Sincerely,

Clay T. Whitehead

Enclosure

Cong.

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

February 19, 1973

DIRECTOR

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

Dear Dean:

The Office of Telecommunications Policy has reviewed the structure and regulation of the international communications industry, and I am enclosing a copy of the Administration's policy proposals which have resulted from that review.

Over the past two years, OTP has conducted studies and discussions with U.S. international carriers, interested government departments, and foreign entities. We have found that our international communications industry has consistently been able to provide valuable, reliable, and high quality services. We also have found a complex industry structure, in part the result of Federal legislation and regulatory action, that is strained by new technologies and new services.

We believe that our policy proposals provide a definitive framework within which legislative and other changes can be made in the future as necessary or appropriate to the expected rapid expansion of our international communications industry.

I am looking forward to further discussions with you and other members of the FCC on this important matter.

Sincerely,

Clay T. Whitehead

Enclosure

Cong.

February 19, 1973

Honorable Harley Staggers
Chairman, Committee on Interstate
and Foreign Commerce
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The Office of Telecommunications Policy has reviewed the structure and regulation of the international communications industry, and I am enclosing a copy of the Administration's policy proposals which have resulted from that review.

Over the past two years, OTP has conducted studies and discussions with U.S. international carriers, interested government departments, and foreign entities. We have found that our international communications industry has consistently been able to provide valuable, reliable, and high quality services. We also have found a complex industry structure, in part the result of Federal legislation and regulatory action, that is strained by new technologies and new services.

We believe that our policy proposals provide a definitive framework within which legislative and other changes can be made in the future as necessary or appropriate to the expected rapid expansion of our international communications industry.

I am looking forward to further discussions with you and your Committee on this important matter.

Sincerely,

Clay T. Whitehead

Enclosure
cc:
DO Records
DO CHron
Mr. Whitehead
Eva
Mr. Smith
Mr. Lamb
Mr. Goldberg
Mr. Klaperman

CTWhitehead:HGoldberg:sbw 2/19/73

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

DIRECTOR

August 4, 1972

To: Jon Rose
From: Tom Whitehead TW

Since the House vote on the new CPB legislation is scheduled Monday afternoon, the attached comments must be delivered to the House Commerce Committee first thing Monday morning. I hope, therefore, you will review them at once.

We are sending a copy to Will Taft, with whom you have discussed this matter.

Attachment

O.K. by Ken Cole
8/4/72 Jon Rose
6:45pm

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

August 7, 1972

TO: Bob Guthrie

FROM: Brian Lamb

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

August 7, 1972

TO: Lew Berry

FROM: Brian Lamb

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

DIRECTOR

August 4, 1972

Honorable Harley O. Staggers
Chairman
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Office of Telecommunications Policy (OTP) on S. 3824, a bill authorizing appropriations for the Corporation for Public Broadcasting (CPB), and for the educational broadcast facilities program.

As to the authorization for CPB, S. 3824 is consistent both in amount and purpose with the President's statement of June 30, 1972, regarding his veto of H.R. 13918, the previously passed public broadcast funding bill. The $45 million authorization represents a 30 per cent increase over CPB's Fiscal 1972 funding and will allow for the measured growth of public broadcast services. Being a simple one-year authorization, the bill does not attempt to resolve many of the problems that have appeared in the organization and structure of public broadcasting. As noted in the President's statement, this cannot successfully be achieved for some time, until the still evolving structure of public broadcasting and its role in our national life are more clearly defined. Meanwhile, annual funding as proposed by S. 3824 should be continued.

Our only reservation regarding the CPB portion of the legislation is that, unlike the Administration's bill (H.R. 13007), or even H.R. 13918, there is no mandatory requirement for CPB to distribute a significant proportion of its Federal funds to support local educational broadcast stations. In light, however, of public statements by the officers of the Corporation and actions taken by its Board of Directors, we are confident that CPB will voluntarily distribute to the local stations no less than 30 per cent of a $45 million appropriation. We are informed that this is also the understanding of the national association representing the local stations.

As to the portion of the legislation authorizing a $25 million appropriation for the educational broadcast facilities program administered by the Department of Health, Education, and Welfare: Unlike CPB, this program already has funding authorization for Fiscal 1973. That authorization is at the level of $15 million, and the President's budget requests a $13 million appropriation. There exist serious questions concerning the desirable priority of distributions under the facilities program, and we do not believe alteration of the presently established funding level should be made while they are unresolved. Moreover, congressional funding of many other programs at levels significantly above the President's budget request render it unrealistic to expect expenditure of educational broadcast facilities funds at a greatly increased rate during the present fiscal year.

I hope, Mr. Chairman, this provides you with information that will be useful as the House completes its deliberations on S. 3824. Please call on us for further comment, if you feel it would be necessary or helpful.

Sincerely,

Clay T. Whitehead

Copy

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

February 8, 1973

DIRECTOR

MEMORANDUM FOR MR. TIMMONS

Last year, the Administration, through OTP, helped negotiate a compromise among the cable TV, television program production (i.e., copyright owners), and broadcasting industries. The purpose of this consensus was to devise rules to end the FCC freeze on cable growth in the top 100 television markets.

Under the new rules cable operators are required to retransmit all local broadcast signals and permitted to "import" a limited number of distant signals, but the extent of copyright liability of the cable systems must be resolved in new legislation. It is impractical for each cable system to negotiate a copyright license with each program producer, so the legislation should provide a compulsory, or statutory, license covering cable retransmission of the number of TV signals initially allowed by the FCC rules.

A general copyright revision bill (S. 644), sponsored by Senator McClellan, has been pending for some years. It provides for a fee schedule covering payment and a compulsory license, but the fees are quite low and it is not acceptable to the copyright owners.

Consequently, in the Administration-sponsored consensus, the parties agreed to determine a new fee schedule through their own negotiations. If a fee schedule could not be agreed upon, however, the parties agreed to support legislation which simply provided for compulsory arbitration of the fee issue.

The parties have attempted, without success, to negotiate a fee schedule, and McClellan has indicated an unwillingness to depart from the original low fee schedule in his bill.

(See Cable TV)

In taking this position, he has reinforced the resistance of the cable industry to negotiation (since the McClellan fee schedule cannot do better than any new one which might be obtained from compromise with the copyright holder) and killed the compulsory arbitration provision of the consensus agreement.

Senator McClellan is planning to reintroduce S. 644, with the fee schedule unchanged, within the next week. He has worked on this bill (much broader than cable) for four years and wants to get it out. We have no commitment to any particular fee or amount of payment, but we are committed to preventing the consensus agreement from unravelling and to obtaining legislation that all parties can support.

Accordingly, I believe we should seek to find new approaches to the copyright problem which, while close to the spirit of the consensus agreement, at the same time will allow the Senator to play a role which he considers suitable.

I have attached, as Attachment A, what I think are the sensible options in the order of what we think their acceptability to McClellan might be. [Attachment B consists of further background material and correspondence between Dean Burch and Senator McClellan which sheds more light on this matter.] We also need to be sure of his support for a provision to limit the scope of the statutory copyright license to the current number of allowable distant signals. Because of Senator McClellan's sensitivities to the Executive Branch in this area, I recommend that we meet as soon as possible with Scott to see if he will carry the message to McClellan. If he is unwilling, we have no choice but to visit with McClellan ourselves.

Clay T. Whitehead

Attachments

ATTACHMENT A

OPTIONS

(1) Retention of McClellan fee schedule in new legislation, but with compulsory arbitration for its adjustment after the first distribution of funds to copyright holders is held (on the first August 1 following enactment), thereafter adjustments every five years;

(2) Retention of McClellan fee schedule in new legislation, but with provision for its adjustment through compulsory arbitration at one year intervals, rather than at the five-year intervals that the current bill stipulates;

(3) Deletion of the present fee schedule, but legislative provision for compulsory arbitration for a new fee schedule to commence no later than two months, and conclude no later than one year, after enactment, with the new fee schedule to take effect as soon as agreed upon;

(4) Immediate commencement of compulsory arbitration to establish a fee schedule, to last no longer than twelve months, followed by legislative hearings and enactment of the schedule so obtained;

(5) Same as (4) but the reverse order of hearings and arbitration, to prevent the issue from being considered twice.

ATTACHMENT B

BACKGROUND

I. Mechanism Currently Provided in the McClellan Bill (S. 644; 92d Cong., 1st Sess.)

The bill stipulates that for all compulsory licenses, a single administrative mechanism shall apply:

- Quarterly payments by the cable operator to the Register of Copyright;

- Amount of payment = 1% of first $40,000 of gross receipts (i.e., subscriber payments to cable operator); additional 1% for each subsequent $40,000 of gross receipts (i.e., 2% if between $40-80,000; 3% if between $80-120,000, etc.), with escalator of 1% for each channel added by FCC to those initially allowed to be imported;

- Annual disbursement of royalties to copyright owners every August 1, after costs of administration have been deducted, and after the first 15% of royalties have been set aside for owners of copyrighted musical works;

- Fees pertaining to which a controversy exists are held until adjudication by the Copyright Royalty Tribunal, created in the Library of Congress;

- The Tribunal is empowered both to adjust the overall rate initially stipulated in the statute five years after its enactment and every five years thereafter; and to determine the distribution of royalties among disputing claimants;

- A panel of the Tribunal is convoked only if a party requests an adjustment of the rate or disputes his share of the distribution;

- Members of the panel are selected by the American Arbitration Association;

- Judicial review is provided for the distribution of fees by the Tribunal only on the grounds of misconduct and not on the merits, no judicial review of the overall adjustments to the rate;

- Adjustments to the overall rate may be "vetoed" by either House of the Congress through a resolution taken within 90 days of the Tribunal's decision.

