

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the
Subcommittee on Treasury, Post Office, and General Government
The Honorable Joseph M. Montoya, Chairman
Appropriations Committee
United States Senate

May 19, 1971

WITNESS LIST

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1. Clay T. Whitehead, Director
2. George F. Mansur, Deputy Director
3. Wilfrid Dean, Jr., Assistant Director
4. Walter R. Hinchman, Assistant Director
5. Charles C. Joyce, Jr., Assistant Director
6. Antonin Scalia, General Counsel

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you to review the budget estimates of the Office of Telecommunications Policy.

We are requesting total appropriations of \$2,702,000. An appropriation of \$1,702,000 is requested for salaries and associated expenses; this will enable us to grow at a uniform rate over the fiscal year to a level of 65 full-time positions. An appropriation of \$1,000,000 is requested for necessary studies that can be carried out more economically by contract or require highly specialized expertise rather than by in-house staff. Our budget estimates for Fiscal Year 1972 are based on the requirements foreseen at the time the Office of Telecommunications Policy was established, as modified by our first few months of actual operation.

You have before you our budget estimates for Fiscal Year 1972. Since the Office of Telecommunications Policy is new to this Committee--since, in fact, we are rather new to everyone--I think it would be useful in this presentation to discuss briefly what the Office is and what it does.

Essentially, it is our responsibility to develop overall communications policy. First, the Director of the Office is the President's principal adviser on electronic communications policy. Second, the Office enables the Executive Branch to speak with a clearer voice on communications matters and to be a more responsible partner in policy discussions with Congress, the FCC, the industry, and the public. Third, the Office formulates new policies and coordinates operations for the Federal Government's own very extensive use of electronic communications.

I. HISTORY OF OTP

Electronic communications at this point in our history can no longer be considered a novelty. The first commercial telephone service in this country was initiated almost a century ago, the first commercial radio broadcasting a half-century ago. Congressional regulation of the field began as early as 1866, and the Federal Communications Commission has been in existence since 1934. Until 1970, however, there was no agency within the Executive Branch responsible for establishing executive policies in the communications field or for coordinating the communications activities of the Federal Government itself.

Over recent years, the need for such an agency became increasingly apparent. Communications has rapidly become such an important part of the national economy and of the Federal Government's own operations that it requires continuing and coordinated attention on the part of the Executive Branch. During the last twenty years, the communications industry's contribution to national income increased by over 500 percent. That growth is almost double that of the economy as a whole during the same period and even more in excess of the rate for such important areas as transportation and trade.

(Chart #1) Communications is, moreover, an industry which requires a constantly increasing share of our national capital investment--\$10 billion of new investment in 1970, compared with approximately \$6 billion for transportation and \$3 billion for mining. (Chart #2)

Such figures demonstrate the economic importance of the industry. They do not suggest its social importance. Communications is no longer just a technology; it is no longer just a service; it is a social force of the first magnitude, affecting what our children learn, how our political processes operate, where our business and industry locate, what our people know and perhaps what they believe in. There is virtually no area of our life which it does not touch.

It is, moreover, a force which is constantly changing, and in changing, it creates a series of new and important policy problems and issues. This era of change is not coming to an end; it seems to be barely beginning. A graphic representation of the dates that principal communications innovations first entered into commercial use will show most of them crowded into the last 25 years. (Chart #3) The rate of innovation is accelerating. It was only in 1956, for example, that we were first able to make transatlantic telephone calls by submarine cable; prior to that, the calls were subject to the poor quality and unreliability of shortwave radio transmission. Yet less than 10 years later, we were making transatlantic calls by satellite.

Presidents Truman and Eisenhower conducted studies of this accelerating trend and the need for improved Executive organization. President Kennedy ordered a limited reorganization for emergency communications in 1963. President Johnson established a task force on communications policy that proposed, as one of its major recommendations, the establishment of a new entity within the Executive Branch--"a long-range planning, policy-formulating and coordinating, and mission-support capability which can serve to integrate the various roles in which the Executive Branch is presently engaged." When the present Administration took office, it initiated extensive discussions on this subject among representatives of Government and industry, and carefully examined the merits of alternative reorganization forms. Last year President Nixon submitted, and the Congress approved, Reorganization Plan No. 1 of 1970, establishing the Office of Telecommunications Policy. The functions of the Office were further specified in Executive Order 11556.

II. FUNCTIONS

The specific responsibilities assigned to OTP are set forth in the Reorganization Plan and the Executive Order, copies of which I submit for the record and will be happy to distribute if you wish. You already have our budget estimates before you which go into our specific programs in some detail. For the balance of this presentation I would like to give you some examples of the

matters which currently occupy our attention in the three major subject areas with which we deal.

A. Government Communications:

We are responsible for establishing policies and procedures for the management of the Federal Government's own communications systems. Federal communications systems serve a variety of purposes, ranging from telephone service communication between fire prevention personnel in national forests to command and control of our strategic missile systems. It has been estimated that the Government's investment in communications equipment is almost \$50 billion. The annual expenditure for these systems is somewhere between \$5 and \$10 billion; the imprecision of this estimate is testimony to the absence, prior to OTP, of any agency which could focus upon overall Government expenditures.

Some of the major policy issues with which we are presently concerned in the field of government communications are the following:

(1) National Warning and Alert Systems:

It is imperative that the nation have a warning system, available for use in the event of attack or natural disaster, in which the public can have absolute confidence. The recent failure of the Emergency Broadcast System (EBS) has shaken that confidence, and has raised serious questions about our ability to respond to major emergencies. This Office is now in the process of subjecting both EBS and our National Warning System to an intensive review to assure their reliability and responsiveness to varying needs.

(2) Oversight of Federal Communications Expenditures:

As the expenditures of the Federal Government for communications--including research and development in the field--have grown to their current level, it has become both increasingly important and increasingly difficult to avoid duplication and waste. An example is the relationship between AUTOVON and FTS: The Federal Telecommunications System (FTS) is a voice and data communications system, managed by the General Services Administration and used by all Federal Government agencies. In addition, the Department of Defense maintains a separate voice communications network (AUTOVON) and a separate data communications network (AUTODIN). Interconnection between FTS and AUTODIN has been achieved, but at the present time the Department of Defense voice system has no access to, and is not accessible from, the voice communications systems serving the rest of the Government. This situation is not only inconvenient but perhaps very costly. This Office, working with the General Services Administration, the Department of Defense and the Office of Management and Budget has undertaken to determine what improvements and economies can be achieved.

(3) Spectrum Allocation Procedures:

Approximately half of the radio frequency spectrum is now allocated to the Federal Government and used by the various agencies of the Federal Government. I am responsible for the appropriate allocation of this Federal Government use of the spectrum, and in carrying out that responsibility, I rely heavily upon the advice and assistance of the Interdepartment Radio Advisory Committee composed of representatives of 17 Federal agencies that make extensive use of the spectrum. The spectrum is a limited--and therefore valuable--resource. Highly complex and very difficult decisions must be made about who will be allowed to use what frequencies, for what purposes, where. As the demands on the spectrum for various public and private uses multiply new methods of spectrum planning and management will be required. OTP is exploring such methods jointly with the FCC which allocates the spectrum to non-Federal users.

B. Private Domestic Communications:

The United States has the largest communications industry in the world. Our per capita expenditure on communications services of all kinds exceeds the total per capita income of many nations. Almost 5% of our gross national product is devoted to electronic communications. Except for health services and education, it is the most rapidly growing sector of our economy. OTP is responsible for clarifying the significant policy issues concerning electronic communications and for formulating and presenting the Administration's positions in this field to the Congress, the FCC, and the public. Some of the current and important issues are the following:

(1) Specialized Carriers:

Advances in electronic technology have created the need for, and made possible, many new kinds of communications services in addition to the familiar telephone and telegram services. Having quantities of data and methods of doing business at the disposal of small companies may equalize the competitive advantage held by larger corporations. Microwave relay and satellite systems can carry enormous amounts of information, including television signals, computer data, and facsimile; new low-cost information machines make these large quantities of data and information widely available. Such new systems present the nation with the policy question whether the common-carrier monopoly historically held by telephone companies should be extended to some or all of these new fields; whether new common or quasi-common carriers should be allowed to enter this field; or whether competition should be allowed. If competition is to be allowed, we must decide what pricing limitations should be imposed upon the protected-monopoly common carriers.

(2) Mobile Communications Services:

Ours is a mobile society. As a result, our communications systems must become mobile as well. This is already a reality in the area of broadcast communications--the car radio, the pocket radio, and the TV set small enough to take to the beach. There are increasing demands for similar flexibility in our person-to-person communications--personal paging devices such as many doctors now have, radio-dispatched vehicles for the small businessman, and pocket or car telephones for everyone. Mobility, however, stretches the capability of the wire; most of these new services must utilize the radio frequency spectrum. A pressing issue at the present time is how space is to be found for mobile person-to-person communications on an already crowded radio frequency spectrum.

Even more importantly for the long run we must develop a sound technological and institutional framework that will permit a substantial growth in mobile communications not possible under current arrangements.

(3) The Fairness Doctrine:

In exercising its responsibility to insure that broadcasting meets the "public interest, convenience and necessity," the FCC has over the years developed the "Fairness Doctrine." This refers to what is becoming an increasingly detailed and confusing set of rules and decisions, intended to assure that broadcasters present fairly both sides of controversial issues of public importance and provide opportunity for response to personal attack. There is concern that what was originally intended to spur public debate and increase public awareness has now come to have the opposite effect, since the risk of violating the Fairness Doctrine can be reduced by minimizing discussions of public issues. The time has come for an overall reassessment of the doctrine and its effects--including its application to the political field and the threat of governmental content control.

(4) Protection of Private Rights in the Computer Culture:

Computers make it possible to accumulate data banks which contain vast quantities of data with considerable proprietary value and information concerning millions of our citizens. Electronic communications make this information readily accessible to people in remote locations. The way in which it is assembled, used, and distributed may profoundly affect lives, careers, and incomes. On occasion, the assembled information may be inaccurate. Should the individual have some right to learn about this and correct it? What restrictions should be imposed upon the communications of such accumulated information to other persons? What procedural and privacy safeguards should be required?

(5) Cable TV and Over-The-Air Broadcasting:

One of the new technologies, coaxial cable, permits the distribution of television signals by wire--and a much larger number of signals than over-the-air broadcasting. Cable seems to have the technological potential of providing a new diversity, flexibility, and quality in television programming. There may be some danger, however, that it could destroy our present system of over-the-air television without providing a satisfactory substitute. At the present time, some cable systems are permitted to import "distant signals" from broadcast stations many miles away without making any payment for the use of such material, either to the broadcasters or to the copyright owners from whom the broadcasters have purchased performance rights. There is general agreement that this is wrong, but no consensus as to how the payment should be required. The FCC has required cable systems above a certain size to originate programs. Some feel that the desirable policy would be the direct opposite of this--that origination of programming by the cable system owner should be positively forbidden so that an anti-competitive common control of program production and telecast distribution will not develop. Cities, counties, and states in addition to the FCC have all imposed upon the new medium varying, often confusing, degrees of regulation which may conflict now or in the future. These and many other problems pertaining to cable do not fit existing regulatory molds and almost certainly will require new legislation.

(6) Domestic Satellites:

American technology launched the first commercial communications satellite for international use in 1965. Six years have passed, and even though American private industry has been willing and able, the American public still does not have the benefit of even a satellite system for national communications. The problem has not been money or technology, but simply governmental delay and indecision concerning how domestic systems should be authorized. Should there be one company granted monopoly rights from the outset, or should the field be open, at least initially, to all entrants? Should telephone common carriers be permitted to enter the field? Should Comsat? What special requirements should be imposed, or special privileges granted, to assure service to Alaska and Hawaii?

C. International Communications:

International communications traffic has historically grown at an annual rate of about 15%. Americans now spend more than \$530 million a year for this purpose and are expected to be spending more than \$5 billion by 1980. International communications are not only important for the conduct of overseas business; in the open world which we seek, they heavily affect the way

in which nations view one another. It is now possible to call London from New York City by simply dialing the number. Last week, a world championship boxing match taking place in Monte Carlo was watched by United States sports enthusiasts on network television. In an era when so many new technologies seem only to facilitate war, creative development of the new technologies of communications is a great chance for peace. Such development requires the resolution of many policy issues, on which OTP will be developing proposals and working closely with the Congress and the FCC.

(1) Structure of the Industry:

At present this country's international private communications are handled by several companies--most of the telephone traffic by AT&T, and most of the data traffic by ITT World Communications, RCA Global Communications and Western Union International. By decision of the FCC, AT&T divides its telephone traffic originating in this country between submarine cables and satellite circuits leased from the Communication Satellite Corporation (Comsat). Comsat is a private corporation authorized by Federal statute whose Board includes Presidentially appointed directors and representatives of other U. S. carriers that buy service from Comsat. The complexity and conflicting incentives built into this industry structure may increase the cost to the public of overseas messages; they certainly place the United States at a severe disadvantage in negotiating with other countries, each of which is usually represented by a single entity. There have been questions raised about this structure for many years; with the tenfold increase in traffic projected by 1980, the Congress and others have been calling for a review of existing legislation and the development of new policy.

(2) The Balance between Satellites and Underseas Cables:

No landing of an undersea communications cable may be made within the United States nor may any communications satellite be placed into service without governmental approval, determined by the FCC. Because of our regulatory structure, if insufficient or excessive capacity is authorized, or if an unreliable or technologically outmoded system is authorized, the private and public consequences are serious. There are at times sharp disputes concerning projected capacity, as well as the relative merits of cables and satellites. These disputes are routinely resolved, in one way or another, in the context of a particular cable or satellite application, but they arise from a failure to address fundamental questions of long-range planning on which the views of industry and several governmental agencies must be sought and coordinated.

(3) International Negotiations:

International communication requires international agreement. Two-way systems need governmental approval at both ends--for cable landings or

satellite earth stations, for rate structures, for connection into the national communications networks. Even one-way broadcasting requires international agreement, since interfering spectrum uses must be avoided. The first permanent forum for such international arrangements was the International Telegraph Union, established in 1865. Its successor is the International Telecommunications Union, established by the Madrid Conference of 1932 and recast into its present form by the Atlantic City Conference of 1947. This organization holds Plenipotentiary Conferences at approximately 5-year intervals, and sponsors much more frequent Administrative Conferences to negotiate changes in the International Radio Regulations and the International Telephone and Telegraph Regulations. In addition to ITU proceedings there are frequent special negotiations with one or more foreign nations--such as those now in progress here in Washington among the members of the International Telecommunications Satellite Consortium (INTELSAT). Such negotiations can have significant commercial, social, and political consequences for the United States. OTP is responsible for providing communications policy guidance for these negotiations to the Department of State.

In all of the areas I have discussed above--and in particular the private domestic and international fields--it is not my intention to create the impression that OTP is the final policy maker. Communications policy in this country is ultimately made by the Congress. It is interpreted and applied by the FCC in the exercise of its regulatory responsibilities. As in other fields, however, the Executive Branch has an important role to play--by making known to Congress, the FCC, and the public its considered views on communications policy matters and their relationship to the broad scope of national concerns; by proposing legislation to the Congress where necessary; by providing a forum for the opinions of the public and industry; and by stimulating national discussion on issues of national consequence. In the field of management of the Government's own communications systems my Office does exercise considerable authority though even there we feel strongly that our approach, insofar as possible, should be to coordinate rather than to control. In the field of non-Government communications, on the other hand, we are merely a partner in the policy-making process, dealing in behalf of the Executive Branch with the Congress, the public, the industry and the FCC. (Chart #4)

III. ACCOMPLISHMENTS OF THE OFFICE

The most important thing we have done in our first six months is, frankly, to organize the office and form the nucleus of a staff capable of dealing with the kinds of policy problems I have just discussed. I am sure you are aware that the job of building a new agency and establishing its relationship with other Government agencies is enormously time consuming. When OTP was originally

established, it was contemplated that it would have a staff of 65 people. The present budget request would enable us to continue our orderly growth in the coming year until we have reached that original minimal level. I may add parenthetically that we do not anticipate ever growing much beyond that level. The Office was intentionally structured in such a way as to avoid the building of a new bureaucracy. Consequently it was located within the Executive Office of the President; technical support is provided by staff units in various Government departments. In particular, the Department of Commerce has the mission of supplying OTP with broad technical support and with administrative support in the frequency management process. I am pleased to report that we are now beginning to function effectively in the role that the President and the Congress set for us.

While in the process of building our organization, we have felt it important to press forward on a number of substantive issues. Some of these are still underway, but I might mention two completed projects of some importance. First was the establishment of an aeronautical satellite policy for the United States. It had been apparent for several years that the rapid increase in aircraft traffic on international routes and the limited capability of existing communications systems would soon require the use of satellite communications for aeronautical navigation over the Atlantic and Pacific Basins. There had nevertheless been extended delay in making the necessary arrangements, because of disagreement on technical matters among Federal agencies and within the private sector, and because of the absence of any single forum in which the Federal decision could ultimately be made. The National Aeronautics and Space Administration and the Federal Aviation Administration were about to proceed with overlapping and incompatible programs which could have wasted a substantial amount of money. One of the first accomplishments of the Office was the establishment of a Government policy for aeronautical satellite communications, arrived at after consultation with representatives of various Federal agencies, private airlines and foreign governments. It sets a time frame for development of the system and establishes the outlines of Government-industry cooperation and guidelines for international cooperation. This policy was announced last January. Since that time OTP has been following through to see that it is promptly implemented. This is an example of the type of policy which OTP will be developing -- not policy in the abstract but a specific definition of management relationships to hasten the conversion of new technology to benefit the public and to conserve public funds.

The second major project which has been substantially completed is coordination of United States preparation for the World Administrative Radio Conference on Space to be held in Geneva next month. The process of establishing detailed United States positions is a lengthy one, requiring consultation with industry, Federal agencies ranging from HEW to DOD and, of course, the Department of State. The decisions reached in these international negotiations will be submitted to the Senate for ratification as a treaty; they will affect the growth and development of space communications over the next decade. Our major positions have at this point been established. The briefings of

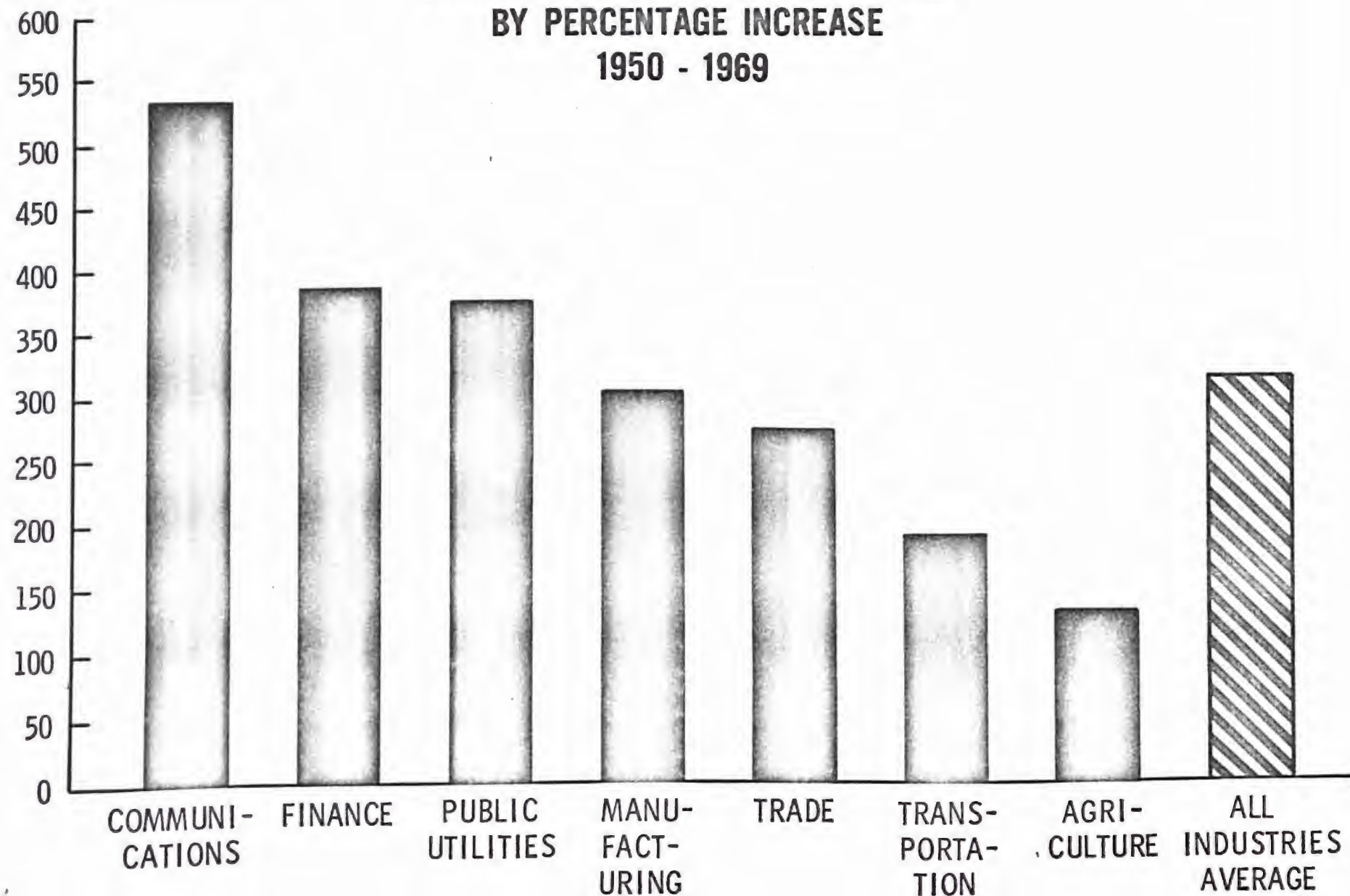
the Chairman to our delegation have been commenced, and we look forward to a successful session in Geneva.

I should also make mention of three policy proposals which will be announced in the near future. One is legislation for the long-term financing of the Corporation for Public Broadcasting and for the support of educational broadcasting in general. The second is an Executive Branch policy statement concerning the planning of satellite and cable facilities for transatlantic communications. And the third is an updating and amplification of the Executive Branch policy on domestic satellites which was originally announced before formation of this Office, a year ago January.

I have thought it most important, at this first formal appearance before this Committee, to give you this overview of what the Office of Telecommunications Policy is and what it does. Needless to say, I have not made mention of everything we are engaged in, nor have I gone into much detail. I hope, nevertheless, it was enough to give you the general sense of what this Office is meant to do. I will now be happy to reply to any questions you may have concerning the Office and its budget proposal.