II. Provisions of the Consensus Agreement

All parties would agree to support separate CATV copyright legislation . . . and to seek its early passage.

Unless a schedule of fees covering the compulsory licenses or some other payment mechanism can be agreed upon between the copyright owners and the CATV owners in time for inclusion in the new copyright statute, the legislation would simply provide for compulsory arbitration failing private agreement on copyright fees.

III. Correspondence Between Dean Burch and Senator McClellan (Excerpted)

Burch letter to McClellan of January 26, 1972:

"As of course you know, representatives of the three principal industries involved -- cable, broadcasters, and copyright owners -- have reached a consensus agreement that deals with most of the matters mentioned above. On the basis of experience and a massive record accumulated over the past several years, we regard the provisions of the agreement to be reasonable, although we doubtless would not, in its absence, opt in its precise terms for the change it contemplates in our August 5 proposals. But the nature of consensus is that it must hold together in its entirety or not at all -- and, in my own view, this agreement on balance strongly serves the public interest because of the promise it holds for resolving the basic issue at controversy.

"This brings me directly to a key policy consideration where your counsel would be most valuable. That is the effect of the consensus agreement, if incorporated in our rules, on the passage of cable copyright legislation.

"The Commission has long believed that the key to cable's future is the resolution of its status vis-a-vis the television programming distribution market. It has held to this view from the time of the First Report (1965) to the present. We remain convinced that cable will

"not be able to bring its full benefits to the American people unless and until this fundamental issue is fairly laid to rest. An industry with cable's potential simply cannot be built on so critical an area of uncertainty.

"It has also been the Commission's view, particularly in light of legislative history, that the enactment of cable copyright legislation requires the consensus of the interested parties. I note that you have often stressed this very point and called for good faith bargaining to achieve such consensus.

"Thus, a primary factor in our judgment as to the course of action that would best serve the public interest is the probability that Commission implementation of the consensus agreement will, in fact, facilitate the passage of cable copyright legislation. The parties themselves pledge to work for this result."

The reply to Burch of January 31, 1972:

"I concur in the judgment set forth in your letter that implementation of the agreement will markedly facilitate passage of such legislation. As I have stated in several reports to the Senate in recent years, the CATV question is the only significant obstacle to final action by the Congress on a copyright bill. I urged the parties to negotiate in good faith to determine if they could reach agreement on both the communications and copyright aspects of the CATV question. I commend the parties for the efforts they have made, and believe that the agreement that has been reached is in the public interest and reflects a reasonable compromise of the positions of the various parties."

cong.

Maritime
W. H. - Flanigan's office
President
Chron
Congressional

June 16, 1971

To: Jon Rose

From: Tom Whitehead

I would think that before a letter of this kind goes out, you might check with Navy to make sure you're not raising expectations that cannot be fulfilled. Also I think it might be nice to add a sentence expressing the President's appreciation for Reinecke's support.

cc: Mr. Whitehead
Mr. Lamb

CTWhitehead:ed

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 8, 1970

TO: TOM WHITEHEAD
CASPER WEINBERGER
NOBLE MELANCAMP

FROM: JON ROSE

For review.

Dear Ed:

Thanks very much for your recent letter regarding the Maritime Program. I, of course, appreciate your encouraging words. Certainly I realize the importance of the maritime industry to Southern California, and you can be assured I will do all in my power to see that California gets a fair share of the maritime contracts.

With best wishes,

Sincerely,

Honorable Ed Reinecke
Lieutenant Governor
State of California
Sacramento, California 95814

State of California
LIEUTENANT GOVERNOR'S OFFICE
SACRAMENTO 95814

ED REINECKE
LIEUTENANT GOVERNOR

Dear Ed, Many thanks for your recent letter regarding

May 11, 1971

The Honorable Richard M. Nixon
The President
The White House
Washington, D. C. 20500

My dear Mr. President:

We were most pleased that in late 1970 you signed into law the long-needed program to revitalize this nation's Merchant Marine. As you know, the maritime industry, both navy and commercial, is uniquely important to California. Our extensive usable coastline and numerous harbors exceed those of any other state and our shipyards continue to be capable of employing many, many thousands of people.

I am greatly encouraged and fully support the steps you are taking to bring the conflict in Southeast Asia to an end. Your massive reduction in military operations there enable us to redirect resources to other nationally important programs such as the strengthening of our Merchant Marine and Navy.

This past fall, the Governor and I formed an advisory committee of California representatives from labor and management to bring more shipbuilding and repair to California. The consensus of that committee is that immediate action is needed from Washington to ensure that California's privately owned shipyard capabilities are maintained during this interim period before the long range merchant and navy programs can be implemented.

California's participation in the nation's Merchant Marine program and in the future navy modernization program cannot be assured unless the private yard base is preserved by immediately increasing the volume of federal government ship overhaul and repair contracts to the private yards here.

An equitable allocation of this work between government and private shipyards is not only important to the maintenance of a broad industrial base for military preparedness, but is desirable in order to obtain full competition for commercial programs. On behalf of the California maritime industry, I ask for your personal attention and help in this matter.

Sincerely,

Ed

ED REINECKE

June 21, 1971

The Honorable J. Caleb Boggs
United States Senate
Washington, D.C. 20510

Dear Senator Boggs:

In answer to your telephone request of last Friday I am writing this letter to detail our reaction to the House Appropriations Committee's reduction of the OTP budget request. As you know, this Office estimated our budget for fiscal year 1972 to be $2,702,000, an increase of $669,000 over the fiscal year 1971 budget. The House Appropriations Committee reduced our budget estimate by $102,000.

OTP is not going to appeal to the Senate to reinstate our full budget estimate. However, Senator Boggs, we sincerely hope the Senate will approve the full recommendation of $2.6 million made by the House Appropriations Committee last Friday.

In order for OTP to be able to adequately and effectively deal with the vast issues of communications we feel that it is necessary to have sufficient staffing and contract funds for in-depth studies and research.

As we discussed in our hearing before your subcommittee, the growth rates in communications have been more extensive than other major segments of industry and many profound policy issues are being raised. OTP is responsible for providing the President with the necessary policy information so that our government can deal intelligently and give proper guidance in this important field.

Thank you for your interest in our Office. I hope this information will be helpful.

Sincerely,

Clay T. Whitehead

CTW:BPL:hch

July 8, 1971

The Honorable Charlotte T. Reid
House of Representatives
Washington, D. C. 20515

Dear Mrs. Reid:

I want to congratulate you on your recent nomination to serve as a Commissioner of the FCC.

As you know, OTP is also deeply concerned with the direction that communications will take in the future. Anticipating your confirmation by the Senate, I look forward to working with you.

I hope to meet you in the near future. If we can be of any assistance, I hope you will let me know.

Sincerely,

Clay T. Whitehead

CMS

No
MEETING
8/12/71

Thursday 8/12/71

10:10 Mr. Hinchman has had a call directly from John Bystrom. Had indicated that Mr. Bystrom was hoping to have an appointment with you.

If so, wondered if you would mind if hejoined in the meeting.

10:45 We have had another call from Sen. Fong's office. Told them that Sen. Inouye's office had also called re an appt. -- indicated that we might have to schedule the appt. the end of next week. She indicates that it was her impression that he could talk with someone on the staff and that it would need to be done prior to his meeting with NASA people -- and the end of next week would be too late.

Wednesday 8/11/71 MEETING

2:30 Alice Thompson in Senator Fong's office called. Would like to set up an appointment for John Bystrom, Univ. of Hawaii, either tomorrow or Friday afternoon. Wants to discuss the use of spectrums. We advised that your calendar was very full and that we would check with you. 225-6361

4:00 Mr. Ravnholt, AA to Senator Inouye, called to see if there would be a possibility of your meeting with John Bystrom who has been working with the Governor on communications matters. Would like to meet with you tomorrow or Friday (is requesting this as a member of the Commerce Committee on Communications). When told him your time was very limited but perhaps someone else could speak with Mr. Bystrom, he said he thought Mr. Bystrom would be able to get back into Washington the end of next week and he would prefer to meet with you rather than someone on your staff. 225-3934

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

DIRECTOR

August 12, 1971

Honorable John A. Burns
Governor of Hawaii
Honolulu, Hawaii

Dear Governor Burns:

The President has asked me to follow up his letter to you of July 28, 1971, concerning Hawaii's initiative in seeking to improve communications among Pacific peoples through the use of modern technological capabilities.

The imaginative program set forth in your letter to the President of June 24, 1971, is indicative of the potential for cultural development among nations that can be enhanced through the use of communications satellite techniques. The PEACESAT (Pan Pacific Education and Communication Experiments Using Satellites) project and the experimentation on which it is to be based will be followed closely by my Office. In this connection, NASA and the Government of India are developing an experiment for the distribution of community-type information within that country via satellites. The results of both these experiments can be steps to make the objectives of PEACESAT a reality.

The reference in your letter to the possibility that the PEACESAT project might serve as a symbolic step in opening a dialogue with China is noted with interest and for its timeliness. This prospect will certainly not be overlooked as political actions develop.