GROWTH RATES

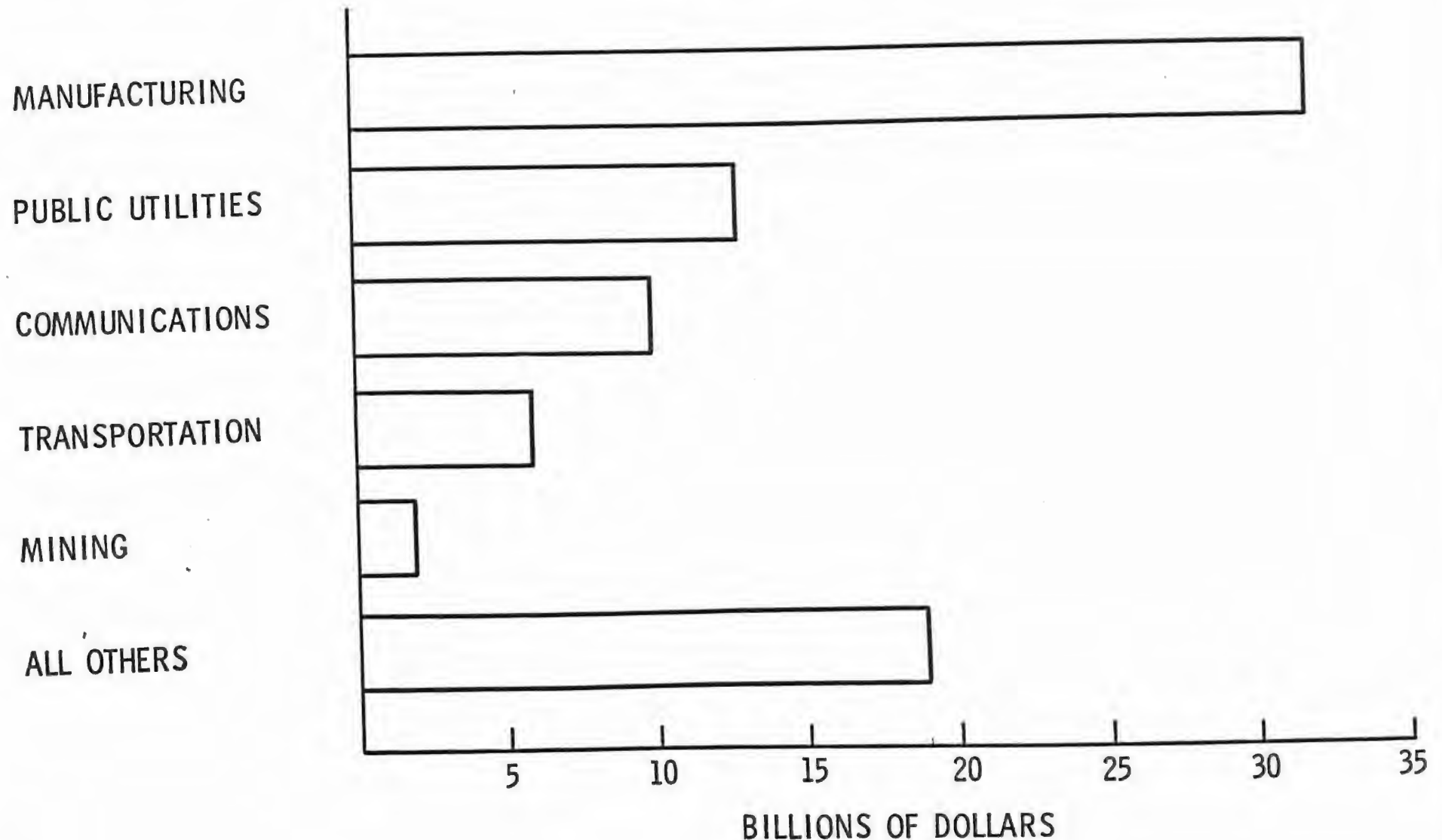
CONTRIBUTION TO NATIONAL INCOME BY PERCENTAGE INCREASE 1950 - 1969



NEW CAPITAL INVESTMENT IN PLANT AND EQUIPMENT

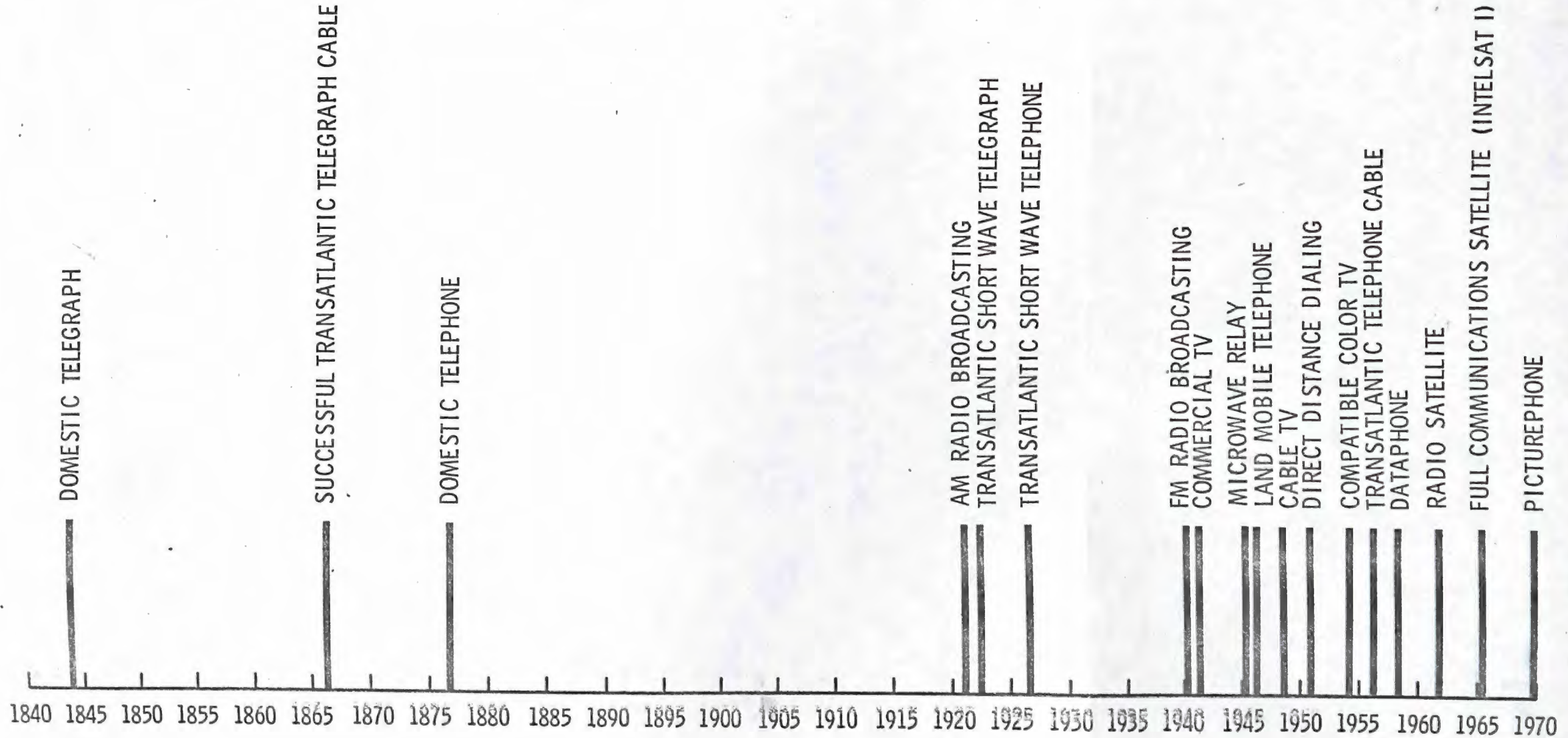
CHART 2

1970



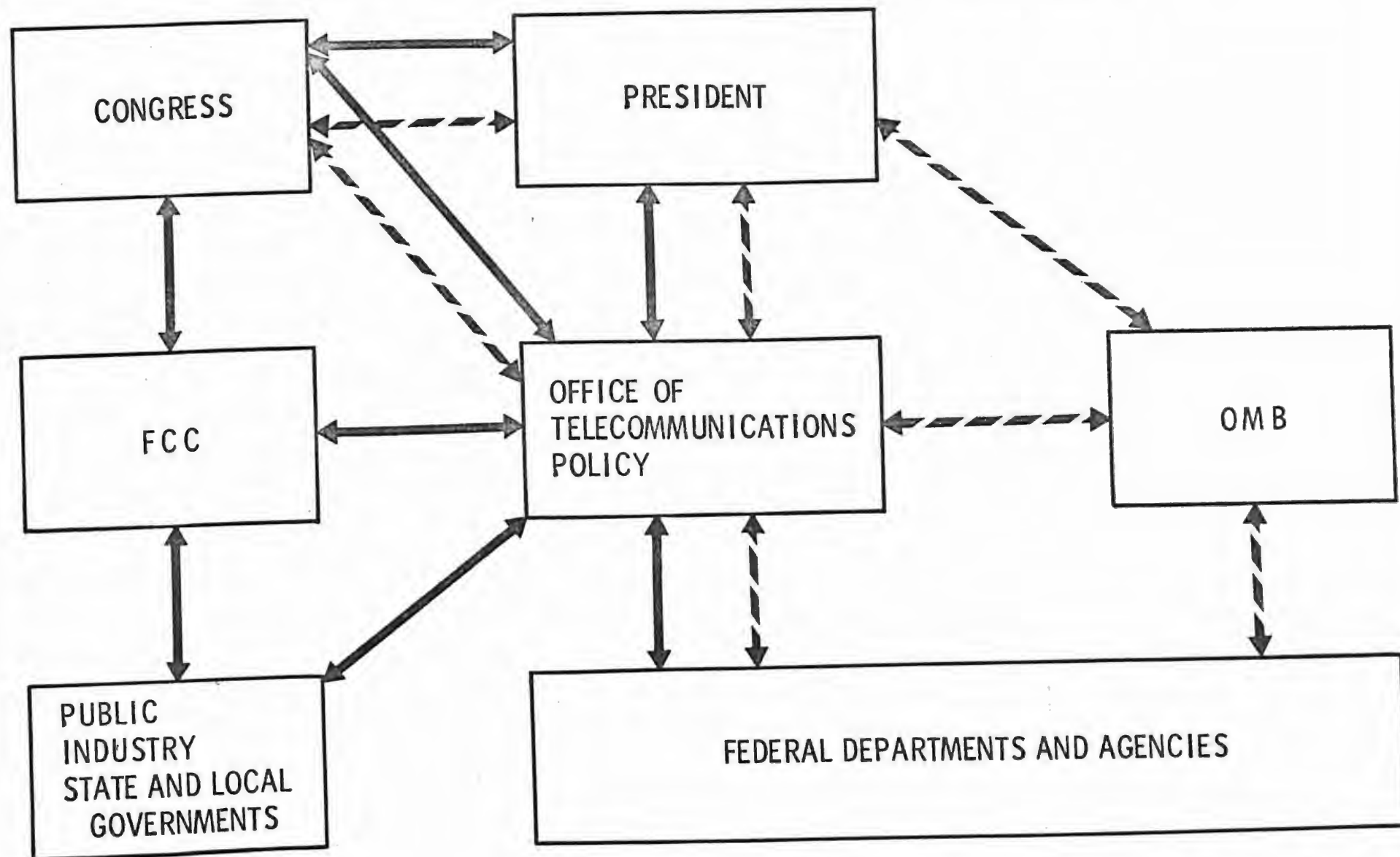
DEVELOPMENTS IN ELECTRONIC COMMUNICATIONS

CHART 3



OFFICE OF TELECOMMUNICATIONS POLICY RELATIONSHIPS

CHART 4



--- Policy For Federal Government Communications
— Policy For Other Communications

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Constitutional Rights
The Honorable Sam J. Ervin, Chairman
Committee on the Judiciary
United States Senate

February 2, 1972

I am pleased to have this opportunity to appear before you today, to discuss some aspects of the First Amendment which it is an important concern of my Office to protect. I wish to address my remarks specifically to the First Amendment implications of the two most significant innovations in our mass communications system during the past decade.

The first of these is cable television. Coaxial cable and related technologies enable large numbers of electronic signals--television signals included--to be carried directly into the home by wire rather than being broadcast over the air. There is no particular limitation on the number of signals which can be provided; systems now being constructed typically have the capacity to carry about 20 television channels, and can be readily expanded to 40.

The original use for this technology was "CATV," or Community Antenna Television. As its name implies, that involved no more than the use of cable to carry broadcast signals picked up by a high master antenna into homes in areas where reception was difficult. In recent years, however, use of the technology has progressed far beyond that. Many cable systems now use microwave relay systems to import television signals from far distant cities. Some originate programming of their own, and make unused channels available to private individuals, organizations, schools, and municipal agencies. Looking into the future, cable technology has the potential to bring into the home communications services other than television--for example, accounting and library services,

remote medical diagnoses, access to computers, and perhaps even instantaneous facsimile reproduction of news and other printed material. But I wish to focus upon the immediate consequences of cable, and in particular its impact upon mass communications.

I do not have to belabor the point that the provision of 20 to 40 television channels where once there were only four or five drastically alters the character of the medium. It converts a medium of scarcity into a medium of abundance. As this Subcommittee is aware from earlier testimony, one of the most severe problems which must be faced by broadcasters today is the allocation of limited broadcasting time--allocation among various types of programming, and allocation among the many groups and individuals who demand time for their point of view. Cable, if it becomes widespread, may well change that by making the capacity of television, like that of the print media, indefinitely expandable, subject only to the economics of supply and demand.

Of course the new medium also brings its own problems, several of which are immediately related to First Amendment concerns. Economic realities make it very unlikely that any particular community will have more than a single cable system. Unless some structural safeguard or regulatory prohibition is established, we may find a single individual or corporation sitting astride the major means of mass communication in many areas.

The second aspect of this new technology which bears on the First Amendment is, to my mind, the more profound and fundamental, because it forces us to question not only where we are going in the future, but also where we have been in the past. That aspect consists of this: the basic premises which we have used to reconcile broadcasting regulation with the First Amendment do not apply to cable.

In earlier sessions of these hearings, this Subcommittee has heard three principal justifications for Government intrusion into the programming of broadcast communications: The first is the fact of Government licensing, justified by the need to prevent interference between broadcast signals. But with cable, there is nothing broadcast over the air, no possibility of interference, and hence no unavoidable need for Federal licensing. The second is "the public's ownership of the air waves" which the broadcaster uses. But cable does not use the air waves. The third is the physical limitation upon the number of channels which can be broadcast in any area-- meaning that there is oligopoly control over the electronic mass media, in effect conferred by Federal license. But the number of feasible cable channels far exceeds the anticipated demand for use, and there are various ways of dispersing any monopoly control over what is programmed on cable channels.

In other words, cable television is now confronting our society with the embarrassing question: Are the reasons we have given in the past forty-odd years for denying to the

broadcast media the same First Amendment freedom enjoyed by the print media really reasons--or only rationalizations. Why is it that we now require (as we in effect do) that each radio and television station present certain types of programming--news, religion, minority interest, agriculture, public affairs? Why is it that our courts repeatedly intervene to decide, or require the FCC to decide, what issues are controversial, how many sides of those controversies exist, and what "balance" should be required in their presentation? Is it really because the detailed governmental imposition of such requirements is made unavoidable by oligopoly control of media content or by the need to decide who is a responsible licensee? Or is it rather that we have, as a society, made the determination that such requirements are good and therefore should be imposed by the Government whenever it has a pretext to do so? And if it is the latter, is this remotely in accord with the principle of the First Amendment, which (within the limitation of laws against obscenity, libel, deception, and criminal incitement) forbids the Government from determining what it is "good" and "not good" to say?

This stark question is inescapably posed by cable technology. The manner in which we choose to regulate cable systems and the content of cable programming will place us squarely on one or the other side of this issue. Perhaps the First Amendment was ill conceived. Or perhaps it was designed for a simpler society in which the power of mass media was not as immense as it is today. Or perhaps the

First Amendment remains sound and means the same thing now as it did then. The answer to how we as a nation feel on these points will be framed as we establish the structure within which cable television will grow.

Because the President realizes that such fundamental issues are involved, he has determined that the desirable regulatory structure for the new technology deserves the closest and most conscientious consideration of the public and the executive and legislative branches of Government. For this reason, he established last June a Cabinet-level committee to examine the entire question and to develop various options for his consideration. Not surprisingly, in view of the magnitude and importance of the subject, the work of the committee is not yet completed. I assure you, however, that First Amendment concerns such as those I have been discussing are prominent in our deliberations--as I hope they will be prominent in yours when the Congress ultimately considers this issue.

I now wish to turn to what I consider the second major innovation in our mass communications system during the past decade--the establishment of a Corporation for Public Broadcasting, supported by Federal funds. The ideals sought by this enterprise are best expressed in the following excerpt from the Report of the Carnegie Commission on Educational Television.

"If we were to sum up our proposal with all the brevity at our command, we would say that what we recommend is freedom. We seek freedom from the constraints, however necessary in their context, of commercial television. We seek for educational television freedom from the pressures of inadequate funds. We seek for the artist, the technician, the journalist, the scholar, and the public servant freedom to create, freedom to innovate, freedom to be heard in this most far-reaching medium. We seek for the citizen freedom to view, to see programs that the present system, by its incompleteness, denies him."

In addition to this promise, public television also holds some dangers, as was well recognized when it was established. I think most Americans would agree that it would be dangerous for the Government itself to get into the business of running a broadcasting network. One might almost say that the free-speech clause of the First Amendment has an implicit "non-establishment" provision similar to the express "nonestablishment" restriction in the free-exercise-of-religion clause. Just as free exercise of religion is rendered more difficult when there is a state church, so also the full fruits of free speech cannot be harvested when the Government establishes its own mass communications network. Obvious considerations such as these caused Federal support of public broadcasting to be fashioned in such a way as to insulate the system as far as possible from Government interference.

The concern went, however, even further than this. Not only was there an intent to prevent the establishment of a Federal broadcasting system, but there was also a desire to avoid the creation of a large, centralized broadcasting system financed by Federal funds--that is, the Federal "establishment".

of a particular network. The Public Broadcasting Act of 1967, like the Carnegie Commission Report which gave it birth, envisioned a system founded upon the "bedrock of localism," the purpose of the national organization being to serve the needs of the individual local units. Thus it was that the national instrumentality created by the Act--the Corporation for Public Broadcasting--was specifically excluded from producing any programs or owning any interconnection (or network) facilities.

Noncommercial radio has been with us for over 50 years and noncommercial television for 20. They have made an important contribution to the broader use of communications technology for the benefit of all. The new Corporation for Public Broadcasting has, for the most part, made a good start in expanding the quantity and quality of programming available to local non-commercial broadcasting stations. There remain important questions about the most desirable allocation of the Corporation's funds among educational, instructional, artistic, entertainment, and public affairs programming. But most importantly, from the First Amendment standpoint, there remains a question as to how successful the Corporation has been in avoiding the pitfalls of centralization and thereby of Government "establishment." Now that we have a few years' experience under this new system, we see a strong tendency--understandable but nonetheless regrettable--towards a centralization of practical power and authority over all the programming developed and distributed with

Federal funds. Although the Corporation for Public Broadcasting owns no interconnection facilities, which the Act forbids, it funds entirely another organization which does so. Although it produces no programs itself, which the Act forbids, the vast majority of the funds it receives are disbursed in grants to a relatively few "production centers" for such programs as the Corporation itself deems desirable--which are then distributed over the Corporation's wholly funded network. We have in fact witnessed the development of precisely that which the Congress sought to avoid--a "Fourth Network" patterned after the BBC.

There is, moreover, an increasing tendency on the part of the Corporation to concentrate on precisely those areas of programming in which the objection to "establishment" is strongest, and in which the danger of provoking control through the political process is most clear. No citizen who feels strongly about one or another side of a matter of current public controversy enjoys watching the other side presented; but he enjoys it a good deal less when it is presented at his expense. His outrage--quite properly--is expressed to, and then through, his elected representatives who have voted his money for that purpose. And the result is an unfortunate, but nonetheless inevitable, politicization and distortion of an enterprise which should be above faction and controversy.

Many argue that centralization is necessary to achieve efficiency, but I think it is demonstrable that it does not make for efficiency in the attainment of the objectives for

which public broadcasting was established. For those objectives are variety and diversity--almost inherently antithetical to unified control. To choose for public broadcasting the goal of becoming the "Fourth Network" is to choose for it the means which have brought success to the first three--notably, showmanship and appeal to mass tastes. This is not to say that there should be no nationally produced programming for public television. Some types of programming not offered on commercial television require special talent, unique facilities, or extensive funds that can only be provided at the national level; it is the proper role of the Corporation to coordinate and help fund such programming. But both for reasons of efficiency and for the policy reasons I have discussed above, the focus of the system must remain upon the local stations, and its object must be to meet their needs and desires.

The First Amendment is not an isolated phenomenon within our social framework, but rather one facet of a more general concern which runs throughout. For want of a more descriptive term we might describe it as an openness to diversity. Another manifestation of the same fundamental principle within the Constitution itself is the very structure of the Nation which it established--not a monolithic whole, but a federation of separate states, each with the ability to adopt divergent laws governing the vast majority of its citizens' daily activities. This same ideal of variety and diversity has been apparent in some of the most enduring legislation enacted under the Federal

Constitution. Among the de was the Communications Act of 1934. Unlike the d broadcasting systems of other nations, such as Frangland, the heart of the American system was to be station, serving the needs and interests of its localy--and managed, not according to the uniform dictatentral bureaucracy, but according to the diverse of separate individuals and companies.

In 1967, when Congred the Public Broadcasting Act, it did not abandon tand discard the noble experiment of a broadcasting syd upon the local stations and ordinated towards diversit would indeed have been a contradictory course, fore purpose of public broadcasting was to increase, an diminish, variety. It is the hope and objective of inistration to recall us to the original purposes of I think it no exaggeration to say that in doing so welowing the spirit of the Constitution itself.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Communications and Power
The Honorable Torbert H. Macdonald, Chairman
Committee on Interstate and Foreign Commerce
House of Representatives

February 3, 1972

Mr. Chairman, Members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the pending public broadcast funding bills--H.R. 7443, H.R. 11807, H.R. 12808--and the Administration's plan for increased financing of public broadcasting in Fiscal 1973.

Mr. Chairman, I realize that you have been critical of us for not coming forth with a long-range financing plan for public broadcasting. I regret the delay. I have wrestled with this problem for almost a year. Others have tried for years. I need not tell this Subcommittee that it is an exceedingly complex and difficult problem--one that involves basic assumptions about the role and structure of the public broadcasting system in our country and how Government should interact with that system. We expect to solve this problem before the end of Fiscal 1973. With due deference, I do not believe that the Bills under consideration solve it. In order to comment specifically on the Bills, let me discuss briefly the background of our efforts over the past year.

BACKGROUND

Last year, the President's budget message stated that an improved financing plan would be devised for the Corporation for Public Broadcasting (CPB). My Office worked closely with representatives of CPB, the National Association of Educational Broadcasters (NAEB), HEW, the FCC, and other interested groups. But we were not able to develop an acceptable long-range

financing bill. One of the principal issues concerned the method for CPB distribution of operating funds to local educational broadcast stations, and whether the method should be specified in the statute. We feel strongly that a distribution formula should be set out in the statute to assure that the local entities would have the financial strength to counterbalance the growing dominance of CPB and its network arm--the Public Broadcasting Service.

Indeed, the Carnegie Commission felt so strongly about the need to disburse operating funds free of the Corporation's discretion that it recommended an approach that would have had HEW distribute all operating grant funds to the stations. As Dr. Killian stated in his testimony on the 1967 Act, the principal reason for this separation of funding responsibilities was a fear that, if the stations had to look to the Corporation for their "daily operational requirement," it would lead "naturally, inevitably, to unwise, unwarranted and unnecessary centralization of educational broadcasting." However, the Congress provided for operating funds to come from CPB, and operating support was to have been one of CPB's principal responsibilities. Unfortunately, CPB has never devoted enough funds to this purpose.

By October it was clear that we were not making any progress toward an acceptable financing plan, and I wanted

to explain the situation to the educational radio and TV stations, many of whom are in severe financial difficulty. I did so at the annual NAEB Convention. The particular financing controversy was only illustrative of the underlying issues concerning the shape the Congress wanted public broadcasting to take, and I focused on these fundamental issues.

Reduced to their essentials, my concerns are that:

1. The independence of the local stations has suffered because CPB has not devoted sufficient funds to station support grants and grants for purely local program production.
2. Local station autonomy has been undercut by the CPB and PBS use of interconnection facilities to establish a fixed-schedule, real-time network contrary to the intent of the 1967 Act.
3. Program diversity has not been enhanced, since national programs are produced or acquired in effect by CPB's "in-house" production entities, which are also local broadcast stations. Moreover, the national programming seeks a mass audience for news, public affairs, and entertainment programs.
4. Not enough attention is devoted to achieving two important balances: the balance between local and

national programming, and the broad balance among cultural, entertainment, news, public affairs, educational and instructional programs.

H.R. 7443 and H.R. 11807

With this as background, let me turn to the specifics of H.R. 11807 and H.R. 7443. First, as to both, the level of funding is too high. When all of the other demands on the Federal budget are considered, it is unfortunately not possible to devote a total over five years of \$500 million (H.R. 7443) or \$575 million (H.R. 11807) to public broadcasting. Moreover, H.R. 7443 provides all of these funds to CPB, without specifically requiring any distributions for station support. H.R. 11807 is better, since it requires CPB to earmark at least 30 percent of its funds for this purpose, but here too the amount and nature of the distributions to particular licensees are left to CPB's discretion, albeit a discretion that must be exercised in consultation with public broadcasting representatives. First, we think that a more substantial share of CPB's funds should be passed on to the local stations. When CPB funding gets as high as \$65 million, as it would in the first year of funding under this bill, at least half should go to the stations. Thereafter, an even greater proportion of CPB funds should be distributed to the stations.

Second, H.R. 11807 does not specify the criteria and methods of distributing operating funds to the stations. We prefer to see a matching formula set out in the statute, as it is in the facilities grant portion of the Communications Act. This would give the stations the incentive to generate financial support at the local level. The stations would know that Federal matching funds would come directly to them instead of being disbursed from a Treasury fund to CPB. There's no immediacy to it when CPB then has to set aside a fraction of the match and distribute it to all licensees pursuant to industry-wide criteria. The stations are likely to be more enthusiastic about local fund raising when there is an immediate prospect of a direct match. Finally, it would heighten the local stations' sense of autonomy and independence if they had available a stable source of funds of a known quantity, as a matter of statutory right and not CPB discretion.

Furthermore, H.R. 7443 would not allow CPB to foster the use of new communications technologies, such as video-cassettes, broadband cable, and communications satellites. H.R. 11807 is preferable in that it authorizes CPB to encourage educational and instructional uses of these technologies.

H.R. 12808

Turning now to H.R. 12808, we have not yet assessed the full import of some of the modifications this Bill would make in the present Act. However, the Bill addresses some very real issues, such as the restoration of balance between the local stations and CPB. The Bill would take the interconnection and station support functions away from CPB, and have HEW support the operating costs of the stations. The stations could then make their own interconnection arrangements. Indeed, a number of educational broadcasters are considering the feasibility of just such an arrangement. Some other features such as station representation on the CPB Board of Directors; prohibitions on promotional and lobbying activities, as well as on funding of programs on partisan political controversies, are worthy of consideration. Other features of the Bill, such as the limitation on funding from a single source and the mandatory GAO audit, may be too restrictive. In any event, the cumulative effect of all these features might be to erode the functions that are both necessarily and properly performed at the national level by CPB.

ADMINISTRATION PROPOSAL

In addition to the specifics of the pending long-range financing Bills which I have discussed, as a general matter, we do not believe that a long-range financing plan should be pressed at the present time. This is not to say, however, that the difficulty in devising such a funding approach should stand in the way

of continuing the sound development of public broadcasting at a time when its responsibilities are many but its resources are spread thin. Therefore, the Administration's Bill provides for a oneyear extension of CPB's authorization at an increased funding level and directs operating support grants to the local stations. The reasons we have not submitted a long-range financing plan are neither complex nor devious. One reason the Congress chose to defer long-range financing in 1967 was that CPB was an unknown quantity. It would have to go through a development phase before its structure would be sufficiently set to warrant such a financing plan. Today that development process is continuing. The relationships between the central organizations and the local stations are still relatively unclear. Indeed, the CPB Board has just authorized a study to define these relationships. Until these matters are clarified and the directions are better defined, we believe that it would be more sound for the Congress not to rush forward with a long-range plan during this Session.

The 1967 Act needs substantial refinement to provide a stable source of financing, to define clearly and carefully the respective roles of CPB and the local stations, and to take account of technological changes that have occurred since 1967. While these revisions are under consideration, our one-year extension Bill would allow the growth of the public broadcast system to proceed soundly, during the critical development stages it is now in. Continuing the Administration's

record of increasing funds for public broadcasting--the appropriations will have increased by \$40 million from Fiscal 1969 to Fiscal 1973--the present Bill adds \$10 million to CPB's current level of funding, for a total of \$45 million, of which \$5 million must be matched by funds derived elsewhere.

In addition to the extension and increase in authorization for CPB, our Bill would provide a significant portion of Federal funds to local educational broadcast stations. CPB currently distributes over \$5 million in general support grants to the stations. Our Bill would add \$10 million for Fiscal 1973 and establish a mechanism for distributing a total of \$15 million to the local stations, so that they will be effective partners with the Corporation in the development of educational broadcasting services for their communities.

The Bill provides for \$2 million to be distributed to public radio stations--almost doubling the general support funds which the Corporation now provides them. Because of the large number and enormously diverse nature of public radio operations, the manner of distribution of these radio funds is left to the discretion of the Corporation, to be exercised in consultation with station representatives. The proportion of the \$15 million devoted to radio represents the approximate share of total non-Federal public broadcasting support which goes to radio.

The statutory mechanism would also make available \$13 million to approximately 140 licensees of public television stations. Two types of grants would be used for this purpose. First, there would be a minimum support grant of \$50,000 or one-quarter the licensee's total non-Federal, non-CPB supported Fiscal 1971 budget, whichever is less. Second, the licensee would be entitled to a supplemental grant based on the proportionate amount which his Fiscal 1971 operating budget, exclusive of Federal and Corporation grants, bore to all licensees' operating budgets during Fiscal 1971. There would, however, be an upper limit on the amount of the supplemental grant, since no licensee's operating budget would be considered to exceed \$2 million for grant purposes.

We anticipate that, taking both types of grants into account, and with a total non-Federal Fiscal 1971 budget of over \$117 million for all licensees, the minimum distribution in the typical situation would be around \$50,000 and the maximum would be approximately \$180,000. Station support at this level of funding would give the licensee some breathing time to work with all of us in devising a more long-range financing plan.

CONCLUSION

Mr. Chairman, I have endeavored to summarize the Administration's position on public broadcast funding. I hope that I have given you some idea of the problems that concern us,

and why we believe it is better for now to seek increased funding for another year. We will continue to work constructively and earnestly next year with educational broadcasters to resolve some of the issues that your hearings have aired.

The Congress in the 1967 Act attempted to give practical effect to the Carnegie Commission's eloquent plea for freedom in the public broadcasting system, excellence in its programming, and diversity within that excellence. Despite the arguments of some that diversity and decentralization are impractical and unworkable, or at least not the best way to enhance the national impact of public broadcasting, the Administration is not yet ready to abandon the Congress' grand design. CPB has made major strides in the relatively short time since it was created. The programs it has supported show that it has a great potential in helping the educational broadcast licensees meet their public interest obligations. There should be no doubt on this point. I have focused attention on problems with the public broadcast system because there are problems. But there are also accomplishments and successes that would have been beyond the capacity of educational broadcasting if there had been no CPB.

CPB is still going through that extraordinarily difficult process of self-examination and self-definition. Whether this maturation process evolves an entity that can live up to the

potential envisioned for it depends to some extent on determinations reached by Government. We are continuing to play our role in a way that we feel best serves CPB, the local stations, and the public. We agree with the view, expressed strongly during these hearings, that there must be a workable long-range financing plan, as contemplated by the Public Broadcasting Act of 1967, and the Administration intends to submit one before the proposed extension of authorization expires.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the
Subcommittee on Treasury, Post Office
and General Government
The Honorable Tom Steed, Chairman
Appropriations Committee
U.S. House of Representatives

April 14, 1972

STATEMENT BY

CLAY T. WHITEHEAD

DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss with you the budget requests of the Office of Telecommunications Policy (OTP). You have before you our Budget Estimates in some detail; I would like to use this occasion principally to discuss the various activities on which those funds are to be expended.

Initially, however, I want to volunteer a few observations concerning the numbers you have before you. Our total request of \$3,084,000, represents a net increase of \$484,000 above last year. The vast majority of that is attributable to the increases in Civil Service compensation enacted by Congress this past session, and to the fact that this is the first budget which contemplates operations at a fully staffed level for the entire fiscal year. We are seeking no increase in the level of our presently authorized staff, and only a modest increase (\$25,000) in the funds which we may use for research that can be done better or more economically on a contractual basis than inhouse. I stated to you in our hearings last year that it was not our intention to create a huge bureaucracy out of this new office; I stand by that statement, and our activities to date and the current budget request bear it out.