The World Administrative Radio Conference for Space Telecommunications completed its work on July 17, 1971. International agreement was reached for many space applications and of particular significance is the allocation of the 2500-2690 MHz band. This band is intended to accommodate many of the services described in your letter.

The Conference results require the advice and consent of the Senate prior to ratification by the United States. Upon ratification, the Federal Communications Commission is expected to take the necessary regulatory actions that

will make it possible for sponsors of non-Government space communications programs and projects to proceed. For this reason, I am forwarding a copy of our correspondence to the Chairman of the Federal Communications Commission so that he will be fully informed of your proposal.

Your suggestion for conferring with the Hawaii Congressional Delegation is appreciated. The Honorable Spark Matsunaga has already contacted me with regard to the PEACESAT project.

If I can be of further assistance to you on this or any other matter, please do not hesitate to ask.

Sincerely,

Clay T. Whitehead

cc: Chairman, FCC

Congressional

August 13, 1971

MEMORANDUM

To: Mr. William Timmons
From: Mr. Brian Lamb

Subject: INQUIRY FROM CONGRESSMAN ALBERT JOHNSON REGARDING DR. RICHARD McCORMACK

Attached is suggested correspondence from you to Congressman Albert Johnson regarding Dr. Richard McCormack.

Since our telephone conversation yesterday Dr. McCormack took it upon himself to write a letter of explanation to the Congressman and I have enclosed a copy of his letter. As you can see, Dr. McCormack obviously knows the Congressman and the tone of his letter was strictly his idea.

I hope this information will be sufficient for a proper response to the Congressman. Please let us know if we can be of further assistance on this.

PROPOSED LETTER FROM WILLIAM TIMMONS TO ALBERT JOHNSON

Dr. Richard McCormack haw been with the Executive Office of the President for more than two years on various assignments. Initially he was a senior staff member of the President's Advisory Council on Executive Organization, working closely with Mr. Roy Ash. Later he was detailed at the request of former Governor William Scranton to serve as his special assistant. Dr. McCormack also worked with a number of other White House officials on various projects. Most recently he has served as international affairs consultant where he assisted in the successful completion of the INTELSAT negotiations among other matters.

We understand that Dr. McCormack who was born and raised in the Appalachia region of Pennsylvania spent a few of his weekends and his vacation trying to help area residents qualify for additional State and Federal assistance.

August 11, 1971

Congressman Albert Johnson
Hamlin Bank Bldg.
Smethport, Penna.

Dear Al,

I understand that you were interested in a recent visit made to my home during which I accepted an invitation by the board of the North Central Pennsylvania Development District.

More than ten percent of the area work force is now jobless. When my own brother , Francis, joined the ranks of the jobless, I agreed to help the local people who were trying to deal with the worsening situation on my weekends and in my spare time.

At the dinner you mentioned, I was quite frankly surprised and honored to be on the program as a speaker. And hastily drew up a few general comments on the back of an envelope. The thrust of these comments was that only by working together could we possibly deal with the unemployment problem. I pointed to the Scranton area as an example of how united effort could greatly reduce a massive unemployment problem. Frankly, Al, I simply can't imagine why you were offended by the spirit of these comments.

Two months ago when the magnitude of the problem became clear to me, I arranged to spend full time in our area after the 15 th of August to help where I can. This, however, will not be funded through the Executive Office and I am looking forward to working closely with you.

Again, many thanks for your kind invitation to your picnic last weekend. The chicken was just delicious.

Sincerely,

Richard McCormack

Dr. Richard McCormack

P.S. Ambassador Scheyven included Bradford on a tour through the United States examining the economy. He also spoke with Paul McCracken, Arthur Burns, and the President of General Motors among others.

COMMITTEE ON APPROPRIATIONS, THE SENATE

Richard B. Russell, (D-Ga), Chairman

Subcommittee on Independent Offices

John O. Pastore, (D-RI), Chairman

PASTORE, JOHN O., Democrat of Cranston, RHODE ISLAND

ALLOTT, GORDON LLEWELLYN, Republican of Lamar, COLORADO

CASE, CLIFFORD P., Republican of Rahway, NEW JERSEY

COTTON, NORRIS, Republican of Lebanon, NEW HAMPSHIRE

ELLENDER, ALLEN JOSEPH, Democrat of Houma, LOUISIANA

HOLLAND, SPESSARD LINDSEY, Democrat of Bartow, FLORIDA

HRUSKA, ROMAN LEE, Republican of Omaha, NEBRASKA

MAGNUSON, WARREN G., Democrat of Seattle, WASHINGTON

RUSSELL, RICHARD BREVARD, Democrat of Winder, GEORGIA

SMITH, MARGARET CHASE, Republican of MAINE

STENNIS, JOHN CORNELIUS, Democrat of DeKalb, MISSISSIPPI

Ex Officio:

YOUNG, STEPHEN M., Democrat of Cleveland, OHIO

Ex Officio from Committee on Aeronautical and Space Sciences:

ANDERSON, CLINTON P., Democrat of Albuquerque, NEW MEXICO

CURTIS, CARL T., Republican of Minden, NEBRASKA

SYMINGTON, STUART, Democrat of St. Louis, MISSOURI

Staff Members		Room	Ext.
CLARK, ROBERT B.	NSOB	2200	7246
COOPER, EARL W.	NSOB	1322	7274
PUJOL, MAURICE P.	NSOB	1324	7246

COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES

George H. Mahon, (D-Tex), Chairman

Subcommittee on Independent Offices and Department of Housing and Urban Development

Joe L. Evins, (D-Tenn), Chairman

EVINS, JOE L. (Democrat, Tennessee)

Fourth District: Counties Anderson, Campbell, Cannon, Clay, Coffee, Cumberland, DeKalb, Fentress, Grundy, Jackson, Morgan, Overton, Pickett, Putnam, Roane, Scott, Smith, Van Buren, Warren, White and Wilson.

BOLAND, EDWARD P. (Democrat, Massachusetts)

Second District: Hampden County (Cities of Chicopee and Springfield. Towns ofBrimfield, East Longmeadow, Hampden, Longmeadow, Ludlow, Monson, Palmer, Wales and Wilbraham)
Hampshire County (Towns of Belchertown, Granby, South Hadley and Ware)
Worcester County (Towns of Auburn, Brookfield, Charlton, Dudley, East Brookfield, Leicester, North Brookfield, Oxford, Southbridge, Spencer, Sturbridge, Warren, Webster, and West Brookfield)

CLAWSON, DELWIN (DEL) MORGAN (Republican, California)

Twenty-third District: Los Angeles County (Assembly District 38 and 52)

GIAIMO, ROBERT N. (Democrat, Connecticut)

Third District: New Haven County (Towns of Branford, East Haven, Guilford, Hamden, Madison, Milford, New Haven, North Branford, Orange, West Haven and Woodbridge)
Fairfield County (Town of Stratford)

JONAS, CHARLES RAPER (Republican, North Carolina)

Ninth District: Counties Iredell, Lincoln, Mecklenburg and Wilkes

MC DADE, JOSEPH MICHAEL (Republican, Pennsylvania)

Tenth District: Counties Bradford, Lackawanna, Pike, Sullivan, Susquehanna, Tioga, Wayne and Wyoming

MARSH, JOHN O., JR. (Democrat, Virginia)

Seventh District: Counties Albemarle, Augusta, Bath, Clarke, Culpeper, Fluvanna, Frederick, Greene, Highland, Madison, Orange, Page, Rappahannock, Rockbridge, Rockingham, Shenandoah, and Warren
Cities: Buena Vista, Charlottesville, Harrisonburg, Lexington, Staunton, Waynesboro and Winchester

PRYOR, DAVID (Democrat, Arkansas)

Fourth District: Counties Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Dallas, Desha, Drew, Grant, Hot Spring, Jefferson, Lafayette, Lincoln, Miller, Nevada, Ouachita, Saline and Union

SHIPLEY, GEORGE EDWARD (Democrat, Illinois)

Twenty-third District: Counties Bond, Christian, Clay, Clinton, Crawford, Effingham, Fayette, Jasper, Lawrence, Macoupin, Marion, Montgomery, Richland and Shelby
Madison County (Townships of Alhambra, Alton, Foster, Godfrey, Hamel, Helvetia, Leef, Marine, Moro, New Douglas, Olive, Omphghent and Saline)

TALCOTT, BURT L. (Republican, California)

Twelfth District: Counties Kings, Monterey, San Luis Obispo and Santa Cruz

Subcommittee Staff Assistant - G. Homer Skarin, Capitol, Room H. 143, Ext. 3241

Copy

August 13, 1971

Dear Al:

This is in response to your letter of August 4 to the President and the call made to my office yesterday from a member of your staff regarding Dr. Richard McCormack.

Upon receipt of your letter, we checked into the matter for you and have received the following information.

Dr. Richard McCormack has been with the Executive Office of the President for more than two years on various assignments. Initially, he was a senior staff member of the President's Advisory Council on Executive Organization, working closely with Mr. Roy Ash. Later he was detailed at the request of former Governor William Scranton to serve as his special assistant. Dr. McCormack also worked with a number of other White House officials on various projects. Most recently he has served as international affairs consultant where he assisted in the successful completion of the INTELSAT negotiations among other matters. I have been informed that he has concluded his White House assignment and will enter into the private field.

In reference to your specific inquiry, I understand that any activity in your District by Dr. McCormack has been in a private capacity. There have been no occasions in which he has appeared as an official representative of the Administration.

I appreciate having an opportunity to clarify this for you.

With warm regards,

Sincerely,

William E. Timmons
Assistant to the President

Honorable Albert W. Johnson
House of Representatives
Washington, D.C. 20515

bcc: Clay Whitehead - For your information

WET:EF:VO:ve

Cong.

August 23, 1971

The Honorable John Y. McCollister
House of Representatives
Washington, D.C. 20515

Dear Mr. McCollister:

Bill Timmons has brought your letter to him regarding cable television to my attention for further comment.

I certainly understand the concerns expressed by the local broadcasters from your area and want to assure you that it is not the intent of this Administration to favor or promote cable television over any other media. As you may know, I have been asked to be the chairman of a special Administration committee to develop proposals for a comprehensive policy for cable television. (A copy of the White House press release is attached.) The President has requested the views of the Secretary of Commerce, the Secretary of HEW, and the Secretary of HUD, three members of the committee, from the standpoints of their individual concerns - the business community, education, and the cities. The committee was established simply to study the many complex issues involved which must be somehow resolved to allow cable television to develop in a way that would not seriously disrupt the existing television service. It is hoped that the policy recommendations of this committee (scheduled to be prepared by October 1st) will offer a framework for the most effective development of cable technology which will be in the best interests of all concerned.

I hope this information will be helpful. I would welcome any additional information or comments you might have and please let us know if we can be of any further assistance.

Sincerely,

Clay T. Whitehead

cc: DO Records
DO Chron
Dr. Mansur
Mr. Lamb
HCHall:hh:8/23/71

FOR IMMEDIATE RELEASE

JUNE 23, 1971

Office of the White House Press Secretary

THE WHITE HOUSE

The President announced today that he has established a special Administration committee to develop proposals for a comprehensive policy with regard to cable television. Members of the Committee will be:

Elliot L. Richardson	Secretary of HEW
George Romney	Secretary of HUD
Maurice H. Stans	Secretary of Commerce
Robert H. Finch	Counsellor to the President
Leonard Garment	Special Consultant to the President
Herbert G. Klein	Director of Communications for the Executive Branch

The committee will be chaired by Clay T. Whitehead, Director of the Office of Telecommunications Policy. An OTP review of broadcasting and cable TV policies has been underway for several months and will serve as the focal point of the deliberations.

Coaxial cable provides a means for the distribution of television programming and for the development of new communications services as well. The President recognizes that television, which has rapidly become an enormously important nationwide news and entertainment medium has a profound impact on the social fabric of the nation. He wishes to avoid in the field of television that instability which technological change has caused in some of our heavily regulated industries.

A number of complex issues must be resolved if cable TV is to grow in an orderly way and without serious disruption of existing television service. The President has asked the committee to develop forward-looking policy proposals that will permit the full potential of cable TV to be realized and enhance the television service available to the American public.

# # #

OFFICE OF TELECOMMUNICATIONS POLICY

ROUTE SLIP

ACTION	☐
Concurrence	☐
Signature	☐
Comments	☐
For reply	☒
Information	☐
Per conversation	☐
Discuss with me	☐

TO Mr. Hinchman

FROM Helen Hall DATE 8/9/71

REMARKS

It sounds as if Bill Timmons needs a detailed response which he can use to draw on for future replies.

Helen:

If you will draft a reply I will be glad to review. I believe all that is needed is a straightforward denial of any Administration plan to favor or promote cable television over any other media, and a recap of the charter and objective of the cable TV committee. You should also point out that the Secretaries -- not the "information officers" -- of the several Departments are involved, and the basis for their interests.

Walt

August 4, 1971

Dear John:

Thank you for bringing to my attention the concern being expressed to you regarding the development of cable television.

I will be pleased to present your comments for consideration by the staff members who are working on this matter and will also ask that you receive information which will be helpful to you in responding to your constituents.

With warm regards,

Sincerely,

William E. Timmons
Assistant to the President

Honorable John Y. McCollister
House of Representatives
Washington, D.C. 20515

bcc: w/ihc. to Clay Whitehead for DIRECT REPLY. Please furnish Bill Timmons with copy of response

WET:EF:VO:jj

JOHN Y. MCCOLLISTER
SECOND DISTRICT, NEBRASKA

WASHINGTON OFFICE:
511 CANNON OFFICE BUILDING
202-225-4155

Congress of the United States
House of Representatives
Washington, D.C. 20515

DISTRICT OFFICE:
2313 FEDERAL BUILDING
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102
402-221-3251

INTERSTATE AND
FOREIGN COMMERCE

SUBCOMMITTEE ON
COMMERCE AND FINANCE

July 28, 1971

JUL 29 1971

Bill Timmons, Special Assistant to the President
The White House
Washington, D.C.

Dear Bill:

I have a problem that needs your help; so, anything you can offer in the way of enlightenment is appreciated.

The problem is this: Many of my constituents are "burned up" about Commerce, Agriculture, HEW and Labor pushing cable television. These constituents are in the broadcasting business and they have contributed free promotion to all of these departments. They have also contributed free promotion to the military forces. When the Pentagon decided to spend eleven million dollars in advertising it did not put any of the money into local broadcasting stations; it turned to the major markets instead. Naturally this aroused the ire of the local broadcasters who had given so much free time.

A direct quote from the Straus Editor's Report, June 28, 1971, is this:

> "...As White House deliberates anew about cable policy, it will be hearing words to gladden the hearts of all operators. Information chiefs from Agriculture, Commerce, HEW, Labor will boost cable medium by reporting they've used it successfully, inexpensively to pitch their service messages."

Bill, you and I know to what extent commercial radio and television have benefited these departments - especially Agriculture, and I understand these local broadcasters being "hot under the collar" about this situation. Can you help to enlighten me in this matter?

Thank you.

Sincerely,

John Y. McCollister
Member of Congress

JYM:kp

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

September 22, 1971

DIRECTOR

MEMORANDUM FOR THE RECORD

At my meeting with Dean Burch on Friday (9/17/71) we covered the following points:

1. Cable TV. Burch feels that broadcasters will make significant concessions. He thinks a deal along the following lines can reasonably be sold: (a) the proposed FCC distant signal formula, (b) copyright as in the McClellan Bill, (c) Footnote 69 as proposed but perhaps with modification of the viewing percentages, (d) exemplification provision, and (e) total exemption of all systems over 3500 subscribers. Burch feels that this can be sold only if OTP proposes it publicly and applies pressure on all the parties to accept. He is willing to put pressure on the cable people to negotiate.

2. We discussed the EBS problems. I emphasized that I thought it was getting out of hand and was potentially embarrassing to the President. Burch indicated he did not know much about it. Left to Bob Wells of the staff. He asked about Ken Miller as a problem. I indicated my reluctance to tell him who he should and shouldn't have on the Commission staff, but it was the view of my staff and other elements of the Executive Branch that Miller was indeed a big part of the problem. We agreed that Bob Wells might well do us an outgoing favor by firing Miller.

3. We discussed preparatory arrangements for the 1973 ITU Conference. I had previously indicated that I would like him to name a commissioner to work on this. Burch indicated that he did not really have an appropriate commissioner at this time and indicated he would normally send Whitey. I indicated I would like a committee structure parallel to the State Department's committee structure and that it was my committee that I wanted the commissioner on. I thought that in view of the low level I might send a staff member, Whitey if that is what he desires.

4. We discussed forthcoming appointments to the FCC and agreed that in our analysis the best approach would be to name Wiley to replace Wells and to announce the intention to nominate Ledbetter to replace Bartley.

5. In view of the short time, we covered AEROSAT and domestic satellite matters only very briefly. I indicated that the President was interested in both of these and that I would be sending over some material in the very near future in view of the potential political situation.

6. We did not discuss the Atlantic Facility Conference.

7. He indicated that McClellan was unhappy that I had not kept him informed of what we were doing in the cable TV area. He indicated that McClellan felt his program in the copyright area was being conflicted on, and suggested that I ought to call McClellan.

Clay T. Whitehead

cc: Dr. Mansur
Brian Lamb
DO Records
DO Chron

CTWhitehead:avr:22Sep71

Congressional

Wednesday 9/1/71

MEETING
9/3/71
10 a.m.

9:40 For your information and background -- Mr. Weaver in Sen. Aiken's office had called asking if we would be willing to schedule an appointment for Stuart Martin (President of WCAX TV in Burlington, Vermont) to discuss CATV and the smaller broadcasting stations. Apparently Mr. Martin is a very big man in Vermont.

He advised that Mr. Martin would be in touch with us. We have now received a letter asking for an appointment this week; Brian will meet with him at 10 a.m. on Friday (9/3) -- and we have put it on your calendar so you can drop in on the meeting and leave at any time you wish.

Mr. Goldberg also
Mr. Scalia

WCAX-TV

MT. MANSFIELD TELEVISION, INC. Channel 3 CBS

P. O. BOX 608 • BURLINGTON, VERMONT • UNiversity 2-5761

STUART T. MARTIN
President

August 25, 1971

Mr. Clay T. Whitehead
Director
Office of Telecommunications Policy
1800 G Street
Washington, D. C. 20540

Dear Mr. Whitehead:

Senator Aiken has recently spoken with you concerning my desire to discuss directly with you the proposed FCC plans for CATV regulation. I am a small market broadcaster with 16 years experience in a market containing many CATV systems. I believe I can usefully add to your knowledge about some aspects of CATV operations as they affect small market broadcasters.