I appreciate the problem which you gentlemen face in evaluating the efficiency and utility of an agency that cannot measure its output in terms of applications processed, miles of highway paved, or even radio and television licenses issued and renewed. As our name indicates, our contribution to Government is less quantifiable, but nonetheless valuable. The fruits of our endeavors are to be found in governmental decisions--usually decisions rendered by other governmental entities, including the FCC and the Congress itself--which can affect the shape of United States communications for years to come.

I would like, therefore, to discuss with you in some detail the major projects to which my Office has devoted its energies during the last fiscal year, and those which it intends to pursue under the proposed budget. They fall into four major areas, namely domestic communications, Government communications, international communications, and spectrum management and use, with a number of subcategories under each.

I. DOMESTIC COMMUNICATIONS

A. Common Carrier Communications

Common carrier communications is for the most part a monopoly public utility service provided by the Bell system and independent telephone companies. The performance of the industry has come under increasing criticism in recent years, and it has been proposed that various segments of common carrier operations be opened to competition. In response to such proposals, the carriers have asserted that the benefits of economy of scale and operational integrity derived from integrated ownership and operation far outweigh any potential customer benefits from competition.

OTP has initiated several investigations into these questions. The ultimate aims of these studies are, first, to develop recommendations as to which aspects of common carrier operation can safely be opened to increased competition, and which should remain under integrated control; and, second, to determine the regulatory principles and practices best designed to ensure that noncompetitive operations remain efficient and innovative.

Principal studies and findings to date include the following:

1. Domestic Satellite Communications

OTP has found that there are insufficient economies of scale in domestic satellite communications to warrant government restriction of competition. Its studies showed that all of the satellite applications on file with the FCC are economically viable, technically compatible, and could be accommodated within existing spectrum and orbital space. OTP therefore recommended to the FCC that any technically and financially qualified applicant be allowed to establish and operate satellite systems on a competitive basis.

2. Specialized Communications Carriers

The entry of new communications carriers offering "specialized" services (e.g., data, private line, video interconnection, etc.) in competition with the existing telephone carriers was approved in principle by the FCC, but a number of issues which could determine the practical feasibility of competitive entry were left unresolved--such as the allowable pricing response and interconnection constraints.

OTP has commenced investigation of the more important unresolved issues, including the technical and economic implications of alternative interconnection policies which will, among other factors, affect competition in the supply of terminal equipment (e.g., telephone and data sets) to be used with the existing telephone "network." These will be long-term studies and could result in new FCC regulations or legislation.

3. Common Carrier Regulation

Even if it is feasible to introduce competition into selective aspects of common carrier operations, it will affect only about 10-20% of total operations. Most common carrier operations, notably the public message telephone service, will continue to be a natural monopoly.

Effective regulation of natural monopolies is necessary to prevent investments in inefficient facilities, excessive rates and profits, technological obsolescence, service degradation, and other problems, but it is difficult for government to second-guess a large public utility on detailed investment and operating decisions. For this reason, in Fiscal Year 1973 OTP will continue to explore the desirability of encouraging better public performance of regulated utilities through improved policies rather than increasingly detailed regulation. Some of these policies include:

a. Alternatives to Rate of Return Regulation: Traditional common carrier regulation is based on an agency-determined "fair" rate of return which requires establishment of a "rate base" (i.e., the amount of investment) and detailed information on profit flow. But this method of regulation can create incentives for excessive investment in capital equipment and can distort normal business decisions in other ways which affect technological progress. OTP will attempt to determine (a) the magnitude of the distortions, if any, caused by rate-base regulation and (b) whether there are alternatives to rate-base regulation. It is very difficult to perform quantitative comparisons to test the hypothesis of rate-base distortions when dealing with a natural monopoly. OTP has studies underway in this area.

b. Depreciation Programs: Common carrier equipment is typically depreciated over very long periods corresponding to the expected physical life of the equipment, although the useful life is often much shorter due to rapid technological

advances. This is only one aspect of depreciation policies that affect common carrier financial decisions and customer rates; other aspects are disposition of fixed asset salvage, and separation of depreciable and nondepreciable investments. In Fiscal Year 1973, OTP will undertake a comprehensive investigation of depreciation practices, objectives, effects, and alternatives in the common carrier industry.

B. Cable Television and Broadband Communications

Broadband cable systems represent a new communications medium which can increase consumer choice in television programming and provide many new communication services hitherto unavailable. The immediate effect of cable expansion, however, is to disrupt some of the distribution practices of the existing television industry and to threaten the economic position of some broadcast stations and copyright owners. There is urgent need for policies to guide the development and regulation of cable in such a fashion that its enormous benefits can be rapidly achieved without depriving the society of its healthy programming industry and its essential broadcasting services.

OTP has undertaken a series of studies and investigations to identify and illuminate particular aspects of broadband cable development which require policy consideration, and to develop policy recommendations. These include:

- a. A study of the present and projected costs of broadband cable systems, to serve as a basis for estimating future growth patterns and rates of development of cable distribution systems.
- b. A study of the television program production industry and its economics, to serve as a basis for estimating the growth in new television programming likely to occur as a result of cable system development.
- c. A study directed to the development of an industry simulation model to be used in conjunction with the results of (a) and (b) to predict future industry development.
- d. Definition of a study project on projected consumer demand for cable television under alternative policies.

In addition to these studies, OTP has provided supporting analysis and developed alternative policy recommendations for the

President's Cabinet committee on cable television. In this work it has examined, among other matters, the economic and social effects of vertical integration in the production and distribution of cable television programming; the probable impact of expected cable growth on the broadcast and copyright industries; the problems of access to the cable media by all segments of the public and industry; and considerations pertaining to joint ownership of broadcast, cable, and telephone facilities. Policy alternatives pertaining to these various matters were developed for consideration by the Cabinet committee. The results of this activity have been presented to the committee, which is expected to complete its report in the near future.

A significant achievement in the cable television field was resolution of the long-standing controversy concerning distant signal importation, that is, cable use of signals broadcast by out-of-market television stations. The distant signal question involved complex, interrelated issues such as CATV's need to offer this service in order to attract capital and begin its growth, the effect of distant signal competition upon the economic stability of local radio and TV stations, program suppliers' need for copyright protection, and the public need for a wide diversity of quality program services. In August, the FCC announced its intention to end the six-year "freeze" on distant signal importation without provisions for copyright payment and copyright exclusivity protection. This aroused great concern within the broadcasting and copyright industries, which threatened to seek Congressional action to stop implementation of the new rules. While the outcome of such an effort was unclear, it would surely have created uncertainty and delay in the regularization of cable television growth. Since OTP believed further delay and uncertainty would be harmful to the public interest, it took the initiative in seeking to act as mediator in the dispute. The principal parties ultimately agreed upon a compromise plan, the main feature of which is to supplement the FCC's rules with regulatory and legislative copyright and exclusivity provisions. The desirability of this plan is now being considered by the FCC, which is completing action on its new cable television rules, and by the Congress, which is considering new copyright legislation.

In Fiscal 1973, OTP will continue its attempts to assist the FCC and the Congress in resolving the complex, but fundamental, policy questions that attend the full development of this new technology. In this regard, OTP recently received the results of a study on the feasibility of designing a broadband cable pilot program for a few selected urban and rural communities to demonstrate the utility of the technology to meet various needs

in the fields of education, health information, vocational training and assistance, and business. OTP is considering how best to proceed in this area. OTP will also prepare and document whatever legislation the President may deem necessary to implement the recommendations of the Cabinet committee.

C. Broadcasting

1. Public Broadcasting

The Public Broadcasting Act of 1967 created a framework for educational and instructional broadcasting, largely as envisioned by the Carnegie Commission on Educational Television. However, the means of establishing a stable source of Federal support funds which would avoid detailed government oversight of program content, was left unresolved and has remained so. In addition, the years since 1967 have witnessed the development of important new technologies for which no provision is made in the Public Broadcasting Act.

During the past year OTP sought to achieve amendments to the Act which would eliminate both these deficiencies. It consulted with interested organizations in public broadcasting and with the relevant agencies of government, and reviewed a range of approaches to new legislation. In the summer of 1971, it drafted and submitted for coordination to the Office of Management and Budget a bill which made provision for new technologies and established a financing plan consistent with the congressional intent for public broadcasting in general, and for the Corporation for Public Broadcasting (CPB) in particular. The bill was withdrawn for modification when it appeared that CPB could not support a financing approach that provided assured Federal funding of individual public broadcast stations.

In order to provide for the immediate financial needs of public broadcasting pending resolution of the difficult question of long-term funding, OTP prepared and submitted to the Congress this year an Administration Bill which increases the level of Federal support by 30%, almost all of the increase to be directed to local public broadcasting stations. Before this one-year Bill expires, OTP hopes to achieve consensus on long-term legislative proposals to meet the needs of public broadcasting in a manner consistent with the intent of the 1967 Act.

2. License Renewal Policy

One of the major broadcasting controversies of recent years has involved the triennial license renewal process. Although all can agree that a broadcaster who has performed well in the public interest should have his license renewed, the Congress, the FCC, and the courts have struggled with the questions of what is good performance and what standard should be used to judge the incumbent licensee's performance in the face of a challenge to his renewal application.

In Fiscal 1972, OTP developed and proposed for public discussion a wide-ranging series of suggestions for modifying the Communications Act of 1934, one of which dealt with license renewal policy. OTP pointed out the dangers of adopting renewal standards that lead inevitably to government supervision of program content. It proposed for discussion a more "neutral" renewal standard that would place the primary emphasis on the licensee's being attuned to the programming needs and interests of his local audience. Using this standard, a premium would be placed on the obligation to be directly responsive to community problems and issues; licensees who had met this obligation would be assured license renewal. This would lead to needed stability in an industry that must make relatively long-term commitments to public service.

In the coming year OTP hopes to work with interested citizen and industry groups, the Congress, and the FCC to create a workable license renewal policy which assures industry stability and service to the public.

3. Fairness Doctrine and Access to the Broadcast Media

Another critical issue--one that is central to the role of the mass media in an open society--is that of public access to the broadcast media for discussion of and information about controversial public issues. The FCC's Fairness Doctrine requires the broadcaster to make time available for the presentation of contrasting viewpoints once a particular side of a controversial issue of public importance has been expressed. Although not originally contemplated, this "fairness" obligation is now being enforced on an issue-by-issue, case-by-case basis, instead of through an overall evaluation of whether the broadcaster has kept the public well informed, with reasonable time for contrasting views. When enforced in this manner, the broadcaster's journalistic determinations are repeatedly second-guessed by agency and courts, and the government decides who shall speak on what issues.

This diminishes the "free press" discretion of the licensee and tends to convert broadcasting from a private enterprise activity to a government instrumentality.

A major incentive for case-by-case application of the Fairness Doctrine is the fact that individuals' access to the media for discussion of controversial issues can only effectively be achieved through that device. Broadcasters do not ordinarily sell their advertising time for such purposes--partly because they may be compelled to "balance" such presentations in their program time.

One of OTP's projects in FY 1972 was a study of Fairness Doctrine enforcement and the closely related problem of access to the media. In October 1971 it proposed for consideration several specific modifications of broadcast regulation in these fields. It participated in the FCC panel discussions on the Fairness Doctrine. It has published specific criticisms of recent proposals for compulsory free "counter-advertising."

OTP will continue during the coming year to explore various alternatives for solving the fairness and access dilemmas. It will seek to assist the Congress and the FCC in devising mechanisms to enhance free expression and to minimize government intervention in the marketplace of ideas.

4. Radio Regulation

For many years radio broadcasting has been regulated as an afterthought to television. Some of the rationales and assumptions, such as scarcity of outlets and restricted entry, which shaped early radio regulation and still justify regulation of television stations, have been rendered meaningless by the phenomenal growth in the number of AM and FM radio stations, offering widely diversified special program services to the public.

After studying the issue during FY 1972, OTP proposed to the FCC that it undertake an experiment in radio deregulation, with a view toward lessening the regulatory controls on commercial radio programming, commercial practices and other nontechnical operations. The proposal was supported by an OTP Staff Paper setting forth the reasons such an experiment seemed appropriate and promising. The FCC is now considering this proposal and OTP intends to work with the Commission, to the extent deemed desirable, in order to implement a pilot plan.

D. Federal-State Communications

Communication issues affecting State and local governments arise in every substantive area and in varying contexts. For example, the planning of a national emergency communication system requires State and local participation; regulation of the communications common carrier industry has traditionally been divided between the FCC and State public utility commissions; regulation of CATV systems has been divided between the FCC and local (municipal) authorities; public broadcasting and educational communications involve State and local governments to a significant degree; the operation of public safety communications systems (police, fire, ambulance, etc.) are usually under the direct operational control of local officials; and in many cases, local governmental communication facilities and services are funded in whole or in part through Federal grant-in-aid programs.

To provide guidance and assistance to State and local governments, OTP has undertaken one general and several specific tasks. The general task is to identify the various Federal assistance programs involving telecommunications, in order to advise State and local governments on the effective utilization of these programs, and in order to inform the Congress of duplications or deficiencies. This review is now in progress under OTP supervision, and should be completed by the end of Fiscal Year 1972.

Among the specific tasks which OTP has undertaken in this area are (a) assistance to the States of Hawaii and Alaska in identifying communications needs which might be met through modern technology (e.g., communication satellites), and in developing plans and programs for using such technology; (b) advice to local and State government officials concerning the potential and the problems of broadband cable communications and CATV, and the desirable manner of State and local regulation; and (c) consultation with State public utility commissioners concerning the impact of new specialized communications carriers, broadband cable systems, and data communications services on traditional regulatory policies and practices. Since these tasks are largely consultative and ad hoc in nature, it is difficult to specify a future timetable. OTP does expect, however, that major requirements for information and consultation will emerge from long-range cable policy development; this expectation is based upon the very large flow of such requests which were stimulated by the announcement and preliminary work of the Cabinet committee. OTP also anticipates a substantial continuing requirement for assistance to Hawaii, Alaska, and the U.S. Trust Territories as their internal communication planning activities progress.

E. Mobile Communications

The frequency spectrum available for mobile radio services has recently been tripled by the FCC. The mobile communications industry will no longer be limited by a frequency shortage but will face classical supply and demand limitations. This will raise a number of issues as to appropriate types of new systems, new services, and the institutional structure to support them. The transition from spectrum scarcity to spectrum abundance must be regulated to create an industry structure that is sensitive to future demands for communications services of all types, including improved mobile telephone services for urban areas, integrated dispatch services, and public telephone services for domestic aircraft.

OTP has begun a program, with assistance from the Policy Support Division of The Office of Telecommunication of the Department of Commerce, to assess the technical, economic, and institutional effects of proposed new mobile systems and services and to formulate policy guidelines for the development and regulation of the expanded industry. In cooperation with the FCC, DOT, LEAA, HEW, and HUD, OTP will assess the feasibility of a pilot program to demonstrate innovative uses of mobile communications services in support of public safety, emergency health services, highway safety, and transportation in general.

F. New Technology

During the past decade there have been radical improvements in communications technology resulting from independent research and development of U.S. industry, research in the academic community, the U.S. space program, and other Government sponsored R&D. These technologies provide opportunities for vastly improved and expanded communications services, which could have significant social and economic effects if exploited properly.

OTP plans a study effort designed primarily to identify areas in which new technological advances are occurring and to evaluate the effect of these technologies upon the existing structure of the domestic communications industries. In the coming year, OTP hopes to identify in broad terms the current state-of-the-art in major fields of communications technology, and to isolate any natural limiting factors. If necessary, OTP will develop policy guidelines regarding the application of a new technology to a particular use.

II. GOVERNMENT COMMUNICATIONS

A. Federal Communications Policy and Planning

The Federal Government's own communications consume from 5 to 10 billion dollars per year. The major concerns in this field are avoidance of duplication, effective management of the acquisition of new systems, achievement of compatibility among systems, and satisfactory operating performance. The creation of the National Communications System in 1963, which sought to integrate long-haul, point-to-point communications of the Federal Government into a united system, has not significantly affected the planning, design and cost of government communications systems, although it has contributed to better coordination of day-to-day operations. The majority of Federal communications expenditures are beyond the scope of the NCS and have not been addressed at all from an overall Federal point of view.

The major objectives of the OTP program in the area of Federal communications are: First, identifying all the communications activities and resources of the Federal Government; second, determining the needs for effective information exchange among the various departments and agencies; and finally, taking action in those areas in which integration will best achieve the ends of efficiency and economy.

OTP has completed a review of all existing studies and analyses pertaining to the integration of the two largest communications networks in the Federal Government, the AUTOVON network and the FTS. OTP has determined that integration should not be attempted at this time.

OTP has undertaken a review of existing and planned radio navigation aids operated or used by various elements of the Federal Government, accounting for the expenditure of between one and three billion dollars annually (not including expenditures by private users). It is now discussing with the affected Federal departments the designation of a single system as the standard long-range radio navigation system and the formulation of a schedule on which other long-range systems can be phased out. It is planning an evaluation of the many different position-fixing systems used by the Government, to determine how many are needed to meet all requirements, and how many might be replaced if a global, high-accuracy navigation satellite system is deployed.

OTP has begun a review of all the Government's communications satellite programs, with an eye toward identifying avoidable duplication and assuring that available economies of scale are exploited. It will initiate a similar review of

computer-communications networks. The assistance of major Federal departments and agencies will be solicited in both these reviews, and they are expected to be completed in time to influence the preparation of the Fiscal Year 1974 Budget.

OTP has begun work with other elements of the Executive Office of the President to determine the probable future communications needs of the Executive Office, particularly the needs for integration with the communications and information handling systems of the departments and agencies. It is anticipated that most of these requirements will be established during Fiscal Year 1973. Based on the results of the requirements survey, OTP plans to determine the technical arrangements necessary to meet these requirements, including the degree of compatibility among Federal systems needed to permit the required exchange of information.

B. Emergency Preparedness

The purpose of the Emergency Preparedness Program is to insure that national and Federal communications systems are fully capable of meeting priority needs under emergency conditions, including nuclear attack. This is a demanding task, because of the numerous contingencies that must be provided for--both with respect to the nature and location of the disruption and with respect to the nature and location of the services which, in one or another circumstance, it must be considered vital to restore. Emergency communications plans and capabilities must comply with three basic principles. First, maximum dual use of facilities for both emergency and routine operations. Second, balanced survivability among communications and the facilities which are supported by communications. Third, focusing of responsibility to assure accomplishment.

OTP has completed reviews of those existing and proposed emergency communications systems which would provide warning and emergency information to the people of the United States under conditions of nuclear attack or natural disaster. These include the Emergency Broadcast System, the proposed radio warning system of the Office of Civil Defense, the radio warning systems of the National Oceanic and Atmospheric Administration, and the proposed warning capability through the facilities of private broadcasting. These reviews have resulted in the following: (1) Changes in the Emergency Broadcast System, to improve its reliability. (2) Separation of the warning

function from the Emergency Broadcast System. (3) The selection from among various alternatives of the most promising approach to a nationwide public warning system. (4) Identification of a need for design of an inexpensive home warning receiver, a project which the Office of Civil Defense is now working on. (5) Establishment of an Administration policy that legislation will not be sought requiring the inclusion of a warning receiver in every new radio or television set.

OTP is reviewing the policies and procedures under which critical private line services would be restored by the United States communications common carriers. Since no system of pre-set restoration priorities can be satisfactory for all emergency conditions, some mechanism must be developed to provide for flexible management of national resources when central control is possible. To this end, OTP has directed the preparation of a new plan for providing on-the-scene communications facilities and resource management capabilities to Federal field teams deployed in areas where a natural disaster has struck. This Office is also completing a study of the basic organizational framework for emergency communications management, and has prepared a communications annex to Federal emergency plans. During Fiscal Year 1973 OTP expects to complete a plan for effective Federal field organization for communications management under war emergency conditions.

OTP is concerned with the design features that should be incorporated in national communications facilities to increase their resistance to nuclear weapons effects. The principal nuclear effect now under study is the electromagnetic pulse from high altitude nuclear detonations. The Office is also working with the Department of Defense to assure that measures taken to enhance the survivability of communications links are consistent with the survivability of the terminal points of the system.

III. INTERNATIONAL COMMUNICATIONS

A. Communications Satellites

1. INTELSAT

Negotiation of Definitive Arrangements for INTELSAT was completed in 1971, and they are expected to take effect during 1972. They will change the U.S. role in INTELSAT, in that we will no longer have a controlling voice in its governing body, although we will have substantial continuing influence in decision-making; Comsat's assured tenure as the contract manager of INTELSAT will be limited to six years; and several new organs are created which involve direct government participation in the organization. These changes give added importance to OTP's obligation, in conjunction with the Department of State and the FCC, to advise Comsat as our Government's representative to INTELSAT.

2. Domestic and Regional Systems

The FCC is considering several applications for domestic satellite systems. Most propose service between the mainland and Hawaii, which is now provided by INTELSAT. The transition from INTELSAT services to domestic satellite services may have a significant impact on the Pacific INTELSAT region. Similarly, the Europeans are planning domestic and regional systems which could affect present INTELSAT services. OTP advice will be required as to these and other interfaces between INTELSAT and domestic and regional systems.

3. Specialized Satellite Communications Services

In this area, the issue is the institutional structure within which specialized services will evolve. OTP announced a policy in January, 1971, providing guidelines for the establishment of a new structure for international aeronautical satellite communication services. Subsequently, FAA, DOT, and the Department of State discussed this matter with the European countries (ESRO) and drafted a Memorandum of Understanding defining a joint international program. OTP reviewed the Memorandum, along with other Executive agencies, and prepared a recommendation which was accepted by the White House. OTP is currently engaged in coordinating the renegotiation of a joint international program.

With respect to maritime satellite services, the Coast Guard, the American Institute for Merchant Shipping, and the Maritime Commission consider that such services will be required well before the end of this decade. OTP will work with those organizations during Fiscal Year 1973 to insure that maritime requirements will be satisfied in the most efficient manner.

for the Atlantic Basin, including comparative cost and performance estimates. This was forwarded to the FCC, with policy recommendations concerning authorization criteria needed to avoid inefficient future investment in international transmission facilities. OTP is presently conducting a similar case study for the Pacific Basin. It has the same objective of establishing firm analytic procedures and investment criteria for use in the authorization process, so that the international carriers and their foreign counterparts can plan future investments with reasonable assurance. Implementation of policies concerning international communications will require continued effort in future years.

C. International Organization Activities

1. UNESCO

During 1972, UNESCO will convene several meetings to develop guidelines for use of communication satellites in the international distribution, and possible international broadcasting, of radio and television programming. OTP has worked closely with the United States Patent Office, the Department of State, and the FCC, as well as various interested groups in the broadcasting industry, to establish and maintain a sound and consistent U.S. position on standards, codes of conduct, and intellectual property rights protection. Because of the expected developments within UNESCO and, possibly, within the World Intellectual Properties Organization, these activities are expected to continue throughout Fiscal 1973.

2. International Telecommunication Union

The International Telecommunication Union, a specialized agency of the United Nations with 141 member administrations, maintains and extends international cooperation for the improvement and rational use of telecommunications of all kinds. The Union uses world conferences of its members to review and update the international regulations needed to assure the smooth flow of global radio and telegraph communications. A principal function is the allocation of radio frequencies among the respective radio services (amateur, broadcasting, fixed, aeronautical mobile, communication satellites, etc.). During the past year, OTP provided guidance for U.S. participation in ITU activities. As a result of the combined effort of the Executive Branch, the FCC, and industry interests, U.S. objectives in accommodating space communication requirements were achieved at the World Administrative Radio Conference on Space Telecommunications.

OTP has developed in conjunction with the FCC the means of implementing the decisions of this Conference, as soon as Senate ratification of the Conference results is obtained.

In 1973, an ITU Plenipotentiary Conference will be convened to review and update the International Telecommunications Convention. Principal issues involved in U.S. participation include whether the United States should advocate changes in the organization or the purposes of the ITU, and whether a new international communications organization should be formed to cope with policy issues unrelated to technological cooperation. As part of its preparatory work, the United States must study these and other questions in depth and prepare position papers aimed at assuring responsiveness of the ITU to the international telecommunications requirements of the 1970's and 1980's. OTP is working with the Department of State on the recommended scope of the Conference and the general objectives the United States should seek to attain; it will remain active during Fiscal Year 1973 in developing and coordinating the U.S. position, and commenting upon the positions of other countries. Similar efforts have been begun in preparation for the World Administrative Radio Conference on Maritime Matters scheduled for 1974.

The ITU maintains two major international coordinating bodies known as the International Consultative Committee on Telegraph and Telephone and the International Consultative Committee on Radio. These organizations have numerous technical study groups which examine problems regarding international standards, practices, system planning, and rates applicable to the international communications services. OTP is responsible for coordinating the preparation of U.S. positions for such activities, particularly those dealing with technical and operational aspects of radio frequency spectrum planning, allocation, and use. During Fiscal Year 1973, activities dealing with the problems of space technology will be particularly important.

IV. SPECTRUM PLANS AND POLICIES

There is intense national and international competition for the use of the radio spectrum for all forms of radio transmissions (radio communications, navigation, broadcasting, radar, air traffic control, etc.). The Federal Government is the largest single user of the spectrum, and OTP directs Government activities related to spectrum management and planning. This includes cooperating with the FCC to develop plans for the more effective use of the entire spectrum, for both Government and non-Government purposes.

Specific tasks involved fall basically within the categories of allocation and assignment for particular uses, evaluation of possible biomedical side effects of electromagnetic radiations, and planning to meet Government and non-Government national needs.

In the allocation and assignment area, much progress has been made in Fiscal 1972. The results of improved ADP and engineering capabilities were applied to direct more effectively the assignment of frequencies to Government stations (about 120,000 actual assignments on file). Specific analyses were conducted of the interference potential among competing interests for the same spectrum resources (e.g., interference between Collision Avoidance Systems and Altimeters; malfunctioning CATV systems and Air Traffic Control services; tropospheric scatter systems and space systems) and an interference prediction model for Air Traffic Control air-ground communications was developed. New procedures were developed to assess the potential electromagnetic compatibility among communications and electronics systems before budgetary support is committed; these procedures will greatly improve Federal planning and budgeting for communications systems, and will save both dollar and spectrum resources. Some 8000 MHz of spectrum, previously reserved for exclusive Government use, was made available to the FCC for sharing by non-Government interests. In the allocation and assignment area during the coming Fiscal Year, OTP plans to continue the development of an electromagnetic compatibility analysis capability to realize better efficiency in Federal use of the spectrum. More engineering analyses are projected in such areas as interference between the Decision Information Distribution System and power line systems, interference prediction with respect to air-ground communications, the compatibility of Government systems at 7/8 GHz, and the compatibility of proposed aeronautical and maritime satellite operations between 1535 and 1660 MHz. The Office will update the national emergency readiness plan for use of the radio spectrum, and will monitor

Government agency compliance with the allocations resulting from ITU Conferences (1967 Maritime WARC and 1971 Space WARC). A stronger technical base will also be developed for Government use of the spectrum--standards, monitoring, technical characteristics, receiver improvement, research in the field of radio wave propagation, and radio noise abatement.

There is some evidence and much apprehension about the hazards of electromagnetic radiations. With respect to biomedical effects, OTP established during the past year a coordinated "Program for Assessment of Biological Hazards of Nonionizing Electromagnetic Radiations." Under this program, the Office provided guidance to Federal Government agencies concerning needed research. The program is being pressed to fruition at the earliest practicable date (a coordinated five-year effort of some \$63 million allocated among the cognizant agencies of the Government, much of which is already budgeted).

In the category of spectrum planning, a study was initiated during Fiscal Year 1972 to develop alternative methods for allocation of spectrum resources which would give more accurate weight to all relevant technical, economic, and social criteria. In cooperation with the FCC, a review of present frequency allocations and uses was initiated with a view to reallocation and improved sharing arrangements between Government and non-Government uses. Both these activities will continue in the coming Fiscal Year.

CONCLUSION

This concludes my explanation of the projects and activities undertaken by OTP during Fiscal Year 1972 and contemplated under the budget estimates you have before you. We believe that our plans and projections serve fully the mission we have been assigned by the President and the Congress.