I can be at your office any day of the week of August 30th at 10:00 A.M., or thereafter which would suit your convenience. It would be especially convenient for me, but not necessary, if an appointment could be arranged in time for me to catch the 3:00 P.M. shuttle to New York.

Cordially,

Stuart T. Martin

Tuesday 8/24/71 MEETING
(Stuart Martin)

10:30 Since we had not heard from Stuart Martin concerning an appointment (as suggested in the call from Mr. Weaver in Senator Aiken's office) we called Mr. Weaver to say we had not had a call from Mr. Martin and wondered if there had been a misunderstanding and that we were supposed to get in touch with him. 225-4242

Mr. Weaver was most appreciative that we had called and they have advised Mr. Martin that we will schedule an appointment; Mr. Martin will be in touch with us when he can plan a trip to Washington.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

Monday

Set up
in Brian's
office
+ Tel can
buy out.

Walt
Mon

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

August 20, 1971
11:30

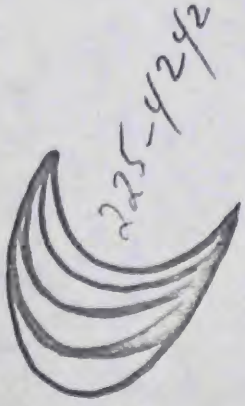
Eva-

I received a call from Mr. Weaver in Senator Aiken's Office (Vermont). The Senator's office was asking if we would be willing to make an appointment for a Mr. Stuart Martin

WCAX TV
Burlington, Vermont

Mr. Martin is very concerned that the smaller Broadcasting Stations are being ignored completely in the CATV controversy and that it is only the big stations ~~xxx~~ who are being considered. Mr. Weaver said we can expect to be hearing from him. Senator Aiken request that we set up an appointment for Mr. Martin, because Mr. Martin is a very important man in the State of Vermont.

timmie



10 JAN 1972

JAN 18

Honorable John O. Pastore
Chairman
Subcommittee on Communications
United States Senate
Washington, D.C. 20515

Dear Senator Pastore:

In response to your request, I am enclosing a report on the activities of the Office of Telecommunications Policy during 1971, and the activities it contemplates during the present year.

I hope you will find the report complete and helpful. If you require further information, I shall be happy to discuss the Office's operations with you and your Committee.

Sincerely,

s/CTW

Clay T. Whitehead

Enclosure

BLamb:avr:18Jan72
cc: DO Records
DO Chron
Director OTP - 2
Dep Director OTP -1

See OTP-8

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

Corg

DIRECTOR

July 30, 1971

Honorable Spark M. Matsunaga
House of Representatives
Washington, D.C. 20515

Dear Mr. Matsunaga:

This is in furtherance of your July 3 letter to the President regarding the development of educational satellite communications systems.

The potentialities of communications satellites as a means of enhancing cultural development are appealing to many countries and, as you may be aware, a program for the distribution of community type information via satellites is underway between NASA and the Government of India. With respect to the PEACESAT Project, we will be following with interest the progress of the joint University of Hawaii/NASA experiment.

On the matter of radio frequencies, the U.S. Delegation to the World Administrative Radio Conference on Space Telecommunications has just returned and reports that excellent allocations were obtained for many space applications, in particular the band 2500-2690 MHz which is planned for the distribution of educational and public service information via satellites. This allocation relates directly to the need referred to in your July 3 letter. Additionally, numerous provisions were obtained for communications satellites which will permit the international interconnection by satellite relay of broadcast stations.

With respect to implementation of the results of the foregoing Conference, Senate advice to consent will be necessary prior to ratification after which action will be required by the Federal Communications Commission to bring the revised regulations into effect so far as the non-Government sector is concerned. A copy of our correspondence on this matter is being forwarded to the Commission for appropriate action.

I trust that the foregoing is responsive to your letter. Do not hesitate to call on me if further assistance can be rendered.

Sincerely,

Clay T. Whitehead

OFFICE OF TELECOMMUNICATIONS POLICY

ROUTE SLIP

TO Tom Whitehead

Via: George Manser

Brian Lamb

FROM Will Dean

DATE 7/28/71

ACTION	☐
Concurrence	☐
Signature	☑
Comments	☐
For reply	☐
Information	☐
Per conversation	☐
Discuss with me	☐

REMARKS

Suggested reply attached.

Helen
Looks good
please send on to George
Tom Kell

4th ¶ beginning "With respe..."
is a little awkward.
gm

OFFICE OF TELECOMMUNICATIONS POLICY

ROUTE SLIP

ACTION	☐
Concurrence	☐
Signature	☐
Comments	☐
For reply	☒
Information	☐
Per conversation	☐
Discuss with me	☐

TO Mr. Dean

7/28

FROM Brian Lamb DATE 7/27/71

REMARKS

Could you give us a suggested answer for the attached? Thanks.

30268

NATIONAL SECURITY COUNCIL

July 26, 1971

MEMORANDUM FOR: MR. BRIAN LAMB
Congressional Relations
OTP
1800 G Street, N. W.
Washington, D. C.

SUBJECT: Further Response to Representative Matsunaga's Letter to the President on Satellite Communications Systems for the Pacific

Mr. Kissinger's office has reviewed the attached correspondence, and believes that due to the technical factors involved a more detailed reply should originate from your office. The correspondence is, therefore, transferred for further action.

For your information, a similar letter, received from Governor Burns, was staffed by your office, and noted by the NSC before dispatch.

JOHN H. MURPHY
NSC/Secretariat

cc: W. E. Timmons
Congressional Relations

30268

July 7, 1971

Dear Mr. Matsunaga:

I would like to acknowledge and thank you for your July 3 letter to the President regarding the proposed development of an educational satellite communications system in which the nations of the Pacific Basin and Asia would participate. I sense the time element involved in specific portions of your request for assistance and want to assure you your letter will be accorded prompt attention.

With cordial regards,

Sincerely,

William E. Timmons
Assistant to the President

Honorable Spark M. Matsunaga
House of Representatives
Washington, D.C. 20515

bcc: w/incoming to Dr. Kissinger for DRAFT OR DIRECT REPLY AS appropriate.
bcc: w/incoming to Clay Whitehead for your consideration.
WET:VO:jlh

SPARK M. MATSUNAGA
1st District, Hawaii

WASHINGTON OFFICE:
442 Cannon Building
20515

HONOLULU OFFICE:
218 Federal Building
96813

MEMBER:
COMMITTEE ON RULES
COMMITTEE ON AGRICULTURE

SECRETARY:
STEERING COMMITTEE

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 3, 1971

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

The people of Hawaii, because of their unique cultural heritage and the geographic location of the Island State, have long had a deep interest in the development of strong friendly relations with the nations of Asia and the Pacific Basin. Knowing of your own abiding interest in the establishment of closer relations with Asia and the Pacific Basin nations, I believe that you will be interested to learn of a project now underway in Hawaii which could be expanded to improve communication between the people of the United States and the people of Asia.

The project, called PEACESAT, has been initiated on an experimental basis by the University of Hawaii in cooperation with the National Aeronautics and Space Administration. Currently, the University is using an ATS-1 satellite for communications between its main campus on the island of Oahu and its campus on the island of Hawaii. The satellite communications system has been utilized for exchanges of library material, classroom instruction, and seminars between widely separated participants. Specifically designed to link remote users with limited fiscal resources, PEACESAT, or a similar satellite communications system, could be expanded to include educational and health service institutions in the Pacific Basin almost immediately, using existing technology and equipment. Ultimately, the system could be expanded to link educational and health institutions throughout Asia and the Pacific. It could also be used to link noncommercial radio stations for exchanges of weather information, health data, news, and local cultural programs.

The proposed linking of health and educational institutions would be mutually beneficial to the institutions and would, no doubt, result in closer ties of friendship and cooperation between the people of the United States and the participating foreign nations.

Although existing technology is sufficiently advanced for the development of the proposed communications system, a number of obstacles stand in the way of its successful implementation. First and foremost among these is the need for a strong federal mandate for the development of such communications systems in an effort to bring East and West closer together. I therefore respectfully urge you to lend your personal support and leadership to the project initiated by the University of Hawaii.

Secondly, a matter of great urgency at the present time involves securing vital radio frequencies. Permanent international radio spectrum assignments are essential to the development of PEACESAT and other international educational communications systems.

It is my understanding that the matter of international radio spectrum assignments will be considered at the World Administrative Radio Conference for Space Telecommunications now underway in Geneva. I respectfully request that the United States delegation to the Conference be informed of Hawaii's activities in the field of satellite communication, and that a favorable allocation of radio spectrum assignments be sought to ensure the future development of the PEACESAT system.

In this connection, the following two actions are recommended. First, agreement should be advocated by the United States for international allocation of approximately 200 MHz at a point where present telecommunications technology allows for use of low-cost sending and receiving stations in a point-to-point distribution system using satellite relay for noncommercial education and community service.

Second, a provision should be sought which would permit appropriate spectrum allocations for international interconnection by satellite relay of radio broadcast stations. The allocation should allow for low-cost ground stations and international two-way exchange networks.

Your assistance in communicating these concerns to our delegation at the Geneva Conference, and your strong support of the proposed educational communications system would be deeply appreciated.

Aloha and best wishes.

Sincerely,

Spark Matsunaga
Member of Congress

Cong.