Despite the length of this presentation, I am confident that some matters have not been covered in as complete detail as the Subcommittee would find helpful. I shall be happy to answer any questions you may have.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the
Subcommittee on Treasury, Post Office, and General Government
The Honorable Joseph H. Montoya, Chairman
Appropriations Committee
United States Senate

May 2, 1972

STATEMENT BY

CLAY T. WHITEHEAD

DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss with you the budget requests of the Office of Telecommunications Policy (OTP). You have before you our Budget Estimates in some detail; I would like to use this occasion principally to discuss the various activities on which those funds are to be expended.

Initially, however, I want to volunteer a few observations concerning the numbers you have before you. Our total request of \$3,084,000, represents a net increase of \$484,000 above last year. The vast majority of that is attributable to the increases in Civil Service compensation enacted by Congress this past session, and to the fact that this is the first budget which contemplates operations at a fully staffed level for the entire fiscal year. We are seeking no increase in the level of our presently authorized staff, and only a modest increase (\$25,000) in the funds which we may use for research that can be done better or more economically on a contractual basis than inhouse. I stated to you in our hearings last year that it was not our intention to create a huge bureaucracy out of this new office; I stand by that statement, and our activities to date and the current budget request bear it out.

I appreciate the problem which you gentlemen face in evaluating the efficiency and utility of an agency that cannot measure its output in terms of applications processed, miles of highway paved, or even radio and television licenses issued and renewed. As our name indicates, our contribution to Government is less quantifiable, but nonetheless valuable. The fruits of our endeavors are to be found in governmental decisions--usually decisions rendered by other governmental entities, including the FCC and the Congress itself--which can affect the shape of United States communications for years to come.

I would like, therefore, to discuss with you in some detail the major projects to which my Office has devoted its energies during the last fiscal year, and those which it intends to pursue under the proposed budget. They fall into four major areas, namely domestic communications, Government communications, international communications, and spectrum management and use, with a number of subcategories under each.

I. DOMESTIC COMMUNICATIONS

A. Common Carrier Communications

Common carrier communications is for the most part a monopoly public utility service provided by the Bell system and independent telephone companies. The performance of the industry has come under increasing criticism in recent years, and it has been proposed that various segments of common carrier operations be opened to competition. In response to such proposals, the carriers have asserted that the benefits of economy of scale and operational integrity derived from integrated ownership and operation far outweigh any potential customer benefits from competition.

OTP has initiated several investigations into these questions. The ultimate aims of these studies are, first, to develop recommendations as to which aspects of common carrier operation can safely be opened to increased competition, and which should remain under integrated control; and, second, to determine the regulatory principles and practices best designed to ensure that noncompetitive operations remain efficient and innovative.

Principal studies and findings to date include the following:

1. Domestic Satellite Communications

OTP has found that there are insufficient economies of scale in domestic satellite communications to warrant government restriction of competition. Its studies showed that all of the satellite applications on file with the FCC are economically viable, technically compatible, and could be accommodated within existing spectrum and orbital space. OTP therefore recommended to the FCC that any technically and financially qualified applicant be allowed to establish and operate satellite systems on a competitive basis.

2. Specialized Communications Carriers

The entry of new communications carriers offering "specialized" services (e.g., data, private line, video interconnection, etc.) in competition with the existing telephone carriers was approved in principle by the FCC, but a number of issues which could determine the practical feasibility of competitive entry were left unresolved--such as the allowable pricing response and interconnection constraints.

OTP has commenced investigation of the more important unresolved issues, including the technical and economic implications of alternative interconnection policies which will, among other factors, affect competition in the supply of terminal equipment (e.g., telephone and data sets) to be used with the existing telephone "network." These will be long-term studies and could result in new FCC regulations or legislation.

3. Common Carrier Regulation

Even if it is feasible to introduce competition into selective aspects of common carrier operations, it will affect only about 10-20% of total operations. Most common carrier operations, notably the public message telephone service, will continue to be a natural monopoly.

Effective regulation of natural monopolies is necessary to prevent investments in inefficient facilities, excessive rates and profits, technological obsolescence, service degradation, and other problems, but it is difficult for government to second-guess a large public utility on detailed investment and operating decisions. For this reason, in Fiscal Year 1973 OTP will continue to explore the desirability of encouraging better public performance of regulated utilities through improved policies rather than increasingly detailed regulation. Some of these policies include:

a. Alternatives to Rate of Return Regulation: Traditional common carrier regulation is based on an agency-determined "fair" rate of return which requires establishment of a "rate base" (i.e., the amount of investment) and detailed information on profit flow. But this method of regulation can create incentives for excessive investment in capital equipment and can distort normal business decisions in other ways which affect technological progress. OTP will attempt to determine (a) the magnitude of the distortions, if any, caused by rate-base regulation and (b) whether there are alternatives to rate-base regulation. It is very difficult to perform quantitative comparisons to test the hypothesis of rate-base distortions when dealing with a natural monopoly. OTP has studies underway in this area.

b. Depreciation Programs: Common carrier equipment is typically depreciated over very long periods corresponding to the expected physical life of the equipment, although the useful life is often much shorter due to rapid technological

advances. This is only one aspect of depreciation policies that affect common carrier financial decisions and customer rates; other aspects are disposition of fixed asset salvage, and separation of depreciable and nondepreciable investments. In Fiscal Year 1973, OTP will undertake a comprehensive investigation of depreciation practices, objectives, effects, and alternatives in the common carrier industry.

B. Cable Television and Broadband Communications

Broadband cable systems represent a new communications medium which can increase consumer choice in television programming and provide many new communication services hitherto unavailable. The immediate effect of cable expansion, however, is to disrupt some of the distribution practices of the existing television industry and to threaten the economic position of some broadcast stations and copyright owners. There is urgent need for policies to guide the development and regulation of cable in such a fashion that its enormous benefits can be rapidly achieved without depriving the society of its healthy programming industry and its essential broadcasting services.

OTP has undertaken a series of studies and investigations to identify and illuminate particular aspects of broadband cable development which require policy consideration, and to develop policy recommendations. These include:

a. A study of the present and projected costs of broadband cable systems, to serve as a basis for estimating future growth patterns and rates of development of cable distribution systems.

b. A study of the television program production industry and its economics, to serve as a basis for estimating the growth in new television programming likely to occur as a result of cable system development.

c. A study directed to the development of an industry simulation model to be used in conjunction with the results of (a) and (b) to predict future industry development.

d. Definition of a study project on projected consumer demand for cable television under alternative policies.

In addition to these studies, OTP has provided supporting analysis and developed alternative policy recommendations for the

President's Cabinet committee on cable television. In this work it has examined, among other matters, the economic and social effects of vertical integration in the production and distribution of cable television programming; the probable impact of expected cable growth on the broadcast and copyright industries; the problems of access to the cable media by all segments of the public and industry; and considerations pertaining to joint ownership of broadcast, cable, and telephone facilities. Policy alternatives pertaining to these various matters were developed for consideration by the Cabinet committee. The results of this activity have been presented to the committee, which is expected to complete its report in the near future.

A significant achievement in the cable television field was resolution of the long-standing controversy concerning distant signal importation, that is, cable use of signals broadcast by out-of-market television stations. The distant signal question involved complex, interrelated issues such as CATV's need to offer this service in order to attract capital and begin its growth, the effect of distant signal competition upon the economic stability of local radio and TV stations, program suppliers' need for copyright protection, and the public need for a wide diversity of quality program services. In August, the FCC announced its intention to end the six-year "freeze" on distant signal importation without provisions for copyright payment and copyright exclusivity protection. This aroused great concern within the broadcasting and copyright industries, which threatened to seek Congressional action to stop implementation of the new rules. While the outcome of such an effort was unclear, it would surely have created uncertainty and delay in the regularization of cable television growth. Since OTP believed further delay and uncertainty would be harmful to the public interest, it took the initiative in seeking to act as mediator in the dispute. The principal parties ultimately agreed upon a compromise plan, the main feature of which is to supplement the FCC's rules with regulatory and legislative copyright and exclusivity provisions. The desirability of this plan is now being considered by the FCC, which is completing action on its new cable television rules, and by the Congress, which is considering new copyright legislation.

In Fiscal 1973, OTP will continue its attempts to assist the FCC and the Congress in resolving the complex, but fundamental, policy questions that attend the full development of this new technology. In this regard, OTP recently received the results of a study on the feasibility of designing a broadband cable pilot program for a few selected urban and rural communities to demonstrate the utility of the technology to meet various needs

in the fields of education, health information, vocational training and assistance, and business. OTP is considering how best to proceed in this area. OTP will also prepare and document whatever legislation the President may deem necessary to implement the recommendations of the Cabinet committee.

C. Broadcasting

1. Public Broadcasting

The Public Broadcasting Act of 1967 created a framework for educational and instructional broadcasting, largely as envisioned by the Carnegie Commission on Educational Television. However, the means of establishing a stable source of Federal support funds which would avoid detailed government oversight of program content, was left unresolved and has remained so. In addition, the years since 1967 have witnessed the development of important new technologies for which no provision is made in the Public Broadcasting Act.

During the past year OTP sought to achieve amendments to the Act which would eliminate both these deficiencies. It consulted with interested organizations in public broadcasting and with the relevant agencies of government, and reviewed a range of approaches to new legislation. In the summer of 1971, it drafted and submitted for coordination to the Office of Management and Budget a bill which made provision for new technologies and established a financing plan consistent with the congressional intent for public broadcasting in general, and for the Corporation for Public Broadcasting (CPB) in particular. The bill was withdrawn for modification when it appeared that CPB could not support a financing approach that provided assured Federal funding of individual public broadcast stations.

In order to provide for the immediate financial needs of public broadcasting pending resolution of the difficult question of long-term funding, OTP prepared and submitted to the Congress this year an Administration Bill which increases the level of Federal support by 30%, almost all of the increase to be directed to local public broadcasting stations. Before this one-year Bill expires, OTP hopes to achieve consensus on long-term legislative proposals to meet the needs of public broadcasting in a manner consistent with the intent of the 1967 Act.

2. License Renewal Policy

One of the major broadcasting controversies of recent years has involved the triennial license renewal process. Although all can agree that a broadcaster who has performed well in the public interest should have his license renewed, the Congress, the FCC, and the courts have struggled with the questions of what is good performance and what standard should be used to judge the incumbent licensee's performance in the face of a challenge to his renewal application.

In Fiscal 1972, OTP developed and proposed for public discussion a wide-ranging series of suggestions for modifying the Communications Act of 1934, one of which dealt with license renewal policy. OTP pointed out the dangers of adopting renewal standards that lead inevitably to government supervision of program content. It proposed for discussion a more "neutral" renewal standard that would place the primary emphasis on the licensee's being attuned to the programming needs and interests of his local audience. Using this standard, a premium would be placed on the obligation to be directly responsive to community problems and issues; licensees who had met this obligation would be assured license renewal. This would lead to needed stability in an industry that must make relatively long-term commitments to public service.

In the coming year OTP hopes to work with interested citizen and industry groups, the Congress, and the FCC to create a workable license renewal policy which assures industry stability and service to the public.

3. Fairness Doctrine and Access to the Broadcast Media

Another critical issue--one that is central to the role of the mass media in an open society--is that of public access to the broadcast media for discussion of and information about controversial public issues. The FCC's Fairness Doctrine requires the broadcaster to make time available for the presentation of contrasting viewpoints once a particular side of a controversial issue of public importance has been expressed. Although not originally contemplated, this "fairness" obligation is now being enforced on an issue-by-issue, case-by-case basis, instead of through an overall evaluation of whether the broadcaster has kept the public well informed, with reasonable time for contrasting views. When enforced in this manner, the broadcaster's journalistic determinations are repeatedly second-guessed by agency and courts, and the government decides who shall speak on what issues.

This diminishes the "free press" discretion of the licensee and tends to convert broadcasting from a private enterprise activity to a government instrumentality.

A major incentive for case-by-case application of the Fairness Doctrine is the fact that individuals' access to the media for discussion of controversial issues can only effectively be achieved through that device. Broadcasters do not ordinarily sell their advertising time for such purposes--partly because they may be compelled to "balance" such presentations in their program time.

One of OTP's projects in FY 1972 was a study of Fairness Doctrine enforcement and the closely related problem of access to the media. In October 1971 it proposed for consideration several specific modifications of broadcast regulation in these fields. It participated in the FCC panel discussions on the Fairness Doctrine. It has published specific criticisms of recent proposals for compulsory free "counter-advertising."

OTP will continue during the coming year to explore various alternatives for solving the fairness and access dilemmas. It will seek to assist the Congress and the FCC in devising mechanisms to enhance free expression and to minimize government intervention in the marketplace of ideas.

4. Radio Regulation

For many years radio broadcasting has been regulated as an afterthought to television. Some of the rationales and assumptions, such as scarcity of outlets and restricted entry, which shaped early radio regulation and still justify regulation of television stations, have been rendered meaningless by the phenomenal growth in the number of AM and FM radio stations, offering widely diversified special program services to the public.

After studying the issue during FY 1972, OTP proposed to the FCC that it undertake an experiment in radio deregulation, with a view toward lessening the regulatory controls on commercial radio programming, commercial practices and other nontechnical operations. The proposal was supported by an OTP Staff Paper setting forth the reasons such an experiment seemed appropriate and promising. The FCC is now considering this proposal and OTP intends to work with the Commission, to the extent deemed desirable, in order to implement a pilot plan.

D. Federal-State Communications

Communication issues affecting State and local governments arise in every substantive area and in varying contexts. For example, the planning of a national emergency communication system requires State and local participation; regulation of the communications common carrier industry has traditionally been divided between the FCC and State public utility commissions; regulation of CATV systems has been divided between the FCC and local (municipal) authorities; public broadcasting and educational communications involve State and local governments to a significant degree; the operation of public safety communications systems (police, fire, ambulance, etc.) are usually under the direct operational control of local officials; and in many cases, local governmental communication facilities and services are funded in whole or in part through Federal grant-in-aid programs.

To provide guidance and assistance to State and local governments, OTP has undertaken one general and several specific tasks. The general task is to identify the various Federal assistance programs involving telecommunications, in order to advise State and local governments on the effective utilization of these programs, and in order to inform the Congress of duplications or deficiencies. This review is now in progress under OTP supervision, and should be completed by the end of Fiscal Year 1972.

Among the specific tasks which OTP has undertaken in this area are (a) assistance to the States of Hawaii and Alaska in identifying communications needs which might be met through modern technology (e.g., communication satellites), and in developing plans and programs for using such technology; (b) advice to local and State government officials concerning the potential and the problems of broadband cable communications and CATV, and the desirable manner of State and local regulation; and (c) consultation with State public utility commissioners concerning the impact of new specialized communications carriers, broadband cable systems, and data communications services on traditional regulatory policies and practices. Since these tasks are largely consultative and ad hoc in nature, it is difficult to specify a future timetable. OTP does expect, however, that major requirements for information and consultation will emerge from long-range cable policy development; this expectation is based upon the very large flow of such requests which were stimulated by the announcement and preliminary work of the Cabinet committee. OTP also anticipates a substantial continuing requirement for assistance to Hawaii, Alaska, and the U.S. Trust Territories as their internal communication planning activities progress.

E. Mobile Communications

The frequency spectrum available for mobile radio services has recently been tripled by the FCC. The mobile communications industry will no longer be limited by a frequency shortage but will face classical supply and demand limitations. This will raise a number of issues as to appropriate types of new systems, new services, and the institutional structure to support them. The transition from spectrum scarcity to spectrum abundance must be regulated to create an industry structure that is sensitive to future demands for communications services of all types, including improved mobile telephone services for urban areas, integrated dispatch services, and public telephone services for domestic aircraft.

OTP has begun a program, with assistance from the Policy Support Division of The Office of Telecommunication of the Department of Commerce, to assess the technical, economic, and institutional effects of proposed new mobile systems and services and to formulate policy guidelines for the development and regulation of the expanded industry. In cooperation with the FCC, DOT, LEAA, HEW, and HUD, OTP will assess the feasibility of a pilot program to demonstrate innovative uses of mobile communications services in support of public safety, emergency health services, highway safety, and transportation in general.

F. New Technology

During the past decade there have been radical improvements in communications technology resulting from independent research and development of U.S. industry, research in the academic community, the U.S. space program, and other Government sponsored R&D. These technologies provide opportunities for vastly improved and expanded communications services, which could have significant social and economic effects if exploited properly.

OTP plans a study effort designed primarily to identify areas in which new technological advances are occurring and to evaluate the effect of these technologies upon the existing structure of the domestic communications industries. In the coming year, OTP hopes to identify in broad terms the current state-of-the-art in major fields of communications technology, and to isolate any natural limiting factors. If necessary, OTP will develop policy guidelines regarding the application of a new technology to a particular use.

II. GOVERNMENT COMMUNICATIONS

A. Federal Communications Policy and Planning

The Federal Government's own communications consume from 5 to 10 billion dollars per year. The major concerns in this field are avoidance of duplication, effective management of the acquisition of new systems, achievement of compatibility among systems, and satisfactory operating performance. The creation of the National Communications System in 1963, which sought to integrate long-haul, point-to-point communications of the Federal Government into a united system, has not significantly affected the planning, design and cost of government communications systems, although it has contributed to better coordination of day-to-day operations. The majority of Federal communications expenditures are beyond the scope of the NCS and have not been addressed at all from an overall Federal point of view.

The major objectives of the OTP program in the area of Federal communications are: First, identifying all the communications activities and resources of the Federal Government; second, determining the needs for effective information exchange among the various departments and agencies; and finally, taking action in those areas in which integration will best achieve the ends of efficiency and economy.

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OTP has begun work with other elements of the Executive Office of the President to determine the probable future communications needs of the Executive Office, particularly the needs for integration with the communications and information handling systems of the departments and agencies. It is anticipated that most of these requirements will be established during Fiscal Year 1973. Based on the results of the requirements survey, OTP plans to determine the technical arrangements necessary to meet these requirements, including the degree of compatibility among Federal systems needed to permit the required exchange of information.

B. Emergency Preparedness

The purpose of the Emergency Preparedness Program is to insure that national and Federal communications systems are fully capable of meeting priority needs under emergency conditions, including nuclear attack. This is a demanding task, because of the numerous contingencies that must be provided for--both with respect to the nature and location of the disruption and with respect to the nature and location of the services which, in one or another circumstance, it must be considered vital to restore. Emergency communications plans and capabilities must comply with three basic principles. First, maximum dual use of facilities for both emergency and routine operations. Second, balanced survivability among communications and the facilities which are supported by communications. Third, focusing of responsibility to assure accomplishment.

OTP has completed reviews of those existing and proposed emergency communications systems which would provide warning and emergency information to the people of the United States under conditions of nuclear attack or natural disaster. These include the Emergency Broadcast System, the proposed radio warning system of the Office of Civil Defense, the radio warning systems of the National Oceanic and Atmospheric Administration, and the proposed warning capability through the facilities of private broadcasting. These reviews have resulted in the following: (1) Changes in the Emergency Broadcast System, to improve its reliability. (2) Separation of the warning

function from the Emergency Broadcast System. (3) The selection from among various alternatives of the most promising approach to a nationwide public warning system. (4) Identification of a need for design of an inexpensive home warning receiver, a project which the Office of Civil Defense is now working on. (5) Establishment of an Administration policy that legislation will not be sought requiring the inclusion of a warning receiver in every new radio or television set.

OTP is reviewing the policies and procedures under which critical private line services would be restored by the United States communications common carriers. Since no system of pre-set restoration priorities can be satisfactory for all emergency conditions, some mechanism must be developed to provide for flexible management of national resources when central control is possible. To this end, OTP has directed the preparation of a new plan for providing on-the-scene communications facilities and resource management capabilities to Federal field teams deployed in areas where a natural disaster has struck. This Office is also completing a study of the basic organizational framework for emergency communications management, and has prepared a communications annex to Federal emergency plans. During Fiscal Year 1973 OTP expects to complete a plan for effective Federal field organization for communications management under war emergency conditions.

OTP is concerned with the design features that should be incorporated in national communications facilities to increase their resistance to nuclear weapons effects. The principal nuclear effect now under study is the electromagnetic pulse from high altitude nuclear detonations. The Office is also working with the Department of Defense to assure that measures taken to enhance the survivability of communications links are consistent with the survivability of the terminal points of the system.

III. INTERNATIONAL COMMUNICATIONS

A. Communications Satellites

1. INTELSAT

Negotiation of Definitive Arrangements for INTELSAT was completed in 1971, and they are expected to take effect during 1972. They will change the U.S. role in INTELSAT, in that we will no longer have a controlling voice in its governing body, although we will have substantial continuing influence in decision-making; Comsat's assured tenure as the contract manager of INTELSAT will be limited to six years; and several new organs are created which involve direct government participation in the organization. These changes give added importance to OTP's obligation, in conjunction with the Department of State and the FCC, to advise Comsat as our Government's representative to INTELSAT.

2. Domestic and Regional Systems

The FCC is considering several applications for domestic satellite systems. Most propose service between the mainland and Hawaii, which is now provided by INTELSAT. The transition from INTELSAT services to domestic satellite services may have a significant impact on the Pacific INTELSAT region. Similarly, the Europeans are planning domestic and regional systems which could affect present INTELSAT services. OTP advice will be required as to these and other interfaces between INTELSAT and domestic and regional systems.

3. Specialized Satellite Communications Services

In this area, the issue is the institutional structure within which specialized services will evolve. OTP announced a policy in January, 1971, providing guidelines for the establishment of a new structure for international aeronautical satellite communication services. Subsequently, FAA, DOT, and the Department of State discussed this matter with the European countries (ESRO) and drafted a Memorandum of Understanding defining a joint international program. OTP reviewed the Memorandum, along with other Executive agencies, and prepared a recommendation which was accepted by the White House. OTP is currently engaged in coordinating the renegotiation of a joint international program.

With respect to maritime satellite services, the Coast Guard, the American Institute for Merchant Shipping, and the Maritime Commission consider that such services will be required well before the end of this decade. OTP will work with those organizations during Fiscal Year 1973 to insure that maritime requirements will be satisfied in the most efficient manner.

OTP has already recommended that the aeronautical satellite program be designed to accommodate future maritime requirements.

4. Broadcast Satellites

Satellite technology is available to initiate direct broadcasts to the home, but the political problems involved in the use of broadcast media to cross national boundaries remain an obstacle to institution of this service. The UN is the principal forum in which this matter will be resolved, and the issue has already been joined. Obviously, proposals which would prohibit international satellite broadcasts whose content is not approved by the receiving state raise questions fundamental to our national principles. In conjunction with the Department of State, OTP will participate in the inter-governmental groups working in the broadcast satellite area.

B. International Industry Structure and Facilities

The U.S. international communications industry provides vital communications services for American business, the public, and national security organizations. The structure and performance of this industry have been under criticism from Congressional and other sources for many years, and this criticism has increased with the advent of the new technology of communication satellites and the creation of a quasi-governmental corporation (Comsat) to represent United States interests in the international use of this technology. As a result of a highly complex and artificial industry structure (largely the creation of the Government itself), the traditional problems of rate and investment regulation are particularly acute in the international field; and because of divergent incentives there are widely divergent views in the industry with respect to the best "mix" of international transmission facilities (i.e., cables and satellites). It thus becomes necessary for the FCC to rule on competing or alternative proposals for new facility construction, and to allocate the traffic among various facilities and carriers.

OTP has examined the present structure of the international communications industry to identify sources of inefficiency and duplication, as well as impediments to competition and rate reduction. Its recommendations will soon be forwarded to Senator Pastore in response to his request for Administration views in this area.

In May of 1971, OTP completed a comprehensive study of international transmission requirements and alternative facilities

for the Atlantic Basin, including comparative cost and performance estimates. This was forwarded to the FCC, with policy recommendations concerning authorization criteria needed to avoid inefficient future investment in international transmission facilities. OTP is presently conducting a similar case study for the Pacific Basin. It has the same objective of establishing firm analytic procedures and investment criteria for use in the authorization process, so that the international carriers and their foreign counterparts can plan future investments with reasonable assurance. Implementation of policies concerning international communications will require continued effort in future years.

C. International Organization Activities

1. UNESCO

During 1972, UNESCO will convene several meetings to develop guidelines for use of communication satellites in the international distribution, and possible international broadcasting, of radio and television programming. OTP has worked closely with the United States Patent Office, the Department of State, and the FCC, as well as various interested groups in the broadcasting industry, to establish and maintain a sound and consistent U.S. position on standards, codes of conduct, and intellectual property rights protection. Because of the expected developments within UNESCO and, possibly, within the World Intellectual Properties Organization, these activities are expected to continue throughout Fiscal 1973.

2. International Telecommunication Union

The International Telecommunication Union, a specialized agency of the United Nations with 141 member administrations, maintains and extends international cooperation for the improvement and rational use of telecommunications of all kinds. The Union uses world conferences of its members to review and update the international regulations needed to assure the smooth flow of global radio and telegraph communications. A principal function is the allocation of radio frequencies among the respective radio services (amateur, broadcasting, fixed, aeronautical mobile, communication satellites, etc.). During the past year, OTP provided guidance for U.S. participation in ITU activities. As a result of the combined effort of the Executive Branch, the FCC, and industry interests, U.S. objectives in accommodating space communication requirements were achieved at the World Administrative Radio Conference on Space Telecommunications.

OTP has developed in conjunction with the FCC the means of implementing the decisions of this Conference, as soon as Senate ratification of the Conference results is obtained.

In 1973, an ITU Plenipotentiary Conference will be convened to review and update the International Telecommunications Convention. Principal issues involved in U.S. participation include whether the United States should advocate changes in the organization or the purposes of the ITU, and whether a new international communications organization should be formed to cope with policy issues unrelated to technological cooperation. As part of its preparatory work, the United States must study these and other questions in depth and prepare position papers aimed at assuring responsiveness of the ITU to the international telecommunications requirements of the 1970's and 1980's. OTP is working with the Department of State on the recommended scope of the Conference and the general objectives the United States should seek to attain; it will remain active during Fiscal Year 1973 in developing and coordinating the U.S. position, and commenting upon the positions of other countries. Similar efforts have been begun in preparation for the World Administrative Radio Conference on Maritime Matters scheduled for 1974.

The ITU maintains two major international coordinating bodies known as the International Consultative Committee on Telegraph and Telephone and the International Consultative Committee on Radio. These organizations have numerous technical study groups which examine problems regarding international standards, practices, system planning, and rates applicable to the international communications services. OTP is responsible for coordinating the preparation of U.S. positions for such activities, particularly those dealing with technical and operational aspects of radio frequency spectrum planning, allocation, and use. During Fiscal Year 1973, activities dealing with the problems of space technology will be particularly important.

IV. SPECTRUM PLANS AND POLICIES

There is intense national and international competition for the use of the radio spectrum for all forms of radio transmissions (radio communications, navigation, broadcasting, radar, air traffic control, etc.). The Federal Government is the largest single user of the spectrum, and OTP directs Government activities related to spectrum management and planning. This includes cooperating with the FCC to develop plans for the more effective use of the entire spectrum, for both Government and non-Government purposes.

Specific tasks involved fall basically within the categories of allocation and assignment for particular uses, evaluation of possible biomedical side effects of electromagnetic radiations, and planning to meet Government and non-Government national needs.

In the allocation and assignment area, much progress has been made in Fiscal 1972. The results of improved ADP and engineering capabilities were applied to direct more effectively the assignment of frequencies to Government stations (about 120,000 actual assignments on file). Specific analyses were conducted of the interference potential among competing interests for the same spectrum resources (e.g., interference between Collision Avoidance Systems and Altimeters; malfunctioning CATV systems and Air Traffic Control services; tropospheric scatter systems and space systems) and an interference prediction model for Air Traffic Control air-ground communications was developed. New procedures were developed to assess the potential electromagnetic compatibility among communications and electronics systems before budgetary support is committed; these procedures will greatly improve Federal planning and budgeting for communications systems, and will save both dollar and spectrum resources. Some 8000 MHz of spectrum, previously reserved for exclusive Government use, was made available to the FCC for sharing by non-Government interests. In the allocation and assignment area during the coming Fiscal Year, OTP plans to continue the development of an electromagnetic compatibility analysis capability to realize better efficiency in Federal use of the spectrum. More engineering analyses are projected in such areas as interference between the Decision Information Distribution System and power line systems, interference prediction with respect to air-ground communications, the compatibility of Government systems at 7/8 GHz, and the compatibility of proposed aeronautical and maritime satellite operations between 1535 and 1660 MHz. The Office will update the national emergency readiness plan for use of the radio spectrum, and will monitor

Government agency compliance with the allocations resulting from ITU Conferences (1967 Maritime WARC and 1971 Space WARC). A stronger technical base will also be developed for Government use of the spectrum--standards, monitoring, technical characteristics, receiver improvement, research in the field of radio wave propagation, and radio noise abatement.

There is some evidence and much apprehension about the hazards of electromagnetic radiations. With respect to biomedical effects, OTP established during the past year a coordinated "Program for Assessment of Biological Hazards of Nonionizing Electromagnetic Radiations." Under this program, the Office provided guidance to Federal Government agencies concerning needed research. The program is being pressed to fruition at the earliest practicable date (a coordinated five-year effort of some \$63 million allocated among the cognizant agencies of the Government, much of which is already budgeted).

In the category of spectrum planning, a study was initiated during Fiscal Year 1972 to develop alternative methods for allocation of spectrum resources which would give more accurate weight to all relevant technical, economic, and social criteria. In cooperation with the FCC, a review of present frequency allocations and uses was initiated with a view to reallocation and improved sharing arrangements between Government and non-Government uses. Both these activities will continue in the coming Fiscal Year.

CONCLUSION

This concludes my explanation of the projects and activities undertaken by OTP during Fiscal Year 1972 and contemplated under the budget estimates you have before you. We believe that our plans and projections serve fully the mission we have been assigned by the President and the Congress.

Despite the length of this presentation, I am confident that some matters have not been covered in as complete detail as the Subcommittee would find helpful. I shall be happy to answer any questions you may have.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
ON
PUBLIC BROADCASTING AUTHORIZATIONS

before the

Subcommittee on Communications
Honorable John O. Pastore, Chairman
Committee on Commerce
United States Senate

March 28, 1973

Mr. Chairman, and members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the two pending public broadcast authorization bills, S. 1090 and S. 1228.

Federal funding of public broadcasting presents a dilemma. On the one hand there is a need for the government to support public broadcasting. On the other hand it should be insulated from government interference. The Public Broadcasting Act of 1967 attempted to deal with this dilemma by creating a system based upon the "bedrock of localism" and, by creating an institution--the Corporation for Public Broadcasting--to serve the needs of local stations.

Unquestionably, the Corporation in the few years of its existence has made important contributions to our nation's educational and cultural life. In view of these achievements and the promise of educational broadcasting in general, this Administration has demonstrated its support. We have sought increased appropriations for the Corporation, from \$5 million in Fiscal Year 1969 to the present \$45 million requested in Fiscal Year 1974. Moreover, the Administration has supported steady increases

in funding for the Educational Broadcast Facilities Program.

Nonetheless, despite public broadcasting's positive achievements, there remained serious deficiencies. The purpose of the 1967 Act was to prevent local stations from ever becoming mere conduits for the programming of centralized production sources. But there was a tendency toward centralized program decision-making by CPB and PBS, its wholly-funded interconnection service.

Interconnection was viewed by the Congress primarily as a means of program distribution and not as a means of establishing a fixed-schedule network. But the distribution of programming over the interconnection system by PBS amounted to precisely the kind of federally-funded "fourth network" which the Congress sought to avoid. Such a monolithic approach to public broadcasting is inimical to the letter and spirit of the Public Broadcasting Act.

Another problem area is the funding of public affairs programs. Public affairs and current events programs are important components of public broadcasting's contribution to the flow of information. Indeed, this type of programming is recognized as part of every broadcaster's responsibilities under the Communications Act of 1934. But there

is great concern regarding the use of federal appropriations to produce and disseminate such programming at the national level. This is especially true in view of the tendency to centralize its production in New York or Washington. In short, reliance on federal monies to support public affairs programming is inappropriate and potentially dangerous. Robust electronic journalism cannot flourish when federal funds are used to support such programming.

All of these problems affecting the structure and operations of public broadcasting vitally affect the issue of long-range funding. It is, of course, possible to amend the Public Broadcasting Act to convert the system into one built upon the concept of a centralized network. The Congress could then consider long-range funding for such a system. But unless and until Congress abandons public broadcasting as a community centered enterprise, multi-year funding must await the resolution of the present uncertainties and deficiencies. The problems facing public broadcasting in 1973 are quite similar to those that confronted the Congress in 1967. There is no greater rationale for large-scale, multi-year funding now than there was then.

In 1967, the question of public broadcasting's role was vigorously debated. The debate was thorough and resulted in legislation which placed the stress on localism--a system in which control would flow upward from strong local stations to the national entities. The future funding of such a system, which was the result of much thoughtful and constructive debate, should be right rather than rapid.

We must support public broadcasting, both for what it has accomplished and for its future promise. This is the reason the President is requesting measured increases in funding for CPB.

With this as background, let me turn to the specifics of S. 1090. First, the level of funding, is in my judgment, too high. When all of the demands of the Federal budget are considered, it is impossible to devote \$140 million to public broadcasting in Fiscal Years 1974 and 1975. Second, until the basic problems that I have discussed are resolved, the Congress should review the funding authorizations annually and observe the Corporation's progress in dealing with these problems.

The Administration's bill--S. 1228--provides for the sound development of public broadcasting by extending for

one-year CPB's current authorization. This one-year extension would allow for the growth of public broadcasting to proceed soundly while all elements of the system make progress in resolving the issues under debate.

Continuing the Administration's record of requesting increased funds for public broadcasting, the authorization would add \$10 million to CPB's current level of funding, for a total of \$45 million. Unfortunately, CPB did not receive its full authorization for Fiscal Year 1973. Recognizing that CPB appropriations were caught up in the President's veto of the Labor-HEW appropriations, we now ask for the same increase requested in Fiscal Year 1973 and regret that it is now one year later. In addition, the HEW request for Fiscal Year 1974 funding of the Educational Broadcast Facilities Program will be at a \$13 million level, despite severe budgetary pressures affecting other HEW programs.

Mr. Chairman, I should like to close on a hopeful note by alluding to the efforts now underway to rationalize and improve the relationship between CPB and the local stations. The Corporation must take into account and respond to the needs of all classes and categories of public broadcasting stations around the country. In undertaking these efforts,

a fundamental principle must be maintained. It is that decentralization of programming activities is the cornerstone of the public broadcasting structure. Local stations should play a major role in decision-making in matters of programming and ultimately must have a realistic choice available in deciding whether to broadcast any CPB-supported or distributed programs. But this cannot be accomplished if the role of the local station is limited to some form of representation in national entities that make program decisions.

The best way to proceed is to implement the plan of the Public Broadcasting Act and its rejection of use of interconnection facilities for fixed-schedule networking. This would give local stations the autonomy and authority for complete control over their program schedules. In particular, it would be unfortunate if we were to have a centralized bureaucracy through which the Corporation would have to deal with the stations. The goal should be to create an environment in which the Corporation works directly with all the stations and seeks at all times to preserve their independence and autonomy.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

BEFORE THE
Subcommittee on Treasury, Post Office
and General Government
The Honorable Tom Steed, Chairman
House of Representatives

April 10, 1973

STATEMENT BY

CLAY T. WHITEHEAD

DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget requests of the Office of Telecommunications Policy (OTP) for fiscal year 1974. I believe you have our Budget Estimates for the upcoming fiscal year. With your permission, I would like to submit for the record a more detailed statement of the 1972-1973 Activities and Programs for our Office.

Before discussing our budget requests, I should point out that the past year has been one of great activity for OTP. Briefly, I would like to highlight some of these areas.

In the broadcasting area, we have developed legislative proposals for the modification of license renewal policies and procedures, the need for which we discussed during last year's hearings. We have proposed legislation for increased funding for the Corporation for Public Broadcasting. In addition, OTP completed its study of network practices in prime time television rerun programming, and has forwarded this report to the President and to the Federal Communications Commission.

In the area of cable television, the President's Cabinet Committee Report on Cable Television, which I chair, is nearing completion of its study. This final report will propose long-range policy to guide cable's future development.

Government communications is another significant area of OTP's concern. Last year, various problems in the Emergency Broadcast System and emergency warning procedures were resolved. Also resolved was the controversy of the FTS/ADPVOX merger. In addition, in the field of emergency public safety communications, OTP issued a policy on nationwide implementation of the "911" emergency telephone number.

In other areas, we have reviewed the structure of the U.S. international communications industry and have submitted a policy to the Congress, which would enhance industry performance through improved economic and regulatory incentives within the industry structure.

Mr. Chairman, these are just a few areas with which we have concerned ourselves over the past year. In addition, there are many activities of a continuing nature and we expect more results in the coming year. Let me now turn to our budget requests.

For fiscal year 1974, OTP has requested \$3,270,000. This represents an increase of \$270,000 over the fiscal year 1973 appropriation of \$3,000,000. This is due largely to our request for \$1,200,000 for outside research and studies contracts, an increase of \$175,000 over last year. As I indicated last year, we do not intend OTP to become yet another overly-large bureaucracy. Indeed, consistent with the President's desire to reduce the size of the Executive Office, we expect to reduce our full time permanent staff to 52 by the end of fiscal year 1974, a reduction of 20% from the authorized level of the current fiscal year.

Despite this planned reduction, we find it necessary to request an increase of \$41,000 over the \$1,432,000 for personnel compensation in fiscal year 1973. This projected increase is a result of two factors. First, fiscal year 1974 estimates include provisions for increased overtime and for the normal within grade pay increases; and, second, there are additional costs associated with phasing down our personnel to the level of 52 by the end of the fiscal year. Average employment in man years is actually larger in fiscal year 1974 than in 1973. With appropriate changes in our operational plans, I am confident we can fulfill our responsibilities with a reduced staff.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the

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

April 17, 1973

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to come here today to discuss the various license renewal bills which have been introduced to amend the Communications Act of 1934.

When the basic structure for the American system of broadcasting was created in the 1920's and 1930's, it was decided that this system should reflect the institutional values and traditions of this country. The structure, therefore, was built on the twin concepts of individual responsibility and localism -- concepts essential to all social and economic institutions, including the media for mass communications.

Built into this broadcast system structure, however, was another important element, which clearly distinguishes broadcasting from the other outlets for expression in this country. Unlike these other media, the broadcast media are federally licensed to preclude property rights in the radio frequency spectrum and to prevent interference among broadcast signals. This fundamental decision was made by the Congress in the Radio Act of 1927 and again in the Communications Act of 1934.

This licensing system presents the Government with a unique dilemma. On the one hand, the Act requires the Federal

Communications Commission to grant applications for broadcast licenses if the public interest, convenience, and necessity are served thereby. This necessarily means that the Commission will have to pass judgment in some way on the totality of the broadcaster's service, an important component of which is the broadcaster's programming. On the other hand, however, the broadcast media should have the full protection of the First Amendment.

This dilemma requires a delicate balancing act on the part of the Government which must be performed within the license renewal process. The FCC and the courts have wrestled with this dilemma in licensing continually since 1934. And as broadcasting has become increasingly powerful and important as a medium of expression and information in our society, the pressures on the licensing system have intensified.

The manner in which renewals are treated goes to the heart of the Government's relationship to broadcasting. The procedures and criteria governing the license renewal process have a profound effect on the daily operations of licensees and the way in which they determine their public interest responsibilities. Considering the power of broadcasting in our society today, these procedures and criteria potentially could have a stifling effect on the free flow of information and ideas to the public.

Current procedures in the license renewal system -- and the trends in broadcast regulation generally over the last decade -- raise the possibility of an unnecessary and unhealthy erosion in First Amendment rights in broadcasting. This could happen if broadcasters, affected by the uncertainty and instability of their business, seek economic safety by rendering the type of program service that will most nearly assure renewal of their license; and that license is, after all, the right to function as a medium of expression. If the Government sets detailed performance criteria to be applied at renewal time, the result could be that the Government's criteria, instead of the local community's needs and interests, would become the touchstone for measuring the broadcaster's public interest performance. Stability in broadcast licensing is, therefore, an important goal of public policy.

Counterbalancing the goal of stability in the license renewal process, however, is the prohibition in the Communications Act against anyone acquiring a property right in the broadcast license. The public has access to the broadcast media only through the broadcaster's transmitter, unlike their access to printing presses and the mails. The First Amendment rights of those who do not own broadcast stations

thus must also be recognized, along with society's interest in a diversity of information and ideas. The Government has an affirmative duty under the Communications Act and the First Amendment, therefore, to foster competition in broadcasting. So the spur of competition and the threat of non-renewal also are indispensable components of the renewal process.

These are lofty and complex considerations. There is room for differing views on the priorities and about the proper balance to be struck. This Administration is convinced, however, that the issues at stake warrant widespread public awareness and debate. They transcend short-run political differences. The age of electronic mass media is upon us; the decisions the Congress makes on license renewal and on other broadcasting and cable matters it will face in the next few years will have a major effect on the flow of information and expression in our society for the rest of this century.

I would now like to address myself, briefly, to the provisions of H.R. 5546 -- the Administration's license renewal bill.

H.R. 5546 would, if enacted, make four major changes with respect to present practice and procedures in the license renewal process: (1) it extends the term of broadcast

licenses from three to five years; (2) it eliminates the requirement for a mandatory comparative hearing for every competing application filed for the same broadcast service; (3) it prohibits any restructuring of the broadcasting industry through the renewal process; and (4) it prohibits the FCC from using predetermined categories, quotas, formats and guidelines for evaluating the programming performance of the license renewal applicant.

Mr. Chairman, my letter to the Speaker of the House transmitting the Administration's proposed bill sets forth in detail the reasoning behind each of our proposals. With your permission, I would like to insert that letter into the record at this point and discuss briefly the four changes we propose.

1. Longer License Term

The first change in the Act made by the Administration's bill would extend broadcast license terms from three to five years.

In 1934, when the Communications Act was enacted, a three-year term was a reasonable precaution in dealing with a new industry. All other transmission licenses are issued for five years, however, and a five-year term would seem

more in keeping with the present maturity of the industry and the modern complexities of broadcasting.

An increased license term would strengthen the First Amendment rights of both broadcasters and the public. It would reduce the opportunity for government interference and the disruption that more frequent, often capricious, challenges can have on the free and unfettered flow of information.

2. Comparative Hearing Procedures

The second change would eliminate the present requirement for an automatic, lengthy, and costly comparative hearing whenever a competing application is filed for the same broadcast license. The FCC would be able to exercise its independent judgment as to whether a comparative hearing is necessary. In the initial stage, the renewal challenger would bear the burden of demonstrating that the renewal applicant has not met the criteria of the Act; a hearing would be required only if the Commission had cause to believe that the broadcaster's performance might not warrant renewal.

It is important to remember that at stake in a comparative hearing is not only the incumbent's license, but also his

right to do business as a private enterprise medium of expression. The incumbent, therefore, should not be deprived of the right to stay in business unless clear and sound reasons of public policy demand such action. This change would afford the licensee a measure of stability and some necessary procedural protections.

Nothing in this second change would affect the ability of community groups to file petitions to deny license renewal applications. Many of these petitions have in the past served the important purpose of bringing the licensees' performance up to the public interest standard and driving home to broadcasters the interests of the communities they serve.

3. Prohibition Against Restructuring Through the
Renewal Process

The third change is designed to preclude the FCC from any restructuring of the broadcasting industry through

the license renewal process. Presently, the Commission can implement policy relating to industry structure -- such as a policy restricting newspaper ownership of broadcast stations -- through the criteria it uses to decide individual renewal challenges. This allows for the restructuring of the broadcasting industry in a haphazard and inconsistent manner.

This change would prohibit the FCC from using against the applicant at renewal time any of its policies that were not reduced to rules. If the FCC wished to impose or change industry-wide policies affecting broadcast ownership or operation, it would have to use its general rulemaking procedures. Besides preventing arbitrary action against individual broadcasters, this has the benefit of assuring that the entire broadcasting industry and all interested members of the public would have full opportunity to participate in the proceeding before the rule was adopted.

By securing important procedural protections for licensees, this change recognizes more fully the First Amendment rights of broadcasters to be free of unpredictable, disruptive Government interference. It also recognizes the public's important right to full participation in any restructuring of such an important medium of expression.

4. Clarification of the Public Interest Standard and Prohibition Against Use of Predetermined Performance Criteria

The Communications Act of 1934 does not anywhere define what constitutes the "public interest, convenience and necessity," and in the intervening years this standard has come to mean all things to all people. To delegate important and sweeping powers over broadcasting to an administrative agency without any more specific guidelines as to their application than the "public interest" is to risk arbitrary, unpredictable ever-increasing regulation.

The FCC has been under pressure to reduce the arbitrariness inherent in this vague standard and establish ever more specific criteria and guidelines. Presently pending before the FCC in Docket Number 19154 is a proposal to establish quotas in certain program categories as representing a prima facie showing of "substantial service." These quotas would be used in the evaluation of a television applicant's program performance in the context of a comparative renewal hearing.

While the Administration recognizes the necessity for a clarification of the FCC's public interest mandate, this clarification should not risk an abridgement of the First Amendment rights of broadcasters and the public.

Our bill is designed to balance this need for clarification of the public interest standard--and the reduction of the potential for arbitrary and intrusive regulation--with the mandates of the First Amendment. It would stipulate that in addition to compliance with the requirements of the Communications Act of 1934 and the FCC rules when evaluating a licensee's performance under the public interest standard, the FCC could apply only the following two criteria:

(1) the broadcaster must be substantially attuned to community needs and interests, and respond to those needs and interests in his programming--this is known as the ascertainment obligation; and (2) the broadcaster must provide reasonable opportunity for discussion of conflicting views on public issues--this is known as the fairness obligation. The FCC would be prohibited from considering any predetermined performance criteria, categories, quotas, percentages, formats, or other such guidelines of general applicability with respect to the licensee's broadcast programming.

These two criteria represent a distillation, as stated by the FCC and the courts, of what the most important aspects of the public interest standard mean in the context of license renewals. They do not add anything new to the broadcaster's responsibilities and have routinely

been applied to licensees in the past. However, in addition to these obligations, the FCC (often at the urging of the courts) has been imposing other less certain and less predictable obligations on licensees under the vague "public interest" mandate.

This fourth change in the Administration's bill is also designed to halt the FCC's movement toward quantification of the public interest. The pending FCC Docket 19154 extends the trend to establish ever more specific programming guidelines as criteria for renewal, and indeed it seems that nothing short of Congressional action can stop it.

The statutory scheme for broadcasting envisions the local broadcaster exercising his own independent judgments as to the proper mix and timing of programming for his local community. The FCC's proposed predetermined program quotas and categories further substitute the Government's judgment for that of the local

licensee. Instead of reflecting a public trust, the broadcast license would be a Government contract with the programming designed in accordance with the specified quotas and categories of the Government.

Mr. Chairman, I would now like to address myself briefly to some of the concerns that have been raised during these hearings and in the press concerning the Administration's bill.

First, some critics have argued that if the Administration feels that the current "public interest" standard is too vague and too sweeping, it should support the enactment by Congress or the FCC of specific program standards such as those proposed by the Commission in Docket 19154. Such criticism seriously confuses the issues. Stability in licensing is, as I have already discussed, an important ingredient in securing First Amendment freedoms in broadcasting. But the ultimate stability of specific and detailed program categories and percentages set by the Government is grossly incompatible with the letter and the spirit of the First Amendment.

The First Amendment expressly prohibits the Congress from abridging the freedom of speech and of the press. Yet when the FCC, as an arm of the Congress, begins determining what is

or what is not good programming and what programming is required in order to be permitted to stay in business, surely this threatens nothing less than abridgment of important First Amendment rights.

The FCC's proposal in Docket Number 19154 would intrude the Government into the content, extent, and even timing, of the broadcaster's programming. Moreover, even if such intrusions are disregarded for the purpose of affording licensees some certainty at renewal time, the FCC's proposal appears to be illusory. As Chairman Burch stated before this Subcommittee, "Quality is what we are after rather than number." Nor, I might add, would there be any assurance that the standards would not be expanded over time.

The second concern centers on the bill's "good faith effort" criterion for evaluating the broadcaster's responsiveness to the needs, interests, problems, and issues he ascertains in his community. This "good faith" standard, along with the fairness obligation, would further elaborate on the present "public interest, convenience, and necessity" standard used by the Commission at renewal time.

This "good faith" standard is an important elaboration of the present vague "public interest" mandate. It is the standard the FCC usually uses to describe the essential responsibility of the licensee, namely to make good faith judgments as to how to meet his community's needs and interests. It also appears in the FCC's 1960 Programming Policy Statement and is reprinted from this statement in an attachment on the renewal form. Moreover, the standard is used successfully in other areas of the law where the Government seeks to strengthen incentives for cooperation by private parties without directing the actual outcome of such cooperation.

The most important point about the good faith standard is that, in the context of FCC review of broadcaster performance, "good faith" is an objective standard of reasonableness and not a subjective standard relating to the broadcaster's intent or state of mind. It makes clear the intent of Congress that the FCC is to focus on the community's definition of its needs and interests in programming rather than imposing on the broadcaster and the community the Commission's own judgments about what is good programming.

Under the "good faith effort" test, the FCC would still have to make judgments about broadcaster performance, but those judgments would be more neutral as to program content.

Moreover, the courts would have less amorphous issues, with more direct relationship to relevant constitutional considerations in considering appeals from FCC actions.

The third concern is directed toward the Administration's supposed "backtracking" on the Fairness Doctrine. The supposed evidence from this "backtracking" is the inclusion of the Fairness Doctrine as one of the renewal criteria under our bill.

The licensee's fairness obligation in Section 315(a) of the Communications Act to present representative community views on controversial issues is a long-standing requirement, upheld in the Supreme Court's Red Lion decision, and an established practice of the Commission. It is an unfortunate, but for the time being necessary, protection of the free speech rights of those who do not own broadcast stations and of the broader interest of the public to a diverse flow of information and ideas.

The Administration has supported the enforcement of this fairness obligation as long as it is done principally on an overall basis at renewal time. What we have not supported is the Commission's present approach of enforcing this obligation on an issue-by-issue, case-by-case basis. It is

this enforcement process that has come to be known commonly as the Fairness Doctrine and has become so chaotic and confused.

The renewal criterion in our bill is not the Fairness Doctrine, as that term has been used to indicate issue-by-issue enforcement. Rather it is the fairness obligation: the unchanged, long-standing requirement of the licensee in Section 315(a) of the Act to "afford a reasonable opportunity for the presentation of conflicting points of view on controversial issues of public importance." Its inclusion in the renewal standards would serve as an expression of Congressional intent as to the preferred method for its enforcement.

A fourth concern is the one voiced by most of the representatives of the minority groups that have appeared before your Committee. They are concerned that the Administration's bill would effectively cut off the rights of minority groups to challenge the actions of incumbent licensees on their community responsibilities in such areas as minority hiring and minority programming.

It is true that competing applications based on frivolous or unproven grounds would be more easily rejected. But responsible competing applications based on real evidence of the incumbent licensee's abrogation of his public trust are in no way penalized and would still have the benefit of a thorough public hearing.

Indeed, with the explicit language of the ascertainment criterion we propose, the focus of the hearings would be shifted to the community's concerns in each case, away from legalistic conformance to uniform FCC percentages.

Moreover, the Administration bill does not change the existing procedures for petitions to deny, the tool that has been the traditional and most useful recourse of the minority groups; it will still be available to them intact. I should also point out that the extension of the license term is not going to put licensees out of the reach of their local communities or the FCC for the five-year term. Community groups may still file complaints at any time, and the FCC would still have ample interim tools available to it -- such as short-term renewals, license revocations, suspensions, and forfeitures -- to protect the public interest.

Finally, Mr. Chairman, I would like to address the concerns that have been voiced during these hearings and elsewhere about my remarks in a speech in Indianapolis last December 18. There apparently is some puzzlement over the relationship between our bill and that speech, in which I announced our intention to submit license renewal legislation. There also has been concern about the motives behind our bill. I would like to set the record straight.

The central thrust of my Indianapolis speech was that broadcast licensees have not, by and large, been doing an adequate job of listening to their communities and correcting faults in the broadcasting system--faults that are not, and should not, be dealt with through use of government power. Important First Amendment freedoms were secured to broadcast licensees under the Communications Act of 1934. And with these freedoms came important responsibilities for licensees to ensure that the people's right to know is being adequately and fully served. As has so often been pointed out in Congressional hearings over recent years, the licensees have not, unfortunately, always met these responsibilities--in part because it is easier to let Government define the limits of those responsibilities.

My speech was intended to remind broadcasters and the public that such attention takes on even more importance if governmental controls are to be reduced, as we have proposed. The speech and the bill are related--but not in the way portrayed in the press coverage of my speech. The relationship between the proposed bill and my speech is no more than the relationship between freedom and responsibility we find everywhere in our society. This Office has steadily promoted the cause of less rather than more regulation of broadcasting. But the public and the Congress should not think of increasing the freedom in broadcasting by easing government controls

without also expecting some indication that voluntary exercise of responsibility by broadcasters can operate as an effective substitute for such controls.

The core issue is: Who should be responsible for assuring that the people's right to know is served, and where should the initiative come from -- the government or the broadcasters. The speech focused on the three TV networks as the most powerful elements in the broadcast industry and asked how this concentration of power was to be effectively balanced. Some, who now profess to fight for broadcasters' freedom, would rely on regulatory remedies such as increased program category restrictions, burdening the broadcaster and the audience with the clutter of counter-advertising, banning ads in children's programs, ill-defined restrictions on violence, and the like.

Anyone who has followed OTP policy pronouncements knows that we reject this regulatory approach. We have always felt that the initiative should come from within broadcasting.

The broadcaster should take the initiative in fostering a healthy give-and-take on important issues, because that is the essence of editorial responsibility in informing the public. That does not mean constricting the range of information and views available on television.

The public has little recourse to correct deficiencies in the system, except urging more detailed government regulation. The only way broadcasters can control the growth of such regulation is to make more effective the voluntary checks and balances inherent in our broadcast system.

Some broadcasters, including network executives, have claimed they believe the Administration bill to be a good one, but only if clearly separated from the speech in which it was announced. But freedom cannot be separated from responsibility.

Some observers profess to see in our bill a conspiracy to deprive broadcasters of their First Amendment freedoms. But, clearly, it is others, not this Administration, that are calling for more and more government controls over broadcasting.

Many newspaper editors and columnists have opposed the Administration bill, preferring apparently to keep the current panoply of government control over broadcasting. Freedom from government

regulation for part of the printed press, but not for the electronic press escapes reason, especially when many of those who wish to expand government controls over broadcasting would also see these controls as the precedent for similar controls over the print media.

Other critics, I fear, do not wish to diminish the government's power to control broadcast content. They seem quite willing to create and use powerful tools of government censorship to advance their purposes and their view of what is good for the public to see and hear. We disagree. The danger to free expression is the existence of the legal tools for censorship. We are proposing actions to begin to take those tools from the hands of government.

The Administration bill is designed to strengthen the First Amendment freedoms of broadcasters. All four changes promote the cause of less -- rather than more -- government regulation and substitute, as much as possible, the voluntary exercise of responsibility by broadcasters for the often heavy hand of government. I challenge anyone to find in our bill any increase in government power over the media.

In my judgment, Mr. Chairman, the Administration bill is not only the most comprehensive of the many bills before you; it also represents the best attempt at balancing the

competing statutory goals of the Communications Act. The dilemma the Government faces in regard to the regulation of broadcasting is by no means insoluble. And our bill is a step in the direction towards a solution--a solution which means less Government control and more reliance on the licensee's individual initiatives. We are asking the Congress to reduce controls not because broadcasting is perfect, but because its problems should be corrected by the broadcasters and their employees, rather than by government action. Indeed this was the intent of Congress from the very beginning as embodied in the Communications Act. And it is time for Congress now to take an important step towards furthering these long-standing statutory goals.