Tuesday 7/20/71

12:55 Congresswoman Heckler's Aide in her Massachusetts Office -- (Caroline Isber) called at the suggestion of Bill Casselman. They want to know what you are doing with respect to educational TV and cable TV, specifically with respect to WGVH, which is one of their major stations in Boston. They want to know what input you have on the policy of educational TV and CATV -- what it will be or is. They are quite anxious to talk with someone. (617) 235-3350

Cong.

Tuesday 7/20/71

MEETING
7/21/71
3 p.m.

11:00 Mr. Whitehead will meet with Cong. Bud Brown at 3 p.m. on Wednesday (7/21).

Cong

Thursday 7/15/71

4:10 Tim Doze in Cong. Goldwater's office said it 225-4461
was their understanding that Mr. Whitehead is either heading up a group or in a group looking into unemployment.

Asked if he might be thinking of the CATV Cmte., which Mr. Whitehead is chairing. He indicated he didn't think so.

He said constituents were writing in to advise that it was a group set up by Mike (?) Flanigan, one of the President's assistants, looking into the movie industries problems.

They wanted to have any of the material concerning this committee.

I called Marge and told her the problem -- and that I had denied that I had any knowledge of such a committee.

Checked with Mr. Whitehead and he said to tell anyone who inquires that we are concerned with the unemployment situation in all of the industries that OTP has dealings with -- common carriers, electronics, movies, etc., but that we don't have any committee or task force working on that as such. Asked if they have any material or comments, we would be glad to hear about it. Them them -- if pressed -- that Mr. Whitehead is involved in a number of activities beyond his official OTP duties -- at the White House -- but only on an informal basis.

Tried to call Doze but he was not there; will check tomorrow.

Friday 7/16/71

10:00 Mr. Doze called again; gave him the info.

Marge said she checked with Mr. Flanigan and he said not to admit any unemployment meetings and movei industry.

Cong

Monday 7/12/71

10:05 Called Mr. Timmons' office and talked with Eloise Frayer about the cy. of Mr. Timmon's interim reply dated 7/7/71 to Cong. Spark Matsunaga re educational satellite communications for the Pacific Basin, etc., which had been referred to Dr. Kissinger's office for draft or direct reply -- with a copy to Mr. Whitehead for consideration.

Told her that we had had a referral from John Campbell's office dated 6/30 of a letter to the President from Governor Burns of Hawaii on the same subject and that Mr. Thornell had hand delivered a draft reply to the White House on July 3. Mr. Whitehead had suggested we send Timmons a copy of our reply; Eloise Frayer has been in touch with with Campbell's office and they will coordinate.

Tuesday 7/13/71

4:30 I have talked with Jack Murphy, Director, Executive Secretariat of the National Security Council, and he is aware of the various letters. Apparently, after receiving our draft, John Campbell's office had sent it to various people to be staffed out by White House, one of whom is Kissinger's shop; however, Mr. Murphy hadn't seen our draft so requested a copy, which I have sent. 3723

JUL 7 1971

Honorable Melvin R. Laird
Executive Agent
National Communications System
Washington, D. C. 20301

Attn: Assistant to the Secretary of Defense for Telecommunications

Dear Mr. Secretary:

The Director of the Office of Emergency Preparedness (OEP) has approved for implementation the plan entitled "National Communications System Plan for Communications Support in Natural Disasters."

It is requested that you arrange for the implementation of the plan, and, as a first step, designate the appropriate agency to provide communications support in each of the eight OEP regions. The Director, OEP, should be advised of the designation to enable him to forward a Mission Assignment letter establishing proper authorities for reimbursement of funds expended in the conduct of the NCS plan.

A training program will be developed by OEP to instruct communications support personnel in disaster assistance activities. The NCS should assist OEP in the development of this training program.

Mr. James E. Nicholson, Disaster Assistance Division, Disaster Programs Office (telephone 395-5894) will be the point of contact within OEP for actions related to the implementation of the NCS plan. It is requested that this Office be kept advised as each major milestone is reached.

The staffs of the Manager, NCS, and the NCS operating agencies are to be commended for developing a plan which will result in providing much needed communications support during natural disaster operations.

Sincerely,

Clay T. Whitehead

cc: Honorable George A. Lincoln
Director, OEP

/Mr. Whitehead (2)
Subject File
Reading File

Dr. Mansur
Mr. Joyce

CTBabcock/bss/7-6-71

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

June 28, 1971

MEMO TO: Tom Whitehead

Attached is my memorandum for record of last week's meeting with Mr. Guthrie of the House Interstate and Foreign Commerce Committee Staff on the subject of Citizens Radio Service. Other attendees are listed in paragraph 1 of the memo.

Spectrum allocations, enforcement of FCC Rules for Citizens Band operations, and relationship of Amateur and Citizen Band operators are the principal issues.

L. R. Raish
Attachment

cc: Nino Scalia
Brian Lamb
George Mansur

Cong.

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

Date: June 28, 1971

Subject: Meeting with Mr. Guthrie of the House Interstate and Foreign Commerce Committee Staff

To: Record

On June 25, 1971, the undersigned attended a meeting convened by Mr. Guthrie of the House Interstate and Foreign Commerce Committee Staff, to discuss the subject of citizen band radio. Particular emphasis and the principal point of the meeting was to review spectrum allocation to meet growing citizens band radio requirements. The meeting was opened at 10:00 a.m. in the House Interstate and Foreign Commerce Committee Hearing Room in the Rayburn Building. In addition to the undersigned, others present were:

Mr. Guthrie	- Committee Staff
Mr. Olsen	- AA to Congressman Ancher Nelsen
Mr. Horner	- President, E. F. Johnson Co.
Mr. Sodolski	- Vice President, EIA
Mr. Spence	- Chief Engineer, FCC
Mr. Barr	- Chief Safety and Special Services, FCC
Mr. Kitzmiller	- Chief Legislative Liaison, FCC
Mr. Walker	- FCC Staff
Mr. Everett	- FCC Staff

For some time there has been pressure on the FCC to "do something" about citizens band communications. The matter was brought to a head by EIA's petition to the FCC of Feb 5, 1971, to establish a new citizen radio service band of 2 MHz between 220 and 225 MHz. This band is now allocated for use of Government radars on a primary basis and amateurs on a secondary basis. The frequencies immediately below 220 MHz are allocated for TV broadcasting and above 225 MHz for military communications of all types. In order to avoid interference with TV, it has been informally accepted that if CB were to be permitted in the band, it should be in the 223-225 MHz portion. The Citizens Radio Service is presently allocated 23 crystal controlled channels with 10 kc spacing in the 27 MHz band.

The undersigned was the "lead-off" speaker at the discussion. It was indicated to the group that OTP was optimistic that an arrangement could be worked out that would permit citizens band operations in the 223-225 MHz band. It was explained that military radars - particularly Navy radars - operate in the 220-225 MHz band, many with high power. Such arrangements would have to include caveats pertaining to areas such as Norfolk, Va., San Diego, Calif , White Sands Proving Ground where there would be obvious concentration of military radar operations. While it is doubtful that citizens band operations would interfere with the radar, vice versa would certainly be true. OTP's interest in efficient and effective use of the spectrum was expressed in the course of the foregoing.

The FCC representatives speaking individually and collectively throughout the morning tied the problem to the need for more assets for enforcement of the Commission Rules. A substantial part of the "citizens band problem" is due to the wanton disregard of the Rules for use of the band. Lack of funds and personnel have prevented the FCC from enforcing its own Rules.

In addition to working out sharing arrangements with the Government, the FCC has a contentious problem in that the EIA proposal would take spectrum space away from the Amateurs to accommodate the Citizen's Band. Strong opposition is anticipated to this and equally as strong opposition would be expected to any thoughts that the Amateurs and Citizens Band should share the same band.

Finally the FCC representatives pointed out that the Commission has to make a finding that it is in the public interest to allocate the requested frequencies for citizens band operations. The Commission has many other requirements for frequencies and in particular for the land mobile service--and it may turn out that the public could best be served by allocating frequencies that might be made available to some other type operation than the citizens radio service.

The points in paragraphs directly above were developed through a combination of statements by FCC representatives and by several questions and answers.

The meeting was wrapped up with the FCC representatives agreeing that they would continue active consideration of the EIA petition. They also announced (through Mr. Spence) that FCC was officially requesting OTP to "return" the entire 220-225 MHz band to non-Government use on a primary basis.

The undersigned made it abundantly clear that the optimism with regard to sharing the 223-225 MHz band with the Citizens Band did not extend to any proposals for turning the entire band over to non-Government or to sharing the band with land mobile operations. While OTP would certainly study any proposals received, the outlook for anything more than sharing with more than citizen band operations would not be encouraging. The matter would be studied objectively and in depth, however, before a decision is made.

Finally, and just before the meeting adjourned, the undersigned explained that we did not have a "rampart situation" with FCC on one side and OTP on the other. During the discussion there were several references to "non-Government bands" and to "Government bands" etc. that would indicate spectrum usage to be on a mutually exclusive basis. It was explained that most spectrum was, in fact, shared and that FCC-OTP personnel work closely on a daily basis in handling spectrum management matters to the mutual benefit of both interests. The FCC representatives agreed with this explanation.

The meeting adjourned around 11:45 a.m. All discussions were informal, no minutes were kept, and everything was on a friendly basis. Mr. Guthrie and Mr. Olsen said they would report to their respective "bosses" on the basis of the discussion just completed. Both said they could not predict what action, if any, would follow.