In your opening statement, Mr. Chairman, you indicated that it was the intention of the Subcommittee to make as complete a record as possible of the many viewpoints and interests affected by the proposed license renewal legislation. You and your Subcommittee are to be commended for focusing attention and debate on these issues, and I welcome the opportunity to add the Administration's comments to this important record.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
ON
PUBLIC BROADCASTING AUTHORIZATIONS

before the

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

June 12, 1973

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the proposed authorization for public broadcasting.

As you know, OTP supports the principle of long-range financing and acknowledges the inadequacy of current funding arrangements for public broadcasting. We have, nevertheless, taken the position that long-range funding cannot be undertaken before there exists a greater proximity between the goals of the 1967 Public Broadcasting Act and the public broadcasting system's present structure and operation.

Appearing before this Subcommittee in February of 1972, I attempted to outline the areas in which the public broadcasting legislation and public broadcasting operation had gone their separate ways.

I noted at that time that lack of CPB financial support for station operations seriously undermined the autonomy of local stations, the keystone of public broadcasting; that a fixed-schedule, real-time network was coming to

pass, despite the plain meaning of the 1967 Act; that homogeneity through centralized program centers and mass audience techniques existed where the Act called for diversity; that public broadcasting too often failed in striking a reasonable balance between local and national programming, and among cultural, entertainment, informational and instructive programs.

Now this is not to say that public broadcasting did not have many substantial achievements. Along with the achievements there has been continued support from the Administration in the form of requests for appropriation from \$5 million in 1969 to \$45 million in 1974. I think this demonstrates a real recognition of the achievements of public broadcasting, and demonstrates the falsity of the charge that we are trying to dismantle the system. We must recognize, however, that public broadcasting is meant to be more than a government-funded, high-class variation on the commercial network theme. Therefore, we have taken the position that, until there is wholehearted compliance with the policies of the 1967 Act and the future directions for public broadcasting are clear, the Congress should not be expected to adopt a plan of long-range insulated funding.

Permit me then, against such a background to turn to the CPB-PBS agreement, which has dealt with some of these concerns, and which, I am delighted to say, has made progress in some areas. For example, OTP had called for a graduated distribution formula to assure local stations of financial support for their local operations. The CPB-PBS compromise incorporates this proposal, and strengthens the autonomy and independence of local public television stations by permitting local stations to share CPB funds on a proportion which increases as the level of Federal funding increases.

The consultative process created by the Agreement may not be the final answer to the problem of local station participation in program decision making, but it does remove some of the obstacles and inspires confidence that CPB and the local stations can work together in finding an equitable solution. Yet the strength of local stations in a public broadcast system of checks and balances will not be felt until the stations have realistic programming alternatives to the programs fed by the national network. We shall continue to work toward that goal.

Similarly, the Agreement's approach to the interconnection problem is a positive step in attempting to minimize the dangers of a fixed-schedule, real-time network, although there remain questions which only time and experience can answer. Whatever your opinion of the CPB-PBS compromise, several major areas require watchful waiting; indeed, if the compromise itself calls for quarterly review by the Partnership Review Committee, is it not appropriate for Congress to review that partnership in an authorization hearing one year from now?

But there are additional reasons why a one year authorization would be appropriate at this time. The future of public broadcasting is still left somewhat uncertain by this compromise. It is only realistic to adopt a wait and see attitude when faced with something which promises to do so much in so vast an enterprise as public broadcasting. It was appropriate in 1967 when Congress wrote the Public Broadcasting Act; it is appropriate now. Indeed, it is not inappropriate to recall that the one time Congress did provide multi-year authorizations, public broadcasting moved to centralized program production and fixed-schedule networking, the two major causes of our present difficulties.

Although the CPB-PBS agreement represents a step forward in dealing with such problems, the new PBS must use caution or else it could itself become a centralized bureaucracy, unresponsive to the needs of its members and forcing them to remit a portion of their grants from CPB to finance PBS operations.

Further, still unresolved is the question of journalistic public affairs programming on a taxpayer-supported broadcasting system. While the Agreement's plan to monitor objectivity and balance in programming is a good faith effort to deal with the problem, it is still fraught with danger.

If Federal funds are used to produce controversial public affairs programming without strong assurances of the objectivity and balance called for in the 1967 Act, the government has abdicated its responsibility to see that public broadcasting is used for all citizens. If the government itself oversees the balance and objectivity, it by that very fact has a chilling effect on vigorous broadcast journalism. It is a dilemma inseparable from government-funded news and information programming.

With this background, let me turn to the specifics of H.R. 2742 and H.R. 5045, which are identical, as well as S. 1090, which was passed by the Senate and referred to the House. First, the level of funding in these bills is too high. When all other demands in the federal budget are considered, it is unfortunately not possible to devote \$340 million to public broadcasting for Fiscal Years 1974, 1975, 1976 and 1977 (H.R. 2742; H.R. 5045), or \$130 million for Fiscal Years 1974 and 1975.

Appropriations at this level would represent an extraordinary increase in the rate of funding. Moreover, until the basic problems underlying public broadcasting are resolved, and until the CPB-PBS Agreement can be assessed in its operation over a year, the Congress should review the funding authorization next year and observe the Corporation's progress in its new partnership role with PBS.

The Administration's bill, H.R. 4560, provides for the healthy development of public broadcasting by extending for one year and by significantly increasing CPB's current authorization. This period would allow public broadcasting a real test under its new agreement and allow Congress time for evaluation. The Administration's bill requests \$10 million increased funding for public broadcasting, for a total of \$45 million. In addition, the HEW request for Fiscal Year 1974 funding of the Educational Broadcast Facilities Program will be at a \$13 million level, even though other HEW programs are feeling severe budgetary pressures.

Mr. Chairman, Dr. Killian has referred to the CPB-PBS compromise as beginning a new era in public broadcasting. I have noted necessary reservations to certain provisions of that Agreement, but I should like to say for the record that public broadcasting has demonstrated real progress in getting its house in order. The time is now right for the Administration, the Congress and the CPB Task Force on Long-Range Funding to renew our joint efforts at achieving a meaningful, long-range funding program for public broadcasting. We hope that with all of us facing up to the problems there can be a more constructive mood among government, CPB, and the local educational stations.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

BEFORE THE
Subcommittee on Treasury, Postal Service
and General Government
The Honorable Joseph Montoya, Chairman
United States Senate

June 15, 1973

STATEMENT BY

CLAY T. WHITEHEAD

DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget requests of the Office of Telecommunications Policy (OTP) for fiscal year 1974. I believe you have our Budget Estimates for the upcoming fiscal year. With your permission, I would like to submit for the record a more detailed statement of the 1972-1973 Activities and Programs for our Office.

Before discussing our budget requests, I should point out that the past year has been one of great activity for OTP. Briefly, I would like to highlight some of these areas.

In the broadcasting area, we have developed legislative proposals for the modification of license renewal policies and procedures. We have proposed legislation for increased funding for the Corporation for Public Broadcasting. In addition, OTP completed its study of network practices in prime time television rerun programming, and has forwarded this report to the President and to the Federal Communications Commission.

In the area of cable television, the President's Cabinet Committee Report on Cable Television, which I chair, is nearing completion of its study. This final report will propose long-range policy to guide cable's future development.

Government communications is another significant area of OTP's concern. Last year, various problems in the Emergency Broadcast System and emergency warning procedures were resolved. Also resolved was the controversy of the FTS/AUTOVON merger. In addition, in the field of emergency public safety communications, OTP issued a policy on nationwide implementation of the "911" emergency telephone number.

In other areas, we have reviewed the structure of the U.S. international communications industry and have submitted a policy to the Congress, which would enhance industry performance through improved economic and regulatory incentives within the industry structure.

Mr. Chairman, these are just a few areas with which we have concerned ourselves over the past year. In addition, there are many activities of a continuing nature and we expect more results in the coming year. Let me now turn to our budget requests.

For fiscal year 1974, OTP has requested \$3,270,000. This represents an increase of \$270,000 over the fiscal year 1973 appropriation of \$3,000,000. This is due largely to our request for \$1,200,000 for outside research and studies contracts, an increase of \$175,000 over last year. As I indicated last year, we do not intend OTP to become yet another overly-large bureaucracy. Indeed, consistent with the President's desire to reduce the size of the Executive Office, we expect to reduce our full time permanent staff to 52 by the end of fiscal year 1974, a reduction of 20% from the authorized level of the current fiscal year.

Despite this planned reduction, we find it necessary to request an increase of \$41,000 over the \$1,432,000 for personnel compensation in fiscal year 1973. This projected increase is a result of two factors. First, fiscal year 1974 estimates include provisions for increased overtime and for the normal within grade pay increases; and, second, there are additional costs associated with phasing down our personnel to the level of 52 by the end of the fiscal year. Average employment in man years is actually larger in fiscal year 1974 than in 1973. With appropriate changes in our operational plans, I am confident we can fulfill our responsibilities with a reduced staff.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.

FOREWORD

Calendar 1972 was the second full year of operation of the Office of Telecommunications Policy. The following report summarizes the principal activities of the Office in the four broad areas of its concern, and sets forth the principal programs contemplated during the present year. Omitted are those activities related to internal organization and management, and also to routine operations, such as review of legislation referred for comment by the Office of Management and Budget.

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I. DOMESTIC COMMUNICATIONS

A. Common Carrier Communications

Common carrier communications is for the most part a monopoly public utility service provided by the Bell System and independent telephone companies. The performance of the industry has come under increasing criticism in recent years, and it has been proposed that various segments of common carrier operations be opened to competition. In response to such proposals the carriers have asserted that the benefits of economy of scale and operational integrity derived from integrated ownership and operation far outweigh any potential customer benefits from competition.

OTP has initiated several investigations into these questions. The ultimate aims of these studies are, first, to develop recommendations as to which aspects of common carrier operation can safely be opened to increased competition, and which should remain under integrated control; and, second, to determine the regulatory principles and practices best designed to ensure that noncompetitive operations remain efficient and innovative.

Principal studies and findings to date include the following:

1. Domestic Satellite Communications

OTP has consistently found that there are insufficient economies of scale in domestic satellite communications to warrant government restriction of competition. It therefore recommended to the FCC that any technically and financially qualified applicant be allowed to establish and operate satellite systems on a competitive basis, and participated in the FCC hearings on this subject. Subsequently, the FCC adopted what is essentially an open entry policy with respect to the provision of communications services via domestic satellites.

2. Specialized Communications Carriers

The entry of new communications carriers offering "specialized" services (generally any services other than public telephone, e.g. data, private line, video interconnection) in competition with the existing telephone carriers was approved in principle by the FCC,

but a number of issues which could determine the practical feasibility of competitive entry were left unresolved--such as the allowable monopoly pricing response and interconnection constraints.

To assess the implications of these issues for long-range public policy, OTP initiated three major programs. First, OTP undertook a major study to identify and quantify scale economies in the provision of all significant voice, data, and video common carrier services by individual functional areas (i.e., long-haul transmission, toll switching, local distribution, terminal supply, and general provision of service). This is necessary in order to decide where monopoly should be protected from competition or is inevitable, from where it is not. OTP also explored various pricing policies with a view toward determining which of these policies would promote the greatest efficiency in the monopoly area, as well as prevent hidden subsidies from arising, and best promote competition.

Second, OTP began to investigate the technical and economic implications of alternative interconnection policies which, among other factors, will be a major determinant as to whether competition in the supply of terminal equipment (e.g., telephone and data sets) to be used with the existing telephone network is viable. This investigation will serve as the basis for recommendations for new legislation or regulatory policy.

Finally, OTP began an examination of the benefits and feasibility of a brokerage market--i.e., a market in the resale of communications services by non-common carriers--and an evaluation of possible impact of removing current restrictions on such activities on common carrier operations, revenues, revenue requirements and service arrangements under various policy alternatives.

Taken together, these three programs will provide guidelines for public policy regarding the major structural characteristics desirable in this industry group.

3. Common Carrier Regulation

Even if it is feasible to allow new communications services to develop on a competitive, rather than monopoly basis, and to introduce competition into selected existent aspects of common carrier operations, this will affect only about 10-20% of current total common carrier operations.

Most common carrier operations, notably the public telephone service, will continue to be monopolistic for some time.

Effective regulation of monopolies is necessary to prevent investments in inefficient facilities, excessive rates and profits, technological obsolescence, service degradation, and other problems, but it is difficult for government to second-guess a large public utility on detailed investment and operating decisions. For this reason, in the coming year OTP will continue to explore the desirability of encouraging better public performance of regulated utilities through improved policies rather than increasingly detailed regulation.

a. Depreciation Programs: The common carrier industry is heavily capital intensive, requiring sums for the expansion and replacement of facilities of close to \$10 billion per year. OTP is very much concerned with the cost of obtaining such large amounts of capital, as well as the impact of the demand for such capital. Consequently, it is carrying out a study of common carrier depreciation policy with the aim of determining how capital can be generated internally under various depreciation alternatives, at what costs, and to whom; and also how depreciation policies generally can affect the rate at which new technologies capable of reducing both capital and operating costs are implemented. Common carrier equipment is typically depreciated over very long periods corresponding to the expected physical life of the equipment, although the useful life is often much shorter due to rapid technological advances. This is only one aspect of depreciation policies that affect common carrier financial decisions and customer rates; other aspects are disposition of fixed asset salvage, separation of depreciable and nondepreciable investments, and purchasing policies of common carriers along with the pricing policies of their suppliers. In 1972, OTP made an overall investigation of the depreciation practices, objectives, effects, and alternatives in the common carrier industry.

b. Accounting Programs: OTP is also conducting an in-depth study of the FCC's Uniform System of Accounts for common carriers, the objective of which is to identify the full range of operating incentives implied for the carriers by this regulatory reporting system and the effect these in turn have on the quality and cost of

service. One of the study's major findings to date is that the classification for capital facilities costs and for operating costs bears no relationship to the classification for service revenues, and thus the Uniform System currently can provide little or no guidance in assessing the reasonableness of the rate of return for particular services. Other issues which will be considered within the study this coming year are the types of incentives and controls under the existing system of accounts that govern the classification of expenditures as either capital or operating costs, the treatment of asset salvage, and the method of tax accounting. Additionally, the possibility of making certain changes with respect to station connection accounting and installation procedures--changes which could add substantially to common carrier cash flow as well as to customer options in instrument selection, payment and rearrangements--will be explored.

B. Cable Television and Broadband Communications

Broadband cable systems represent a new communications medium which can increase consumer choice in television programming and provide many new communication services hitherto unavailable. The immediate effect of cable expansion, however, is to disrupt some of the distribution practices of the existing television industry and to threaten the economic position of some broadcast stations and copyright owners. There is urgent need for policies to guide the development and regulation of cable in such a fashion that its enormous benefits can be rapidly achieved without depriving the society of its healthy programming industry and its essential broadcasting services.

In 1972, OTP undertook a series of studies and investigations to identify and illuminate particular aspects of broadband cable development that require policy consideration, and to develop policy recommendations.

Two of these studies have been completed:

(a) A study of the present and projected costs of broadband cable systems, to serve as a basis for estimating future growth patterns and rates of development of cable distribution systems;

(b) A study directed to the development of an industry simulation model to be used in conjunction with the results of (a) and (c), below, to predict future industry development.

A third study has yielded significant information and is close to completion:

(c) A study on projected consumer demand for cable television as a function of population and market characteristics, to enable the formulation of alternative regulatory policies appropriate for different economic environments.

In addition, the following study was initiated in January of 1973:

(d) A study to determine the most economical ways of conserving and enhancing broadband communications services in low density rural areas, where cable technology may not be economically feasible.

In addition to these studies, OTP has provided supporting analysis and developed alternative policy options for the President's Cabinet committee on cable television. In this work it has examined, among other matters, the economic and social effects of vertical integration in the production and distribution of cable television programming; the probable impact of expected cable growth on the broadcast and copyright industries; the problems of access to the cable media by all segments of the public and industry; and considerations pertaining to joint ownership of broadcast, cable, and telephone facilities. Policy alternatives pertaining to these various matters were developed for consideration by the Cabinet committee. The results of this activity have been presented to the committee, which is expected to complete its report in the near future.

A significant achievement in the cable television field was resolution of the long-standing controversy concerning distant signal importation, that is, cable use of signals broadcast by out-of-market television stations. The distant signal question involved complex, interrelated issues such as CATV's need to offer this service in order to attract capital and begin its growth, the effect of distant signal competition upon the economic stability of local radio and TV stations, program suppliers' need for copyright protection, and the public need for a wide diversity of quality program services. Since OTP believed that delay and uncertainty would be

harmful to the public interest, it agreed to act as mediator in the dispute. The principal private parties ultimately agreed upon a compromise plan, the main feature of which was to supplement the then existent FCC rules with regulatory and legislative copyright and exclusivity provisions. Main elements of this plan were ultimately reflected in rules which the FCC adopted in March of 1972. Congress is still considering the copyright provision of the plan, the main element of which is to establish a schedule of fees governing the use of copyrighted programs, or if such a schedule cannot be agreed on, compulsory arbitration. OTP will retain its interest in this area and follow developments closely.

In addition to the above activities, OTP is coordinating, with HUD and HEW as major participants, the design of a demonstration program that would show effective and economical uses of broadband communications for the delivery of public services and would allow industry to test earlier than otherwise possible the potential of broadband communications for innovative non-public services. The program would be a joint government and industry undertaking that would ultimately benefit both the private and public sectors. During 1973, OTP will continue its coordination of interagency effort, and will guide the demonstration program through its various stages, including the planning of specific experiments, the selection of demonstration sites, and the enlisting of state and local government participation. Finally, also during 1973, OTP will initiate a study to evaluate the economics of allowing consumers to purchase television programs directly over cable. This study will enable an assessment of the desirability and feasibility of such systems and their potential role within the broadcasting and cable industries.

C. Broadcasting

1. Public Broadcasting

The Public Broadcasting Act of 1967 created a framework for educational and instructional broadcasting, largely as envisioned by the Carnegie Commission on Educational Television. However, the means of

establishing a stable source of federal support funds which would avoid detailed government oversight of program content, was left unresolved and has remained so. In addition, the years since 1967 have witnessed the development of important new technologies for which no provision is made in the Public Broadcasting Act.

During the past two years, OTP sought to achieve amendments to the Act which would eliminate both these deficiencies. It consulted with interested organizations in public broadcasting and with the relevant agencies of government, and reviewed a range of approaches to new legislation.

Last year, OTP worked with the Congress and submitted a bill providing for an additional year of funding for CPB and assuring federal funding of individual public broadcast stations. Congress, however, adopted a different bill which would have increased the federal funding of public broadcasting by more than \$115 million over a period of two years. As a practical matter, the bill would have undercut any hope of resolving the various problems that have developed in public broadcasting regarding its structure and the various relationships between the local stations and the national organizations. Consequently, the President vetoed the bill.

OTP has submitted proposed legislation that would increase the federal authorization to CPB by \$10 million to a level of \$45 million. This represents a 30 percent increase over the level in FY 1973.

2. License Renewal Policy

One of the major broadcasting controversies of recent years has involved the triennial license renewal process. Although all can agree that a broadcaster who has performed well in the public interest should have his license renewed, the Congress, FCC, and the courts have struggled with the questions of what is good performance and what standard should be used to judge the incumbent licensee's performance in the face of a challenge to his renewal application.

Because the search for standards comes at a time when community interest in license performance is strong and when competition for licenses is increasing, a certain

amount of undesirable instability has been injected into the broadcasting industry. The regulatory process has become fraught with delay and uncertainty, and the industry's ability to serve the public has suffered.

Last in 1971, OTP developed and proposed for public discussion a wide-ranging series of suggestions for modifying the Communications Act of 1934, one of which dealt with license renewal policy. OTP pointed out the dangers of adopting renewal standards that lead to government supervision of program content. It proposed for discussion a more "neutral" renewal standard that would place the primary emphasis on the licensee's being attuned to the programming needs and interests of his local audience. Using this standard, a premium would be placed on the obligation to be directly responsive to community problems and issues; licensees who had met this obligation would be assured license renewal. This would lead to needed stability in an industry that must make relatively long-term commitments to public service.

In December of 1972, following further study of the license renewal process, OTP proposed that the legislative provisions governing license renewals be revised. It proposed an amendment to the Communications Act of 1934 which would make four revisions in the present renewal process: the extension of the term of license from three to five years; the requirement that policies concerning qualifications to hold a license be made solely through rulemaking; the establishment of specific procedures to be used in the event that a renewal application is challenged by a competing application; and finally, the prohibition on use by the FCC of predetermined performance criteria to be used in evaluating renewal applications.

Legislation was introduced in the Senate and House of Representatives this year. This seeks to establish a regulatory environment which allows for competition for the grant of a license, and, at the same time, reduces the uncertainty and instability that has beset the industry.

3. Fairness Doctrine and Access to the Broadcast Media

Another critical issue--one that is central to the role of the mass media in an open society--is that of public access to the broadcast media for discussion of and information about controversial public issues. The FCC's Fairness Doctrine requires the broadcaster to make time available for the presentation of contrasting

viewpoints once a particular side of a controversial issue of public importance has been expressed. Although not originally contemplated, this "fairness" obligation is now being enforced on an issue-by-issue, case-by-case basis, instead of through an overall evaluation of whether the broadcaster has kept the public well informed, with reasonable time for contrasting views. When enforced in this manner, the broadcaster's journalistic determinations are repeatedly second-guessed by the FCC and the courts, and since these are agencies of government, the decision as to who shall speak on what issues becomes part of the governmental process. This diminishes the "free press" discretion of the licensee and tends to convert broadcasting from a private enterprise activity to a government supervised service.

A major incentive for case-by-case application of the Fairness Doctrine is the fact that individuals' access to the media for discussion of controversial issues can only effectively be achieved through that device. Broadcasters do not ordinarily sell their advertising time for such purposes--partly because they may be compelled to "balance" such presentations in their program time.

In 1971 OTP studied the history of Fairness Doctrine enforcement and the closely related problem of access to the media. As part of the series of suggestions for modifications in broadcast regulation made in October 1971, OTP proposed that there be considered a right of nondiscriminatory access to TV advertising time, accompanied by the elimination of any requirement that paid views be "balanced" by views expressed in program time. In program time, OTP suggested that the fairness obligation ultimately should be enforced by an overall inquiry into the licensee's journalistic responsibility at license renewal time, rather than in the case-by-case fashion now employed.

Under the present structure of broadcasting--the technical scarcity of channels available as broadcast outlets, and the reliance on persons entrusted with these outlets to serve as a vehicle for informing the public--the Fairness Doctrine itself is necessary for the time being as a means of preserving the public's right to be informed. However, the means and mechanisms of enforcing the Doctrine must be improved, and governmental intrusion into program content must be minimized.

Enforcement of the Fairness Doctrine through a review of the broadcaster's overall performance and programming at license renewal time, rather than through case-by-case adjudication, would be a step in this direction.

OTP has highlighted the fairness obligation as one of the renewal standards of the proposed license renewal legislation. This would also serve as a Congressional expression of intent as to the preferred method for fairness obligation enforcement.

OTP will continue during the present year to explore various alternatives for solving the fairness and access dilemmas. It will seek to assist the Congress and the FCC in devising mechanisms to enhance free expression and to minimize government intervention in the marketplace of ideas.

4. Radio Régulation

For many years, radio broadcasting has been regulated as an afterthought to television. Some of the rationales and assumptions, such as scarcity of outlets and restricted entry, which shaped early radio regulation and still justify regulation of television stations, have been rendered meaningless by the phenomenal growth in the number of AM and FM radio stations, offering widely diversified special program services to the public.

In 1971 OTP proposed to the FCC that it undertake an experiment in radio deregulation, with a view toward experimenting in radio deregulation, with a view toward lessening the regulatory controls on commercial radio programming, commercial practices and other nontechnical operations. The proposal was supported by an OTP Staff Paper setting forth the reasons such an experiment seemed appropriate and promising. In response, the FCC instituted a program to reassess its regulations governing radio, and is in the process of acting on its findings. In addition, OTP endorsed a Congressional resolution, H.J. Res. 60, to provide further study and support for the deregulation of radio. OTP will continue working with the Congress, FCC, broadcasters, and public to provide recommendations as to how radio regulation can be improved.

5. Reruns of Networks Programs

In recent years, the portion of network prime time devoted to reruns of original programs has increased dramatically. The increase in reruns has resulted in a diminution in the variety and creativity of programming available to the public and, by contracting the market for new programs, has threatened the economic underpinnings of the program production industry.

However, it has been unclear what the cause of this change is, and what are the available techniques for dealing with it. On the one hand, the shift to more

reruns may be attributable to unfair use by the networks of their monopoly position in buying and distributing programs. Or, on the other hand, the trend may be due to inexorable market forces, such as increased in program production costs not covered by commensurate rises in advertising revenues. Better knowledge of this is required as a basis for determining whether Federal action is necessary.

In view of the importance of this matter to the viewing public and to the health of the program production industry, the President requested that OTP inquire into the causes of increases in network reruns, and, if appropriate, recommend remedial action. OTP has completed its study and has sent it to the President. It found, for example, that original program episodes during prime time declined from an average of 32 in 1962 to 24 in 1972. The principal reason for increased reruns has been the increased cost of prime-time television program production. Our study concludes that the increasing percentage of prime-time reruns in each broadcast year contributed significantly to the decline of employment in the television program production industry, and has diminished the amount of diverse programming available to the public. OTP has asked the Federal Communications Commission to conduct a full inquiry into this matter and consider whatever regulatory remedies may be appropriate in protecting the public interest.

Also, our study found that the prime-time access rule, the effect of which restricts network programming to 8:00-11:00 p.m. EST has not fulfilled its objectives, and has limited diverse, original, and high quality programming available to the public. OTP, therefore, has recommended to the Commission that the rule be changed to allow the networks to program in the 7:30-8:00 p.m. time period.

D. Federal-State Communications

Issues affecting state and local governments arise in every area of communication policy and in varying contexts. For example, the planning of a national emergency communication system requires state and local participation; regulation of the communications common carrier industry has traditionally been divided between the Federal Government and the states. Regulation of CATV systems has involved both federal and local authorities; public broadcasting and educational communication involve state and local governments to a significant degree; the operation of public safety communications systems (police, fire, ambulance, etc.) is usually under the direct operational control of local officials; and in many cases, local governmental communication facilities and services are funded in whole or in part through federal grant-in-aid programs.

To provide guidance and assistance to state and local governments, OTP undertook and completed the following tasks:

- (a) a review of the various federal telecommunication

assistance programs; (b) the issuance of OTP Circular Number 2 requesting all executive agencies to provide information on their current and planned telecommunications research programs which might affect state and local programs; (c) studies for the states of Hawaii and Alaska to identify their unique communications requirements; (d) the preparation of a Cable Communications Handbook for local government officials to provide a basis for community planning and decision; (e) a conference between communications officials of Hawaii, Alaska and the U.S. Trust Territories to strengthen their communication planning procedures.

To provide national policy guidance to state and local governments on the implementation of the nationwide emergency telephone number "911," OTP has issued a coordinated national policy, contracted for a community planning handbook on "911" implementation, and provided for the establishment of a federal informational clearinghouse on "911."

To provide support for public safety telecommunications, OTP is seeking the improvement of the national law enforcement teletype system (NLETS), which services state and local law enforcement agencies in 48 states. OTP is also pursuing an effort to identify the issues that arise from the potential delivery of public services via modern communication methods (CATV, satellites, etc.) with particular emphasis and priority on the communication aspects of the delivery of emergency medical services.

Finally, OTP maintains a continuing program of consultation with state public utility commissions and with the FCC concerning the impact of specialized communication carriers, cable systems, spectrum usage, data communications and other developments in communications which involve regulatory policies and practices. OTP engages in an active dialogue with state and local officials in order to respond to communications problems and issues as they arise.

E. Mobile Communications

The frequency spectrum available for mobile radio services has been tripled by the FCC in a series of actions taken in 1970 and 1971. The mobile communications industry should no longer be limited by a frequency shortage but will face more clearly classical supply and demand limitations. This will raise a number of issues as to appropriate types of new systems, new services and the institutional structure to support them and the manner in which the larger bloc of spectrum will be sub-allocated among the competing mobile services. The transition from spectrum scarcity to spectrum abundance must be regulated to create an industry structure that is sensitive to

future demands for communications services of all types, including improved mobile telephone services for all areas, integrated dispatch services, and public telephone services for domestic aircraft. It is equally important, as the spectrum available for mobile communications expands, to provide for the maximum amount of competition, both in the manufacture and sale of equipment and in the actual provision of service to the public.

In early 1972, OTP commenced a program, using staff, contract, and Policy Support Division resources, to assess the technical, economic, and institutional effects of proposed new mobile systems and services and to formulate policy guidelines for the development of the expanded industry including guidelines for the introduction of competition. It is expected that the results of this program, along with recommendations to the FCC concerning policy guidelines for mobile communications will be forthcoming soon. Additionally, in cooperation with the FCC, DOT, LEAA, HEW, and HUD, OTP will continue to assess the feasibility of a pilot program to demonstrate innovative uses of mobile communications services in support of public safety, emergency health services, highway safety, and transportation in general.

F. New Technology

During the past decade, there have been radical improvements in communications technology resulting from independent research and development of U.S. industry, research in the academic community, the U.S. space program, and other government-sponsored R&D. These technologies provide opportunities for vastly improved and expanded communications services, which could have significant social and economic effects if exploited properly.

OTP maintains in conjunction with the National Science Foundation and the Department of Commerce, an ongoing study effort designed primarily to identify areas in which new technological advances are occurring and to evaluate the effect of these technologies upon the existing structure of the domestic communications industries. In 1973, OTP plans to identify the current state-of-the-art in the major fields of communications technology, to determine the existence of any gaps in research, and to anticipate any potential future policy problems. If necessary, OTP will recommend policy guidelines regarding the applications of new technology.

G. Computers and Communications

In recent years, the two separate industries of computers and communications have come to intersect in several important areas. The use of computers in communications has enabled, or made considerably less costly, new modes of transmission, switching, network design, and system administration. Conversely, the use of communications in conjunction with computers has permitted the sharing of data-processing resources and the pooling of information banks, and has provided an access to computers that has opened up new opportunities across the entire spectrum of endeavor, including business, education, and social services, to name only a few.

The concerns in this area are in part common with those of other areas of domestic communications: Determining the division between competition and regulation, and for the latter, defining a governmental role which avoids inhibiting or restricting the flow of ideas and information. At the same time, however, computers and communications pose some issues which are unique, such as the threat to privacy, equal opportunities to information, and the protection of intellectual property rights.

OTP has commenced one program in this area which will be vital to the task of providing policy guidance. It initiated a review of the basic economies which underlie computers and communications, and therefore, to a great extent, control both its own development and the requirements for policy. From this program, it is expected that a basic understanding of this new combination of industries, as well as the analytic tools and concepts needed to guide it, will be developed.

II. GOVERNMENT COMMUNICATIONS

A. Federal Communications Policy and Planning

The Federal Government's own communications consume from 5 to 10 billion dollars per year. The major concerns in this field are avoidance of duplication, effective management of the acquisition of new systems, achievement of compatibility among systems, and satisfactory operating performance.

The major objectives of the OTP program in the area of Federal communications are: first, identifying all the communications activities and resources of the Federal Government; second, determining the needs for effective information exchange among the various departments and agencies; third, promoting economy in the government's use of communications, through sharing of facilities, elimination of duplication, and effective use of commercial services; and finally, encouraging the use of communications to improve productivity and enhance coordination of Federal Government activities. During 1973, arrangements for the interagency coordination required to achieve these objectives will be strengthened and aligned as appropriate with the Administration plan for the coordination of departmental activities. The areas of government communications to be involved are: communications networks, aids for radio navigation, satellite programs, communications of the Executive Office, audio-visual activities, equipment and facilities standards, and procurement practices.

In the previous year, OTP completed a review of all existing studies and analyses pertaining to the integration of the two largest communications networks in the Federal Government, the AUTOVON network and the Federal Telecommunication System. Based on this review, it was decided that the systems should not be merged. However, this review revealed conflicting considerations concerning the degree of interconnection and inter-usage that should be sought. To resolve these conflicts, OTP directed a field test of service to selected military installations to obtain first-hand data relative to economic and service benefits which might accrue as a result of mutuality of service. The test has been completed and the results are being analyzed. Completion of the analysis will provide adequate information upon which to base decisions concerning further integration or interoperability of military and civilian communications activities.

OTP has completed a review of existing and planned radio navigation aids operated or used by various elements of the Federal Government. It has begun work with the affected Federal departments and OMB to (1) coordinate the navigation satellite programs of the various departments; (2) determine the minimum mix of navigation aids and systems to meet government and civilian requirements; and (3) structure a coordinated national navigation program.

It has formulated a plan to designate a single system for long-range general purpose navigation and will issue this plan to the affected department for planning and budgeting guidance and to the civil community for its information.

The major portion of review of the government's present communications satellite program initiated last year will be concluded in 1973. The collection of information with regard to such programs is nearly complete. Several programs have already been identified for a more detailed analysis which will be aimed at identifying satellite systems which can be (1) reduced or eliminated, (2) consolidated with others, or (3) expanded to serve additional users.

A major consideration in the design of government communications systems is selecting the best means of meeting unique needs, particularly those of the national security community. Special requirements for survivability and security, for example, can be met by highly specialized systems, or by designing general purpose government networks to include these features.

Meeting such requirements creates a dilemma for policy makers. Specialized systems with limited capacity are relatively inefficient for day-to-day use, and seem costly if relegated solely for emergency or backup use. On the other hand, incorporating special features in general purpose systems raises the cost of such systems for all users and can result in an unwarranted expansion of the demand for such features. This dilemma must be taken into account in developing policies and plans affecting Federal communications and a more explicit strategy must be developed for resolving it; including the development of good working relations with the Department of Defense and other national security agencies.

A study has been completed of the applicability of new communications technology to the unique needs of the Executive Office of the President. Particular emphasis was

given to the possible utility of wideband and high speed data services. This study provides guidelines for the introduction of new equipment when and as needed, while ensuring that all equipment fit into an integrated system capable of evolution as technological potential and government needs change. During 1973, key technical and economic questions will be resolved, and a demonstration of selected new capabilities will be begun. This will also provide a basis for recommendations on other inter-agency communications systems.

OTP is conducting an interagency study to improve the management of all audio-visual activities within the Federal Government. This study will review in-house versus contract decisions for the production of audio-visual materials, the volume of and need for government-owned facilities and equipment, and the potential for interagency coordination and cooperation for effective utilization of such facilities and equipment.

An improved process for the development of Federal communications standards has been established with initial emphasis on standards for data communications and standards to promote the interoperability of government communications networks. In 1973, emphasis will be on one of the key elements of such networks, modulator-demodulators, or modems.

A review of government policies and practices for the procurement of telecommunications equipment and services has been started. Its goal is to develop updated and improved government policies and practices in the light of recent changes in regulatory practices and in the structure of the industry, particularly the introduction of competitive suppliers of specialized services and interconnecting equipment. One important factor in the study is the clarification and application of the government's policy of maximum reliance on the private sector for the provision of services and facilities. Another is the problem of reconciling conflicting approaches to computer and communications procurement when systems composed of both elements are involved. A third factor of importance which will be considered is the unique and difficult problem relating to the procurement of satellite communication systems and services.

Finally, OTP has established the Government Communications Policy and Planning Council. The Council, consisting of representatives of key Federal agencies, will provide a focal point for bringing the potential benefits of communications technology to all Federal agencies as a means of

increasing productivity, coordinating operations, and improving the delivery of services to the public. The Council will enable these benefits to be obtained without costly duplication or bureaucratic delay, and through effective cooperation among all of those responsible for Federal communications policy and planning.

B. Emergency Preparedness

The purpose of the emergency preparedness program is to insure that national and Federal communications resources will be available and applied, in emergencies, to meet the most critical national needs. This is a demanding task, because of the numerous contingencies that must be provided for--both with respect to the nature and location of the disruption and with respect to the nature and location of the services which, in one or another circumstance, it must be considered vital to restore. Emergency communications plans and capabilities must comply with three basic principles: first, maximum dual use of facilities for both emergency and routine operations; second, balanced survivability among communications and the facilities which are supported by communications; and third, focusing of responsibility to assure accomplishment. These principles are implemented within the framework of the Federal Government's overall emergency preparedness program, only part of which deals with telecommunications.

Policies and plans for managing the nation's telecommunications resources during war emergencies or natural disasters have been completed. These plans delineate the responsibilities of various Federal agencies regarding telecommunication, and indicate the coordinating arrangements to be used.

In 1972, OTP engaged in a review of the policies and procedures under which critical private line services would be restored by the United States communication common carriers. This review resulted in issuance by OTP of revised policies and procedures for the restoration of such services under a system of defined priorities. Work is now proceeding in conjunction with other Federal agencies to evaluate the currently assigned and requested priorities and to determine whether, and how, the number of priority circuits should be reduced.

With regard to its responsibility of determining policy for warning citizens of attack or of emergencies, OTP in 1971 issued a policy that any use by the public

of home radio receivers in a nationwide radio warning system would be strictly voluntary. At that time a number of studies were undertaken to determine the most effective and economical alternative approaches to providing warning. Several of these studies will be completed during 1973, and further actions for improving the provision of warning to citizens will be made.

During 1972, a new manner of activating the Emergency Broadcast System (EBS) was implemented under OTP's direction. Further changes to improve the effectiveness and efficiency of the EBS will be studied and implemented during 1973.

To provide increased understanding of communications problems which arise when natural disasters occur, several actual disaster situations were studied and the lessons learned were incorporated into pertinent plans and procedures. This practice will be continued in order to provide a larger base of experience for evaluating warning and emergency communications systems and procedures.

C. Computers and Communications

Recent technological advances in the field of computers and communications have produced the potential for several alternative industry structures, for the provision of data processing as well as data communications services. Which of these alternatives will eventually become dominant will be determined both by the regulatory policies adopted by government, and the inherent economic characteristics of computers and communications. This process--the emergence of an industry structure--has already commenced; however, many important questions remain unanswered, and many pertinent areas have not even been explored.

The development of hybrid computer-communications systems has significant implications for the Federal Government in two important fields. First, it will affect procurement of the government's own data processing and communications services. In particular, new hybrid systems may allow economies to be obtained through the sharing of network services by departments and agencies now obtaining such services independently. Secondly, the development of hybrid computer-communications systems may lessen the need for the government to design and operate its own hybrid systems, by making these available in the private sector.

To assure that government use of computer and communications systems is effective and economic, OTP, during the past year, developed a model of hybrid networks that enables a thorough investigation of the economic implications of alternative system structures, sharing policies, and telecommunications tariff arrangements. During 1973, initial use of the model will be made to study high priority issues, including the economics of system sharing within the Federal Government. Also during 1973, an initial survey will be made of the security issues relevant to shared computer-communications systems, such as the maintenance of personal privacy and the preservation of confidentiality of personal information.

III. INTERNATIONAL COMMUNICATIONS

A. International Systems and Facilities

1. General Policy and Industry Structure

Since its inception, OTP has conducted a continuing review of the operating and institutional arrangements of the international communications industry.

The structure and performance of this industry have been a concern to Congress and others for many years, and this concern increased with the advent of the new technology of communication satellites and the creation of a chosen instrument (Comsat) to represent United States interests in the international use of this technology. As a result of highly complex and artificial industry structure (largely the creation of Government regulation), the traditional problems of rate and investment regulation are particularly acute in the international field; and, because of divergent incentives, there are widely divergent views in the industry with respect to the best "mix" of international transmission facilities (i.e., cables and satellites). It thus becomes necessary for the FCC to rule on competing or alternative proposals for new facility construction, and to allocate the traffic among various facilities and carriers, causing strains in foreign relations and in the relations of U.S. industry to foreign carriers.

OTP has submitted its policy to the Congress which seeks to enhance industry performance through improved incentives within the existing industry structure.

OTP now has in the final stages of development proposals and recommendations based upon this policy which seek to enhance industry performance through improved incentives within the existing industry structure. These will soon be forwarded to the concerned Congressional committees in response to requests for Administration views on this matter.

2. International Communications Satellites for Mobile Communications

(a) Aeronautical Satellites

OTP has concentrated on developing a U.S. Government position with regard to arrangements with the European nations to evaluate the use of satellite communications in improving air traffic control over the

high seas. Negotiations with the European Space Research Organization (ESRO) on a coordinated evaluation program commenced in 1971 and were continued during 1972. It is expected that the satellite channels required for the evaluation will be provided by a new entity to be owned jointly by ESRO and a private U.S. company. The State Department, FCC, and DOT/FAA have closely coordinated their interests in this area with OTP throughout this year.

(b) Maritime Satellites

OTP has actively participated in intra-governmental policy discussions aimed at providing satellite communications to civilian ships on the high seas. Current international discussion of this subject is taking place in the International Maritime Consultative Organization (IMCO). The U.S. Government is participating in the necessary preparatory work of defining the maritime requirements for satellite services without prejudging operational or organizational aspects of how these services will be provided. Coordination with all agencies interested in this field is continuing.

The Department of Transportation (Coast Guard), the American Institute of Merchant Shipping, and the Department of Commerce (Maritime Administration) have adhered to the view that maritime satellite services will be required well before the end of this decade. OTP has worked with these organizations throughout 1972 to develop policy in the maritime satellite area and to consider the possible relation of such satellites with aeronautical satellites and the INTELSAT system. Study of these matters was continuing as the year ended.

While IMCO deals with many subjects in the maritime area, it has been particularly active in two areas of radio communications, namely, maritime distress communications and maritime satellites. Throughout 1972, OTP has followed the communications work being done in IMCO and continuously provided guidance to the U.S. Delegations attending the various IMCO meetings. Particular note should be taken that IMCO established a Panel of Experts on Maritime Satellites during 1972 that held two meetings during that year, and promises to be more active in 1973.

3. Pacific Basin Facilities Planning

In September 1971, AT&T and The Hawaiian Telephone Companies filed with the FCC a request for authority to lay a new submarine cable between the U.S. mainland and Hawaii. This application was subsequently supplemented by a request for authority to lay a new basin-spanning cable system, including links between the continental United States, Hawaii, Guam, Okinawa, and Japan. In addition to discussing this proposal with foreign officials and with the Governor of Hawaii, OTP officers have been engaged in an economic analysis and system study of the Pacific Basin requirements in the decade of the 70's. This study will produce policy guidelines and recommendations concerning the Pacific Basin and new facilities planning to meet projected requirements. OTP expects to complete this work early in 1973 and to coordinate a U.S. position that can be agreed to with other nations, thus avoiding the misunderstanding and bitterness in the international community that has characterized past negotiations.

4. International Teleprocessing Systems

Substantial international interest and activity are emerging concerning development of international systems for data transmission and for teleprocessing. During 1972, OTP has engaged in extensive interagency coordination on U.S. interests, activities and policies in this area. In addition, OTP has engaged in international bilateral discussions with Canada, England and Japan, and has coordinated U.S. participation in multilateral meetings on this subject, especially the meetings of the Organization of Economic Cooperation and Development (OECD).

B. International Organization Activities

1. United Nations

In recent years, international communications activities in the U.N. have largely centered on the use of communication satellites to broadcast television programs into the home, directly from one country to another. In 1969 and 1970, the Committee on the Peaceful Uses of Outer Space of the United Nations convened a Working Group

on Direct Broadcast Satellites which rendered reports to the parent committee noting the need for more work to be done in other agencies before the U.N. could meaningfully consider the future of direct broadcast satellites. Subsequent to 1970 a number of important events bearing on this matter occurred. The International Telecommunication Union (ITU) held a World Administrative Radio Conference on Space Telecommunications; the World Intellectual Properties Organization was established; the United Nations Educational, Social and Cultural Organization (UNESCO) adopted a Declaration of Principles relating to the use of direct broadcast satellites; and most recently, the Soviet Union recommended U.N. endorsement of an international convention to control use of broadcast satellites. During 1973, the Legal Subcommittee of the U.N. Committee on the Peaceful Uses of Outer Space and the Working Group on Direct Broadcast Satellites will work on the proposed convention as well as other cultural, social, legal and political aspects of broadcast satellites.

Throughout 1972, in coordination with the State Department, USIA, FCC, and other cognizant agencies, OTP has coordinated and participated in the formulation and presentation in international forums of U.S. Government positions on direct satellite broadcasting. The inter-agency studies and activities necessary in this area will intensify during 1973, and OTP will continue to discharge its policy coordination function to assure timely and responsive policy formulation.

2. UNESCO

UNESCO is an independent agency of the U.N. charged with promoting international cooperation in the areas of education, social affairs and culture. During 1972, UNESCO convened several meetings to develop guidelines for use of communication satellites in the international distribution, and possible international broadcasting, of radio and television programming. OTP has worked closely with the United States Patent Office, the Department of State, USIA, and the FCC, as well as various interested groups in the broadcasting industry, to establish and maintain a sound and consistent U.S. position on standards, codes of conduct, and protection of intellectual property rights.

In May 1972, a meeting of non-governmental experts in Paris under UNESCO auspices endorsed a draft Declaration of Principles relating to the use of satellites

for direct broadcasting. The recommended draft Declaration was circulated by UNESCO in July and was considered and adopted by the UNESCO General Conference in October 1972. The United States strongly opposed the consideration of this Declaration on the procedural grounds that there was insufficient time to study the issues raised by the Declaration, and inadequate coordination with other international organizations. When these concerns were ignored by other countries, the U.S. strenuously voiced its strong opposition to the substance of the Declaration, but was substantially out-voted. Continued effort, growing out of the UNESCO experience in 1972, will shift to U.N. organs which will be active in this area in 1973. OTP will continue extensive work in integrating policy coordination and position formulation.

3. International Telecommunication Union

The International Telecommunication Union (ITU), a specialized agency of the United Nations with 143 member administrations, maintains and extends international cooperation for the improvement and rational use of telecommunications of all kinds. The Union uses world conferences of its members to review and update the international regulations needed to assure the smooth flow of global radio and telegraph communications. A principal function is the allocation of radio frequencies among the respective radio services (amateur, broadcasting, fixed, aeronautical mobile, communications satellites, etc.). During the past year, OTP provided guidance and, in some cases, representatives, for U.S. participation in ITU activities. Additionally, matters came up during the year that required OTP personnel to work directly with the ITU headquarters representative in Geneva, Switzerland, and there were two visits during the year of the ITU Secretary-General to Washington.

During 1971, the World Administrative Radio Conference on Space Telecommunications produced agreements that will influence space and satellite matters for the next decade. Throughout 1972, OTP developed the necessary policies and directives to implement these agreements, all of which became effective on January 1, 1973.

In September 1973, the ITU will convene a Plenipotentiary Conference to review the entire content of the ITU Montreux Convention of 1965 and to discuss the structure and roles of the ITU. More than 100 nations are expected to attend and participate in this conference. Preparatory work has been in progress for more than a year within the United States. During 1972, OTP has provided policy guidance and assured coordination of U.S. positions on a wide range of issues both within government and within industry. In addition, OTP provided the chairman for an intra-agency group to review and recommend changes in the Convention. Preparatory work for the Plenipotentiary Conference will continue during 1973, and OTP will continue to coordinate and play an active role in this effort.

The ITU maintains two major international coordinating bodies known as the International Consultative Committee on Telegraph and Telephone (CCITT) and the International Consultative Committee on Radio (CCIR). These organizations have numerous technical study groups which examine problems regarding international standards, practices, system planning, and rates applicable to the international communications services. OTP is responsible for coordinating the preparation of U.S. positions for such activities, particularly those dealing with technical and operational aspects of radio frequency spectrum planning, allocation, and use. During 1972, OTP participated in negotiations leading to the revision of the work of the ITU World Plan Committee; and also participated in the CCITT Plenary Assembly which met in Geneva during December of 1972.

A World Administrative Telegraph and Telephone Conference will be held in Geneva in April 1973. OTP is now actively engaged in the preparatory work which is underway for this Conference. It is expected that the existing agreements concerning telephone regulations will be substantially revised so as to permit the United States to become a signatory to these agreements for the first time.

A World Administrative Radio Conference on Maritime Telecommunications is being convened by the ITU in Geneva in April of 1974. The agenda for the conference was published by the ITU in June 1972. However,

U.S. preparatory work in anticipation of both the 1974 Conference and its agenda was commenced during the fall of 1971 and continued throughout 1972 and into 1973. Preliminary views of the United States for this conference were published and distributed through the Department of State to the 143 administrations of the ITU for their comments.

4. INTELSAT

The International Telecommunications Satellite Consortium (INTELSAT) is an organization of 83 nations that provides satellite communications on a global basis. New Definitive Arrangements for INTELSAT were concluded in international negotiations in 1972 and enter into force February 12, 1973. Under these arrangements, COMSAT, the U.S. representative, will no longer hold the controlling vote in the global satellite system's governing body, and COMSAT's role as Manager will be limited to technical and operational management of the system's satellites. During the transition to the permanent structure of the Definitive Arrangements, the obligation of OTP to advise COMSAT in its role as U.S. Representative--in conjunction with the obligations of the Department of State and the Federal Communications Commission--will take on special importance. This is especially so in the preparation for and participation in the crucial initial meetings of the new principal organs of INTELSAT established under the Definitive Arrangements: (1) the Board of Governors, which meets at six to eight week intervals; (2) the Meeting of Signatories, which is convened annually; and (3) the Assembly of Parties, which meets biennially. The Board of Governors and the Meeting of Signatories will convene for the first time during 1973 and the Assembly of Parties will convene for the first time no later than February 1974.

The FCC is beginning to authorize applications for domestic satellite systems, many of which propose to provide services between the mainland and Hawaii, Alaska and Puerto Rico that have heretofore been provided by INTELSAT. The possible transfer of these services from INTELSAT to the new domestic systems could have significant impacts upon the U.S. role in INTELSAT, general foreign policy relationships between the U.S. and other INTELSAT members, and planning for

Pacific Basin communications. OTP's role in this area is of considerable importance because OTP is the only governmental entity having responsibility under the Communications Satellite Act of 1962 and pertinent Executive Orders to coordinate domestic and international communication policies. Similarly, OTP has worked in a coordinating role on policies concerning U.S. carrier use of the Canadian domestic satellite system for communication within the U.S. In addition, OTP will continue to work in conjunction with the Department of State and NASA concerning the impact on INTELSAT of proposed regional satellite systems, such as the French-German "Symphonie" system.

5. CITEL

In 1971, the Inter-American Telecommunications Conference (CITEL) became a specialized agency within the Organization of American States and was granted a significantly broader charter signifying its rising importance and influence. In general, CITEL promotes the continuing development of telecommunications in the Americas and conducts studies for the planning, financing, construction and operation of the Inter-American Telecommunications Network. It also deals with questions of regional telecommunications standards and technical assistance. During 1972, OTP participated actively in preparation for and representation at CITEL meetings in Mexico.

It is important that we strengthen U.S.-Latin American relations in the communications area. This can be helped by more active participation by U.S. entities in CITEL affairs. For example, U.S. views concerning the forthcoming ITU Plenipotentiary Conference and the World Administrative Radio Conference will be presented at the CITEL meeting scheduled for June 1973. As part of an overall program to improve U.S. relations with Latin America in the communications field, OTP commissioned a study which was completed in 1972, and, in conjunction with the Department of State, is now seeking to implement certain recommendations resulting from it.

C. Anticipation of Future Problems

The development of communications policy on an ad hoc basis has become a chronic problem, and totally unsuited to the needs of the increasingly complex problems in international communications. Moreover, much policy

has been formulated in response to situations after they have reached a critical stage. To correct this problem, policy support studies and activities are being undertaken which will provide a basis for the determination of policy in a more stable environment. A program is under way to gather information needed to formulate policy on existing as well as potential future problems. The information resulting from this program will include data on existing and planned international communication facilities; on all existing and planned specialized, regional and foreign domestic satellite communication systems; on new technological developments and applications; and on development of service and traffic demand forecast models.

IV. SPECTRUM PLANS AND POLICIES

There is intense national and international competition for the use of the radio spectrum for all forms of radio transmissions (radio communications, navigation, broadcasting, radar, air traffic control, etc.). In the United States the Federal Government is the largest single user of the spectrum. The Director, OTP, assigns frequencies for these uses, and to this end, OTP coordinates all Federal Government activities related to spectrum management and planning. This includes cooperating with the FCC to develop plans for the more effective overall use of the entire spectrum, for both Federal Government and non-Federal Government purposes.

Specific tasks involved fall basically within the categories of allocation and assignment for particular uses, planning to meet Federal Government and non-Federal Government needs, and evaluation of possible biomedical and other side effects of electromagnetic radiations.

In the allocation and assignment area, much progress was made in the past year. An improved data processing system, 90% completed by the end of the year, and an expanded engineering capability made it possible to improve the management of radio frequencies assigned to Federal Government radio stations, and to permit over 48,000 specific frequency actions taken by OTP during 1972.

Communications-electronics systems of the Federal Government continued to increase in complexity. In order to cope with the technical problems inherent in providing the spectrum support necessary to operate them, improved access to the advice and assistance of skilled experts from within the departments and agencies of the Federal Government was necessary. This was accomplished by the establishment of study groups related to such issues as standards, radio noise abatement, improved telecommunications systems, and frequency sharing. Expanded engineering capabilities were used during 1972 to investigate and conduct analyses to assure radio frequency compatibility (reduction of interference) among systems competing for the same spectrum resources. Specific areas included: Collision Avoidance, Aeronautical and Maritime Satellites, and Altimeters in the 1535-1660 MHz band; Air Traffic Control and Military Radars in the 2700-2900 MHz band; Aeronautical Satellites and Terrestrial Microwave Landing Systems in the 5000-5250 MHz band; Earth Exploration Satellites, Fixed Satellites and Terrestrial Microwave Systems in the 7250-8400 MHz band; and Fixed Satellites, Radionavigation Radars, Fixed

and Mobile Communications, and Space Research all in the 13.4-15.35 GHz band.

OTP plans to continue the development of this engineering and electromagnetic compatibility analysis capability. This is particularly important in light of the OTP directive recently issued in coordination with the Office of Management and Budget which requires Government agencies to ensure spectrum availability prior to budgetary requests for development of communications-electronics systems.

In its continuing efforts to ensure that the limited radio frequency resource is used in the best national interest, OTP has completed an analysis of Government projected needs between 100 and 1215 MHz to the 1985 time frame. As a result, it is foreseen that Government increasing communications-electronics requirements in such areas as national defense, law enforcement, resource management, marine and air safety will require that approximately an additional 100 MHz be made available for Government use. OTP has informed the FCC of its recommendations and joint discussions are underway on this matter.

During the previous year (1971), some 8,000 MHz of spectrum, formerly reserved for exclusive Federal Government use, was made available to the FCC for shared use by non-Federal Government interests. This precedent was continued into 1972, and an additional 1763 MHz of spectrum was similarly made available to the FCC. This effort will be continued in the coming year.

In the category of spectrum planning, the study initiated during the previous year was continued to develop alternative methods for allocation of spectrum resources giving more weight to all relevant technical, economic, and social criteria. Plans for implementing the results of the 1971 World Administrative Radio Conference (WARC) for Space Telecommunications were completed and put into effect as regards the Federal Government on January 1, 1973. Joint efforts with the FCC looking toward allocation planning were continued. With new technologies developing for operation of communications-electronics systems on higher frequencies than before, and with the introduction of lasers, more specific planning will be required for the portion of the spectrum above 10 GHz. The Office will also continue to maintain in a state of readiness the national emergency

readiness plan for use of the spectrum, and will monitor Federal Government agency compliance with allocations resulting from past ITU Conference agreements (1967 Maritime WARC and 1971 Space WARC).

In response to some evidence and much apprehension about the hazards of electromagnetic radiations to humans and to the environment in general, the OTP announced a coordinated inter-agency "Program for Assessment of Biological Hazards of Nonionizing Electromagnetic Radiation," in the latter part of 1971. This program, which is inter-departmental in nature, will extend over a five-year period commencing in fiscal year 1974, at a proposed funding level of \$63 million, a portion of which is already included in departmental budget planning. During 1972, OTP guided and coordinated the implementation of the program, i.e., by seeking to increase the level of activity in this area in departments where it would be the most productive, eliminating duplication of effort, and finding ways to avoid gaps in research activities. These efforts will be continued into 1973.