L. R. Raish

Alaska
Copy

June 21, 1971

Honorable Ted Stevens
United States Senate
Washington, D. C. 20510

Dear Senator Stevens:

Thank you for your letter of May 26 and your kind comments regarding my appearance in Anchorage.

The Office is definitely interested in arranging some forum in which Alaskan communication prospects can be thoroughly discussed. As you suggest, I will plan to draft a letter which you can send to certain interested and knowledgeable Alaskans asking them for their suggestions regarding the domestic satellite communications system in Alaska. Unfortunately, I will be out of the country from June 22 - July 15 attending the WARC in Geneva and will not be able to prepare this prior to that time. However, I will be in touch with you upon my return.

Sincerely,

Walter R. Hinchman
Assistant Director

WHinchman:dc
Mr. Whitehead
Mr. Lamb
Subj: Alaska; Domestic Sat
RF

→ Mr Whitehead

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

May 26, 1971

Walt Hinchman
Assistant Director
Office of Telecommunications Policy
Executive Office of the President
1800 G Street
Washington, D.C.

Dear Walt:

I want to express my appreciation for taking time out of your hectic schedule on short notice to go to Anchorage and speak with the Alaska Broadcasters Association at their annual meeting last Friday and Saturday, May 21-22. The reports I have gotten indicate we secured an outstanding speaker for them, and I thank you for your assistance.

George has told me of your interest in reconciling in Alaskan minds the possibilities and realities of the projected domestic satellite communications program. Augie Hiebert apparently brought to light with you and Tom Whitehead some of the thoughts Alaskans had concerning the satellite system and how it should affect Alaska. Seemingly there are vast differences between the actual filings and what Alaskans anticipate as being right around the corner in their communications network of the future.

If it is possible, I would like to send a letter that you could perhaps draw up, which asks certain interested and knowledgeable Alaskans about what they expect of the domestic satellite communications system for Alaska. We could then expect to get some kind of a dialogue going on this situation, which could better assist your efforts as to what Alaskans expect and what is possible.

Many thanks for all of your thoughtful help.

Cordially,

TED STEVENS
United States Senator

Alaska

June 21, 1971

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United States Senate
Washington, D. C. 20510

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Mr. Whitehead
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→ Mr Whitehead

United States Senate

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WASHINGTON, D.C. 20510

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Many thanks for all of your thoughtful help.

Cordially,

TED STEVENS
United States Senator

Copy

June 18, 1971

Mr. James J. Gehrig
Staff Director
United States Senate
Committee on Aeronautical
and Space Sciences — 0508 231, 225-#6477
Washington, D.C. 20510

Dear Mr. Gehrig:

I enclose OTP's contribution to the Senate document on International Cooperation in Outer Space. I regret that it took so long to prepare it, but I hope you will find it satisfactory.

As you requested, I am also enclosing the thoughts of our Director concerning the future purposes of international space cooperation, at least with respect to the communications field. These views are contained in a speech which he delivered recently before the Society of Civil Engineers of France.

If you have any questions or difficulties, I hope you will call me.

Sincerely,

Antonin Scalia
General Counsel

CC: HHall
Subj File
Chron File

AScalia/ec/18June71

United States and International Space Cooperation

The President

Office of Telecommunications Policy

The Office of Telecommunications Policy is an independent agency within the Executive Office of the President. Its functions, established by Reorganization Plan No. 1 of 1970[1] and further specified by Executive Order 11556[2] fall into three major categories:

(1) It serves as the President's principal adviser on communications policy, formulates Executive Branch policy concerning domestic and international communications matters and develops plans and programs to take full advantage of the nation's communications capabilities.

(2) It establishes policies and provides coordination for the Federal Government's own communication systems, including the setting of standards for communications equipment and services, and periodic review of the ability of government communication systems to meet national needs and to perform in time of emergency. In this connection, it assigns among the various agencies those portions of the radio spectrum reserved for government use, and provides policy direction for the National Communications System.

1. 84 Stat. 2083 (1970).
2. 3 C.F.R. 158 (1970 Comp.).

(8) It serves as spokesman for the Executive Branch on communications matters, enabling the Executive to act as a more effective partner in discussions of communications policy with the Congress, the Federal Communications Commission, and the public at large.

OTP's activities in the field of international communications in space arise not merely as a result of its general policy-making responsibilities, but also as a result of its specifically assigned responsibilities to provide advice and assistance to the Secretary of State with respect to communications matters; to coordinate interdepartmental and national activities conducted in preparation for United States participation in international conferences and negotiations concerning communications; and to review, make recommendations to improve, and coordinate with existing communications facilities abroad, the commercial communications satellite system envisioned by the Communications Satellite Act of 1962.

The Office has recently completed four major projects which have significant effect upon international cooperative efforts in space communications.

Definitive Arrangements for INTELSAT

In the history of international cooperation for peaceful application of the benefits of space technology, few programs have matched the success of INTELSAT. That organization was established by the initiative of the Government of the United States, and has been managed by its U.S.

member, the Communications Satellite Corporation (Comsat). While it has experienced predictable administrative and political difficulties from time to time, INTELSAT has undergone a steady growth in both membership and in extent and quality of service. By the end of 1970, it provided interconnection via satellite facilities among 30 countries through 51 earth station antennas operated at 43 earth station sites.

Since its inception, however, INTELSAT has been operating under interim organizational arrangements. In February 1969, the Government of the United States convened in Washington, D.C., a plenipotentiary conference of all member nations to commence negotiation of a permanent charter. Those preliminary negotiations were followed by three subsequent meetings of a Preparatory Committee in 1969, a five-week plenipotentiary session again in February and March of 1970, and numerous subsequent meetings of an Intersessional Working Group to develop recommended texts for the final plenipotentiary session. These negotiations were finally brought to a successful conclusion on May 21, 1971, with agreement upon approved texts for submission to the member States.

The Office of Telecommunications Policy played a central role in achieving the agreement so crucial to the future of international satellite communications. The United States policy positions adopted in the negotiations were developed by an Ad Hoc Policy Advisory Committee chaired by the Director of OTP and composed of the United States Representative to the Conference, the Chairman of the FCC, the Deputy Assistant

Secretary of State for Transportation and Telecommunications, and the President of the Communications Satellite Corporation. Full details on the content of the agreements and the history of the negotiations are contained in another section of this publication.

World Administrative Radio Conference for Space-Telecommunications (WARC-ST)

Exploration and use of outer space requires use of the radio frequency spectrum. Aside from the need for the spectrum in those aspects of space technology which pertain directly to human communications--e.g., communications satellites--the guidance and control of all space exploration, and the return to earth of the information obtained, is done through radio waves. The electromagnetic spectrum, however, is a finite resource which can be rendered useless to everyone unless international rules for noninterference are agreed upon.

One of the oldest and most successful of all international organizations is the International Telecommunication Union (ITU), which is the successor of the International Telegraph Union originally established in 1865. Among its other activities, this organization sponsors periodic world administrative conferences to deal with particular services or special problems pertaining to international telecommunications, and to revise the applicable international regulations as necessary.

The Office of Telecommunications Policy had a leading role in preparing and coordinating the U.S. position for the World Administrative Radio

Conference for Space Telecommunications, which convened in Geneva, Switzerland, on June 7, 1971. This Conference, to which 139 member administrations were invited, was held for the purpose of reviewing and revising the International Radio Regulations as they pertain to the application of space technology--communication, navigational and meteorological satellites, radio astronomy, and space research.

The first step in U.S. preparation for the WARC was to identify national requirements for satellite and outer space communications in the next decade, and to determine the revisions of existing frequency allocations which would be necessary to accommodate those requirements. This task obviously required close coordination of the interests of many Federal agencies. It was accomplished by the Interdepartment Radio Advisory Committee (IRAC), which is an advisory committee to OTP, chaired by OTP's Assistant Director for Frequency Management.

Draft proposals, prepared by this Committee working with liaison representatives from the FCC, were forwarded to the Department of State, which in turn distributed some 1,000 copies to most countries of the world. Comments on the U.S. Draft Proposals and original foreign proposals, were received from a number of other countries (including Argentina, Australia, Canada, Denmark, France, Germany, India, Japan, Norway, and the United Kingdom), from the International Civil Aviation Organization and the Intergovernmental Maritime Consultative Organization.

Following receipt of these comments and proposals, OTP, again in conjunction with State and FCC, revised and further developed the United States proposals. These changes were again coordinated with other nations, through several bilateral and multilateral conferences--including meetings this spring with NATO member countries. Final Proposals were submitted to the Conference in June.

Aeronautical Communications Satellites

Despite the existence for several years of a general consensus that satellite technology offered the most promising solution to the communication needs of the international civil aviation industry, by mid-1970 little concrete work had been accomplished towards that end. Several national and international programs were in fact leading in conflicting directions.

The matter necessarily required international cooperation, for while the United States, through agreements with the International Civil Aviation Organization, has primary responsibility for air traffic control in the Pacific basin and certain other transoceanic routes, the United Kingdom and Canada have responsibility for the North Atlantic route. The most important issue delaying progress was determination of the appropriate frequency to be employed. Many domestic and international air carriers expressed a preference for the VHF frequency band, while

the European Space Research Organization, with the support of the National Aeronautics and Space Administration, strongly supported the UHF band.

In October of 1970, the Office of Telecommunications Policy established an interagency study group to examine the question of aeronautical communications satellites, chaired by OTP's Deputy Director. After receiving the results of that study and after consultation with foreign interests, the Office issued in January of 1971 a Statement of Government Policy on Satellite Telecommunications for International Civil Aviation Operations. Briefly, that statement called for a system costing 50 to 100 million dollars for each ocean basin. The systems would be leased from a commercial company and preoperational deployment would be achieved by 1973 in the Pacific and 1975 in the Atlantic. The program management within the Government would be the responsibility of the Federal Aviation Administration. The Department of State, in conjunction with the Department of Transportation, would seek international utilization of the preoperational system and would initiate cooperative efforts with other nations to establish an operational system by 1980. The Government would use the UHF Frequency Band for its traffic control communications.

Since issuance of this Administration Policy Statement, OTP has been active in pressing its implementation, including the establishment of discussions with foreign communications entities.

Policy Recommendations for International Communication Facilities

With the advent of satellite technology, it has become necessary for U.S. communication entities and their foreign counterparts to make difficult and important decisions concerning the types of new international facilities which will receive their capital investment. These decisions must be made several years in advance of implementation, and require the ability to predict not merely technological and economic developments, but also the course of Governmental regulation, which may permit or forbid a particular installation.

The Office of Telecommunications Policy developed and transmitted to the Federal Communications Commission--which has ultimate authority to determine which facilities will be permitted for U.S. entities--the Administration views on the policies that should guide regulation in this field. Among the recommendations was a proposal for establishment of an international working group of Government and industry representatives, to explore means of achieving more flexibility in investment and circuit activation decisions. The recommendations as a whole proposed regulatory guidelines which will enable U.S. and foreign international carriers to plan efficiently and effectively in advance.

May 28, 1971

Mr. James J. Gehrig
Staff Director
Committee on Aeronautical and
Space Sciences
United States Senate
Washington, D. C. 20510

Dear Mr. Gehrig:

The Director has referred to me your letter of May 25th. As you recognize, events have been moving very quickly, and we do wish to have our contribution to ~~International Cooperation in Outer Space~~ correct and up-to-date.

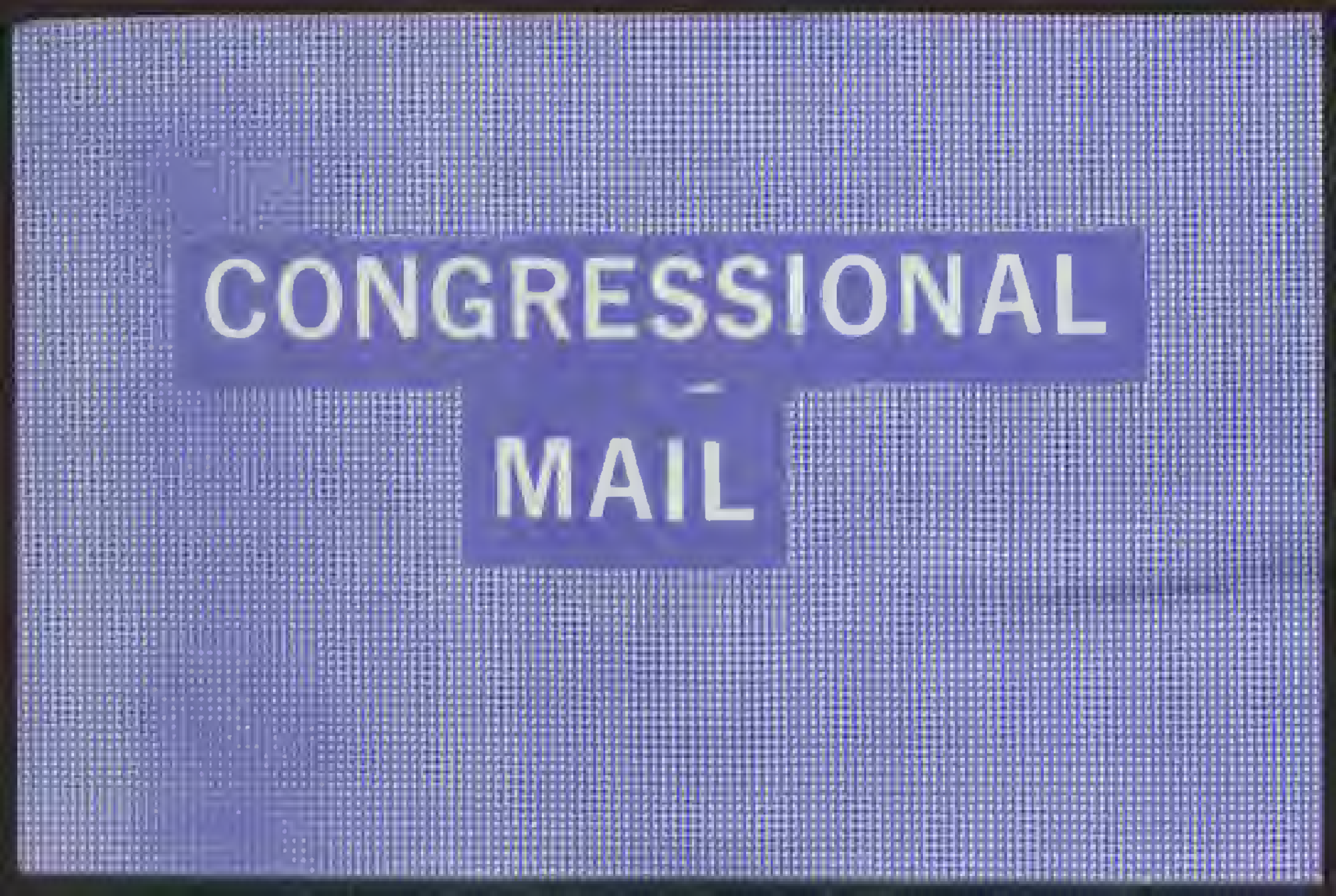
The Director has assured me that any additional comments will be sent to you by the middle of June, as you requested.

Thank you for keeping us informed.

Sincerely,

Linda K. Smith
Special Assistant
to the Director

LKSmith:lmc
cc: Whitehead
Scalia
Lamb
Subject file
Reading file


CONGRESSIONAL
MAIL

Office of Telecommunications Policy
Route Slip

		To
5/26/71	Clay T. Whitehead	
	George F. Mansur	
	Nino Scalia	✓
	Will Dean	
	Walt Hinchman	
	Charlie Joyce	
	Jack Thornell	
	Frank Urbany	
	Steve Doyle	
	Bill Lyons	
	Brian Lamb	
	Linda Smith	✓
	Eva Daughtrey	
	Timmie White	
	Judy Morton	
	Elaine Christofi	

SUSPENSE: COB _____

REMARKS:

Please answer wli 24 hours (5/28) with copy to me. Linda

United States Senate

COMMITTEE ON
AERONAUTICAL AND SPACE SCIENCES
WASHINGTON, D.C. 20510

May 25, 1971

Mr. Clay T. Whitehead
Director of Telecommunications Policy
Executive Office of the President
Office of Telecommunications Policy
Washington, D. C. 20504

Dear Mr. Whitehead:

With reference to your chapter on the Office of Telecommunications Policy, Executive Office of the President for inclusion in the Senate document on INTERNATIONAL COOPERATION IN OUTER SPACE, I realize that events have moved swiftly during these last few weeks and that the texts of two permanent arrangements on INTELSAT have been concluded. I know that this official action would naturally affect the information to be included in your chapter.

The Senate has passed the Resolution to publish this document and we are anxious to receive your chapter as soon as possible, including any remarks you may wish to add on The Future of International Space Cooperation. We have sent the other chapters to the printer for galley proofs.

Do you think you could have your chapter completed by the middle of June or before? We would greatly appreciate it as it is essential for us to have up-to-date information on global space communications.

With appreciation.

Sincerely yours,

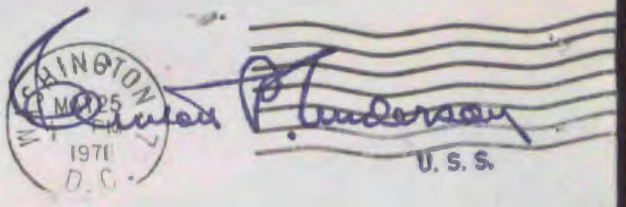
James J. Gehrig

James J. Gehrig
Staff Director

United States Senate

COMMITTEE ON
AERONAUTICAL AND SPACE SCIENCES

OFFICIAL BUSINESS



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Mr. Clay T. Whitehead
Director of Telecommunications Policy
Executive Office of the President
Office of Telecommunications Policy
Washington, D. C. 20504

Copy

June 18, 1971

To: Miss Rose Mary Woods

From: Tom Whitehead

Congressional

June 18, 1971

Mr. Clarence C. Dill
763 Lincoln Building
Spokane, Washington 99201

Dear Mr. Dill:

I very much enjoyed your visit to my office on May 18th and appreciate your sending me a copy of your book "Where Water Falls," which looks extremely interesting. The President also appreciates receiving the copy you included for him. I have passed on your regards to him.

I am sure you found the Awards Ceremony at the University of Montana as interesting as I did. That's great country out there!

Sincerely,

Clay T. Whitehead

cc: Mr. Whitehead
Speech file 5/21/71
Chron
President
Congressional
Mtg. 5/18/71
Miss Rose Mary Woods (The President's secretary)
EDaughtrey/CTWhitehead 6/17/71