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

ON

FEDERAL INFORMATION SYSTEMS

before the

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

July 31, 1973

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

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

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

OTP Role in Federal Information Systems

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

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

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

Sharing and Interconnection

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

Safeguards

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

While there is no single generally accepted definition of "privacy" or the "right to privacy," it is widely acknowledged that a reasonable freedom from intrusion is essential to normal human growth and stability.

The individual should not have information thrust upon

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

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

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

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

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

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

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

Privacy

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

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

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

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

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

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

Propaganda

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

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

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

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

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

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

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

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

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

Application of Technology to Information Activities

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

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

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

Communications for Social Needs

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

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

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

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

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

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

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

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR

OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Treasury, Postal Service
and General Government
Honorable Tom Steed, Chairman
Appropriations Committee
U.S. House of Representatives

April 1, 1974

STATEMENT BY

CLAY T. WHITEHEAD
DIRECTOR

OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget request of the Office of Telecommunications Policy (OTP) for Fiscal Year 1975. I believe you have our Budget Estimates for the upcoming year. With your permission, I would like to submit for the record a more detailed statement of the 1973-1974 Activities and Programs for our Office.

OTP has requested \$9,512,000 for Fiscal Year 1975, an increase of \$7,442,000 over our Fiscal Year 1974 appropriation. Most of this increase, \$6,098,000, represents a transfer of the funding for the technical and analytical support provided to OTP by the Office of Telecommunications, Department of Commerce, transferred from the Commerce budget to our own budget. This transfer and consolidation is the result of suggestions of this Subcommittee, your counterpart in the Senate, as well as the House and Senate Appropriations Subcommittees for State, Justice, Commerce, and Judiciary.

The \$6,098,000 requested in our budget for Commerce support activities includes an increase of \$1,717,000 (and 23 additional positions) for the support program itself. Most of this increase is necessitated by the rapid growth and change in the Federal Government's use of radio frequencies. This requires a larger number of frequency assignment requests to be processed and increases the workload of technical analysis needed to keep that growing number of communications, navigation, and radar systems from interfering with one another. OTP is now processing approximately 5,000 frequency assignment actions per month, we have implemented procedures requiring all Government agencies to submit their frequency plans well in advance so that spectrum availability can be evaluated prior to the commitment or expenditure of public funds.

In addition, \$1,100,000 is requested for our program of outside studies and research beyond the scope of our staff or that of the OT support group. We have reviewed carefully the need for this program of studies, especially considering the inclusion of the Commerce support in our budget, and have concluded that it is by far the most effective and least expensive way of meeting research needs that require highly specific expertise or large research teams too expensive to retain on a full-time basis. The remaining \$244,000 increase is to provide for eight additional full-time employees, to reimburse GSA for the cost of leased space (as required by law this year), and to cover other minor increases in general expenses.

I would like to point out that the past year has been a very active one for OTP, and I would like briefly to highlight some of this activity.

In the field of public safety communications, OTP has prepared, in cooperation with other agencies, a comprehensive plan for emergency medical services. This plan provides for nationwide standardized frequencies for emergency medical use, specialized medical data handling circuits, communications networks for biomedical telemetry, and other features designed to provide rapid communications capability in medical emergency situations. Medical authorities have stated that this program could lead to the saving of thousands of lives each year. OTP has also continued its implementation of the "911" universal emergency telephone number.

In October 1973, OTP initiated a formal program for the planning and coordination of the Federal Government's telecommunications systems and services. The objectives are to identify communications activities and resources, to promote economy through sharing of facilities and elimination of duplication, and to encourage the use of more efficient communications to improve productivity. The program requires each department to document its long-term planning for communications and to submit plans for interagency coordination at an early date. The first reports under this program are to be submitted in August of this year.

In the area of cable television, the President's Cabinet Committee on Cable, for which OTP provided staff support, completed its study and published its report. OTP is now preparing legislation, to be introduced later this year, that would implement certain recommendations of the Committee.

With regard to broadcasting, OTP submitted legislation to the Congress in 1973 proposing a revision of the FCC broadcast license renewal procedures. We have also developed legislation to provide long-term financing for the Corporation for Public Broadcasting, and we have forwarded to the FCC a preliminary report on VHF broadcast frequency assignments that may lead to new television stations to expand the viewers' choices in many localities.

In other areas, we have prepared legislation to amend the Communications Satellite Act of 1962 to reflect changes in international satellite communications that have occurred over the last twelve years and to clarify procedures for the establishment of new international satellite systems. We have submitted

policy recommendations to the FCC regarding frequency allocation and regulatory procedures for land mobile radio services. If adopted, these recommendations would result in the increased availability of economical two-way mobile radio and car telephone services for small businesses, local governments and private citizens. Two years ago, a similar OTP policy recommendation in the area of domestic satellites was adopted by the FCC, and that policy is now on the verge of implementation; this month, we shall witness the launch of the first domestic communications satellite for service to the United States.

We shall continue our studies of regulatory procedures and industry structure for common carrier communication services, especially with regard to the introduction of new technologies, with the objective of making these services available to the American public in a more efficient and effective manner.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the
Subcommittee on Treasury, Postal Service
and General Government
Honorable Joseph M. Montoya, Chairman
Appropriations Committee
United States Senate

May 30, 1974

STATEMENT BY
CLAY T. WHITEHEAD
DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget request of the Office of Telecommunications Policy (OTP) for Fiscal Year 1975. I believe you have our Budget Estimates for the upcoming year. With your permission, I would like to submit for the record a more detailed statement of the 1973-1974 Activities and Programs for our Office.

OTP has requested \$9,512,000 for Fiscal Year 1975, an increase of \$7,386,000 over our Fiscal Year 1974 appropriation. Most of this increase, \$6,098,000, reflects the consolidation into the OTP budget of the funding for the technical and analytical support provided to OTP by the Office of Telecommunications, Department of Commerce. This is being transferred from the Commerce budget to our own budget. The transfer and consolidation is the result of suggestions of this Subcommittee, your counterpart in the House, as well as the House and Senate Appropriations Subcommittees for State, Justice, Commerce, and Judiciary.

The \$6,098,000 requested in our budget for Commerce support activities includes an increase of \$1,717,000 (and 23 additional positions) for the support program itself. Most of this increase is necessitated by the rapid growth and change in the Federal Government's use of radio frequencies. This requires a larger number of frequency assignment requests to be processed and increases the workload of technical analysis needed to keep that growing number of communications, navigation, and radar systems from interfering with one another. OTP is now processing approximately 5,000 frequency assignment actions per month. We have implemented procedures requiring all Government agencies to submit their frequency plans well in advance so that spectrum availability can be evaluated prior to the commitment or expenditure of public funds.

In addition, \$1,100,000 is requested for our program of outside studies and research beyond the scope of our staff or that of the OT support group. We have reviewed carefully the need for this program of studies, especially considering

the inclusion of the Commerce support in our budget, and have concluded that it is by far the most effective and least expensive way of meeting research needs that require highly specific expertise or large research teams too expensive to retain on a full-time basis. The remaining \$188,000 increase is to provide for eight additional full-time employees, to reimburse GSA for the cost of leased space (as required by law this year), and to cover other minor increases in general expenses.

I would like to point out that the past year has been a very active one for OTP, and I would like briefly to highlight some of this activity.

In the field of public safety communications, OTP has prepared, in cooperation with other agencies, a comprehensive plan for emergency medical services. This plan provides for nationwide standardized frequencies for emergency medical use, specialized medical data handling circuits, communications networks for biomedical telemetry, and other features designed to provide rapid communications capability in medical emergency situations. Medical authorities have stated that this program could lead to the saving of thousands of lives each year. OTP has also continued its implementation of the policy relating to the "911" universal emergency telephone number.

In October 1973, OTP initiated a formal program for the planning and coordination of the Federal Government's telecommunications systems and services. The objectives are to identify communications activities and resources, to promote economy through sharing of facilities and elimination of duplication, and to encourage the use of more efficient communications to improve productivity. The program requires each department to document its long-term planning for communications and to submit plans for interagency coordination at an early date. The first reports under this program are to be submitted in August of this year.

In the area of cable television, the President's Cabinet Committee on Cable, for which OTP provided staff support, completed its study and published its report. To implement certain recommendations of the Committee, OTP has prepared legislation, now in the OMB clearance process, and hopefully it will be submitted to the Congress later this year.

With regard to broadcasting, OTP submitted legislation to the Congress in 1973 proposing a revision of the FCC broadcast license renewal procedures. We have also developed legislation to provide long-term financing for the Corporation for Public Broadcasting, and we have forwarded to the FCC a report on VHF broadcast channel assignments that could lead to an increase in the number of VHF television stations.

In other areas, we have prepared legislation to amend the Communications Satellite Act of 1962 to reflect changes in international satellite communications that have occurred over the last twelve years and to clarify procedures for the establishment of new international satellite systems. We have submitted policy recommendations to the FCC regarding frequency allocation and regulatory procedures for land mobile radio services. These recommendations have been taken into account by the FCC in its rulemaking proceeding, and, hopefully, will result in the increased availability of economical two-way mobile radio and car telephone services for small businesses, local governments and private citizens. Two years ago, a similar OTP policy recommendation in the area of domestic satellites was adopted by the FCC, and that policy has now been implemented; just recently we witnessed the launch of the first domestic communications satellite for service to the United States.

Last week, OTP submitted a report to Congress concerning a Federal Government program to assess the biological effects of radio waves. This second annual report summarizes activities by several Government agencies during 1973. The program is designed to produce a sound scientific understanding of how non-ionizing electromagnetic radiations affect man and his environment. Internationally, progress was made in establishing cooperative activities and technical exchange in this area. For example, an international symposium was held in Warsaw, and a United States delegation is now meeting in the Soviet Union.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

ON

BROADCAST LICENSE RENEWAL LEGISLATION

before the

Subcommittee on Communications
Honorable John O. Pastore, Chairman
Committee on Commerce
United States Senate

June 18, 1974

The basic structure for the American system of broadcasting, created in the 1920's and early 1930's, was premised on the twin concepts of private responsibility and public accountability. In that the broadcaster was authorized to use the public airways, a scarce resource, he would be responsible for serving the needs and interests of the people in his local community, and would thus be held accountable to the public for the service he rendered in executing this responsibility. As part of this structure, and clearly distinguishing broadcasting from other media, was the provision that broadcasters would be federally licensed. This fundamental decision was made by the Congress in the Radio Act of 1927 and again in the Communications Act of 1934.

The licensing system, thus, presents the Government with a unique dilemma. On the one hand, the Act requires the Federal Communications Commission (FCC) to grant and renew applications for broadcast licenses if the public interest, convenience, and necessity are served thereby. This necessarily means that the Commission will have to hold the broadcaster accountable for, and pass judgment in some way on, the broadcaster's programming. On the other hand, there is a fundamental Constitutional principle and public policy that the First Amendment should protect from governmental intrusion and interference those who

disseminate news, information and ideas to the public, so that the free flow of information to an informed electorate will be unimpeded.

This dilemma requires a particularly delicate balancing act on the part of the Government with respect to license renewal procedures. The manner in which renewals are treated is basic to the Government's relationship to broadcasting. The procedures and criteria governing the license renewal process inevitably have a profound effect on the daily operations of licensees and the way in which they determine and fulfill their public interest responsibilities. If broadcasters see instability in license renewal, they may seek economic and regulatory safety by rendering the type of program service that will most nearly assure renewal of their license. If the Government sets detailed performance criteria to be applied at renewal time, the result will most likely be that the Government's criteria, instead of the broadcaster's perceptions of his local community's needs and interests, will become the benchmark for measuring his public interest performance. Neither the broadcaster's nor the public's First Amendment interests in the free flow of information would be served in such situation.

Broadcasters should be permitted and encouraged to disseminate ideas and information, whether popular or unpopular, whether consistent or not with the views of any particular government. Broadcasters should be encouraged to serve the actual needs of their communities rather than some arbitrary definition of needs imposed by a federal bureaucracy. Yet, current and proposed license renewal procedures could give the FCC the power to renew licenses of only those broadcasters whose programming meets government-imposed standards or criteria. The price of achieving stability in broadcast licensing should not be the insulation of broadcasters from their local communities by making them more responsive to the Government.

Counterbalancing the goal of reasonable stability in the license renewal process, however, is the prohibition in the Communications Act against anyone acquiring a property right in the broadcast license and the First Amendment goal of promoting a diverse and unfettered flow of information and ideas. The Government has an affirmative duty under the Communications Act and the First Amendment, therefore, to foster competition in broadcasting and to assure that broadcasters are responsive to the needs of their communities. The spur of competition and the threat of non-renewal also are indispensable components of broadcast regulation.

These are lofty and complex considerations. There is room for differing views on the priorities and about the proper balance to be struck. The issues transcend short-run political differences. The decisions the Congress makes on license renewal and on other broadcasting and cable communications matters it will face in the next few years will have a major effect on the flow of information and freedom of expression in our society for the rest of this century.

The Congress can take an important step now by adopting a renewal policy that brings reasonable stability to the renewal process; that insulates the broadcaster from the effects of arbitrary and intrusive governmental influence; that turns a broadcaster toward community standards and away from Government standards; and that protects the public through clarification and enforcement of the broadcasters' public interest obligations.

I would now like to address myself primarily to the provisions of S. 1589, the Administration's renewal bill, and to H.R. 12993, the House bill, and analyze them in terms of the problems and objectives just discussed and needed changes in license renewals that should be made.

There are four essential changes that should be made with respect to present practice and procedures in the license renewal process:

(1) the term of broadcast licenses should be extended from three to five years; (2) there should be no requirement for a mandatory comparative hearing for every competing application filed for the same broadcast service; (3) restructuring of the broadcasting industry through the renewal process should be prohibited; and (4) the FCC should be precluded from using predetermined categories, quotas, formats and guidelines for evaluating the programming performance of the license renewal applicant.

1. Longer License Term

Both S. 1589 and H.R. 12993 would extend broadcast license terms from three to five years. We support this proposal as consistent with the public interest goal of stabilizing the renewal process.

In the early days of radio a three-year license term was a reasonable precaution for dealing with and supervising an infant industry. In keeping with the present maturity and modern complexities of the broadcasting industry, a five-year term for broadcasters would be appropriate and consistent with the terms for all other licenses granted under the Communications Act.

2. Comparative Hearing Procedures

Presently, the law requires an automatic, inevitably lengthy and costly, comparative hearing whenever a competing application is file

for the same broadcast service. Under the Administration bill, S. 1589, the procedures presently applicable to a petition to deny renewal of a license, which are unaffected by our bill, would apply also to a competing application. Thus, the challenger would bear the initial burden of demonstrating that the renewal applicant had not met the renewal criteria of the Act; the FCC would be able to exercise its independent judgment as to whether a comparative hearing was necessary; and a hearing would be required only if the Commission had cause to believe that the broadcaster's performance might not warrant renewal.

It is important to remember that at stake in a comparative hearing is the incumbent licensee's right to operate as a private enterprise medium of expression. In order to insure that such expression is robust, wide open, and unintimidated, this right should be revoked only if clear and sound reasons of public policy demand such action. This change would afford the licensee a measure of stability and some necessary procedural protections. We should not lose sight of the fact that being put through the effort and expense of a five to ten-year comparative hearing is itself a penalty that can be imposed upon a superior broadcaster simply by filing of a competing application.

The expectation of receiving a hearing automatically, with no additional burden of establishing deficiencies in an incumbent's performance, can only encourage the filing of competing applications for bargaining leverage, or harrassment. This undermines the stability of the renewal process, turning it into a forum for inflated promises, and increasing the risk that the process will be abused for ideological or political purposes.

H.R. 12993 lacks procedural safeguards incorporated in S. 1589 and thus fails to afford the broadcaster sufficient procedural protection from these risks.

3. Prohibition Against Restructuring Through the
Renewal Process

The third necessary change is to preclude the FCC from any restructuring of the broadcasting industry through application of various policy criteria in individual renewal cases. Under S. 1589, the FCC would be prohibited from using against the renewal applicant any uncodified policies. If the FCC wished to impose or change industry-wide policies affecting broadcast ownership or operation, it would have to use its general rule making procedures. This proposal would prevent arbitrary action against individual broadcasters; would foster the certainty and stability necessary to good broadcast operations; and would

have the additional benefit of assuring that all other interested parties would have opportunity to participate in the proceeding before the rule was adopted.

For that reason, we support that provision of H.R. 12993 prohibiting the utilization of cross or multiple ownership or integration of ownership and management policy principles as criteria in a renewal proceeding unless codified. It should be clear, however, that S. 1589, prohibiting utilization of any policy not reduced to a rule, affords both the broadcaster and the public much greater protection from capricious administrative action than does H.R. 12993, and is thus to be preferred.

4. Clarification of Renewal Standards and Prohibition Against Use of Predetermined Performance Criteria.

The Communications Act of 1934 fails to define what constitutes the "public interest, convenience and necessity," and in the intervening years this standards has come to mean different things to different people. Important and sweeping powers over broadcasting delegated to an administrative agency without any more specific guidelines as to their application than the "public interest," almost invite arbitrary, unpredictable, and ever-increasing regulation. Such vague standards also invite rampant second-guessing of administrative agency action by the courts.

While there is a need to clarify the public interest test used to evaluate the performance of a renewal applicant, we must avoid adopting a test that would risk abridging the First Amendment rights of broadcasters and the public. Such a risk is presented by the current impetus, expressed in the Commission's Docket No. 19154, for example, to establish performance quotas or program percentages as a means to judge a licensee's programming performance.

While such standards would appear to be purely quantitative criteria, it is difficult to conceive of an instance in which the Commission would not look beyond the mere numbers. Since program performance would be what is being measured, it seems reasonable to assume that the Commission would be driven inevitably to making qualitative judgments on program content within quantitative benchmark. If past regulatory history is a reliable indicator of future conduct, we could expect to see such quantitative criteria applied in an increasingly subjective manner and inflated over the years in an elusive game of measure and countermeasure between the regulators and the licensees.

If this should occur, the licensee would not be fulfilling his obligations to operate the station in accordance with the needs and interests of his community, but in response to the requirements of a Federal agency.

S. 1589 would therefore explicitly prohibit the FCC from considering any predetermined performance criteria, categories, quotas, percentages, formats or other such guidelines of general applicability with respect to a licensee's programming.

H.R. 12993 contains no prohibition against such quantification of the public interest and is deficient in that regard.

Both H.R. 12993 and S. 1589 would clarify present license renewal standards, but go about the task in different ways. S. 1589 provides that in addition to compliance with the technical, legal, financial and other requirements of the Communications Act of 1934 and the FCC rules, the FCC could apply only the following two criteria when evaluating a licensee's past or proposed performance under the public interest standard:

(1) the ascertainment obligation, by which the broadcaster must be substantially attuned to the needs and interests of its service area and make a good faith effort to respond to those needs and interests in his programming; and (2) the fairness

obligation, by which the broadcaster must provide reasonable opportunity for discussion of conflicting views on public issues.

These two criteria represent a distillation of what the public interest standard means in the context of license renewals. First, that the broadcast license is granted in trust for public service to a particular locality, and second, that the licensee, as trustee, is responsible for providing such service. The FCC's role would be limited to review of the licensee's reasonable and good faith efforts in executing these obligations. In the context of FCC review of broadcaster performance, "good faith" is an objective standard of reasonableness and not a subjective standard relating to the broadcaster's intent or state of mind. It makes clear the intent of Congress that the FCC is to focus on the community's definition of its needs and interests in programming rather than imposing on the broadcaster and the community the Commission's own judgments about what is good programming.

H.R. 12993 also would condition the renewal of a broadcast license on the retrospective assessment of a licensee's ascertainment efforts and whether his operations have been responsive to the needs, views, and interests of the public

in his service area as ascertained. This provision is similar, of course, to that of S. 1589. Both bills would turn the broadcaster back to his community to find what programming will serve the public interest, and are thus designed to reduce the role of the government in the relationship between a broadcaster and the local community which he serves. We therefore support this aspect of H.R. 12993.

Although we do not consider the House bill's failure to address specifically in this context the broadcaster's fairness obligation as a serious deficiency, the Congress should not allow the opportunity presented by license renewal legislation to pass without expressing the need for some substantial improvement in enforcement of the fairness obligation under the FCC's Fairness Doctrine.

The broadcaster's fairness obligation to present contrasting views on controversial issues of public importance is a long-standing requirement. It is intended to protect the broad interest of the public in fostering a diverse flow of information and ideas. We support the enforcement of this fairness obligation as long as it is done principally, and as originally intended, on an overall basis at renewal time. What we do not support is the present approach of enforcing this obligation on an

issue-by-issue, case-by-case basis. It is this enforcement process that has come to be known commonly as the Fairness Doctrine and has become so chaotic and confused.

If the Congress decides to make no specific reference to the fairness obligation, then the legislative history of the renewal bill should include a congressional statement that the preferred way to evaluate the broadcaster's journalistic responsibility is by overall review of his performance under the fairness obligation at renewal time rather than on a case-by-case basis throughout the license term. The legislative history of H.R. 12993 is silent in this respect, and that in itself is a deficiency.

H.R. 12993 would add some provisions to the Communications Act that S. 1589 does not cover. These include addition of the word "views" to the usual formulation of the broadcaster's ascertainment obligation; a requirement for FCC procedures governing negotiations between broadcasters and persons raising significant issues about station operations; a requirement for strict adherence to time limits for filing petitions to deny; removal of the exclusive jurisdiction of the U.S. Court of Appeals for the District of Columbia over license renewal matters and other appeals of certain decisions and orders of the FCC; requirement for continuing FCC study of deregulation in the broadcast service; and a requirement that the FCC complete action on Docket No. 18110, regarding cross-ownership matters.

I have no quarrel with most of these provisions. I believe, however, that the addition of the word "views" would inject confusion into the ascertainment process, and I support Senator Scott's bill in its deletion of the word. Moreover, I object to the section dealing with FCC procedures for good faith negotiations with complainants during the course of the license period. Of course, broadcasters should always deal in good faith with persons raising significant complaints. This is an important obligation that most broadcasters have met throughout the years. But I see no need to invite further FCC regulation of the relationship between the broadcaster and the communities he is licensed to serve, nor to cast this relationship in an adversary mold. The license renewal process itself, if improved by the legislation before the Congress, will provide adequate incentives for the broadcaster to cooperate with local public groups and interests, if the license is to be renewed.

* * *

The major concerns with H.R. 12993 are that it does not provide adequate insulation from the harassment that can arise from the present automatic hearing requirement for competing applications and from the increase in Government control of program content that could result from adoption of illusory quantitative program

standards and guidelines. These are serious deficiencies in light of recent broadcast regulatory history which has witnessed an increase in filing of competing applications, and an apparently inexorable accretion in regulatory power, and willingness to apply that power, to force compliance with administratively imposed program requirements. The 1960's, for example, were marked by the administrative and judicial evolution and application of the Fairness Doctrine on a case-by-case basis to specific program and commercial content; the WHDH case; and by the regulatory establishment of licensee obligations to carry specific types of programming. This process has continued into the 1970's, which have been marked by a variety of proposals to force broadcasters to carry counter-advertising, to prescribe how children's programs should be improved, and to set mandatory percentages of various types of TV programming.

Of course, the FCC and the courts have not had this territory entirely to themselves. Executive Branch officials in this and past administrations have also expressed their concerns about broadcast program content. But the Executive Branch has no life and death control over broadcasters, as do the other branches of government, so broadcasters can pay the Executive Branch less heed. But, given the trend of increasing Government controls, it is easy to see why broadcasters might get edgy when any official makes a critical comment.

Whether attempts to influence broadcast programming have come from the FCC, the courts, or the Executive Branch, it is the existence of regulatory mechanisms of program control that gives rise to the potential for abuse, and it is the existence of these mechanisms that the Congress should deal with through enactment of legislation.

I submit that much of the current political turmoil over abuse of FCC processes makes it clear that there is a definite need for increasing the insulation of the broadcaster from governmental intrusions in his First Amendment rights. This could be achieved by enactment of license renewal legislation that contains the essential safeguards of S. 1589 which are missing from H.R. 12993.

S. 1589 is designed to strengthen the First Amendment freedoms of broadcasters. All four changes in our bill promote the cause of less -- rather than more -- Government regulation and substitute, as much as possible, the voluntary exercise of responsibility by broadcasters for the often heavy and arbitrary hand of Government. In short, both S. 1589 and H.R. 12993 turn the broadcaster back to his service area for guidance on his program service, but only S. 1589 achieves this fully by insulating the broadcaster from arbitrary or capricious Federal interference in his First Amendment rights.

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT

ON

S. 3825

PUBLIC BROADCASTING FINANCING ACT OF 1974

before the

SUBCOMMITTEE ON COMMUNICATIONS
HONORABLE JOHN O. PASTORE, CHAIRMAN
COMMITTEE ON COMMERCE
UNITED STATES SENATE

August 6, 1974

Mr. Chairman, members of the Sub-Committee, I welcome this opportunity to appear before you today to discuss S. 3825, the Administration's proposed long-term funding plan for public broadcasting.

It was four years ago that I appeared before you at the hearing regarding my confirmation as Director of the Office of Telecommunications Policy (OTP). At that time, you reminded me of this Administration's pledge to submit a long-range funding plan for the Corporation for Public Broadcasting (CPB) and the local educational stations it is intended to serve. I promised that we would do so. I never realized then what an arduous journey it would be before we could keep that promise.

Working closely and constructively with public broadcasters, we have now devised a financing mechanism that satisfies as fully as possible the many objectives and concerns surrounding such an important and sensitive subject.

Mr. Chairman, the bill is analyzed in detail in the material we submitted with the legislation, and I offer it for the record. Therefore, I would like, in my time here today, to

review briefly how we arrived at this financing approach and how this approach serves and enhances the fundamental principles first set out in the Public Broadcasting Act of 1967.

Those principles are, first, that there must be local station autonomy from centralized control within the public broadcast system and, second, that there must be insulation of programming from Government control arising out of the use of Federal funds.

We all agree that program choices must be left to the judgment of broadcasters, independent of the wishes of Government officials. But a medium of expression funded through the Federal appropriations process can never be totally independent of Government. It matters little that governmental control is not actually exerted over programming; the mere potential for such control and influence can chill--or charm--the exercise of independent judgments by educational broadcasters. For these reasons, the Carnegie Commission on Educational Television strongly recommended permanent, insulated financing for the Corporation--that is, financing completely free of the budgetary process of the Executive Branch and the appropriations process of the Congress.

OTP rejected this recommendation, just as the Johnson Administration and this Sub-Committee did in 1967, when legislation created the framework, but not the financing, for public broadcasting. The reason for the rejection is that the Congress has an inescapable responsibility for holding the recipients of tax dollars accountable for their use of public funds. This is a valid and necessary governmental responsibility even when the recipients of such funds operate a communications medium.

Annual appropriations are just as unacceptable as permanent appropriations, because there is insufficient insulation between the budgetary and appropriations processes and sensitive programming judgments. A multi-year appropriation represents a reasonable balance between the conflicting objectives of insulated financing and Government fiscal responsibility.

We did not, however, urge multi-year appropriations prior to this time, since we felt an obligation to see that public broadcasting was developing in line with the goals of the 1967 Act--to do otherwise would be to set in concrete a system which worked at cross purposes to the intention of that legislation. The Administration's recognition of this responsibility was interpreted by some as an attempt to dismantle public broadcasting. But we were not quarrelling

with public broadcasting as envisioned in the 1967 Act. We did object to a fixed schedule, real-time public network controlled and programmed in Washington in a manner that made a sham of meaningful local participation.

Despite those problems, this Administration continued its support for the public broadcasting system, recognizing its contributions as well as its shortcomings. Our funding requests for CPB have increased from \$5 million in 1969 to \$60 million for 1975. But we rightly withheld support of a long-range, insulated funding plan, until the public broadcast system operated with checks and balances adequate to merit long-term funding without intervening Congressional review.

Over the years public broadcasting changed. The structure of the system and the policies of CPB and the Public Broadcasting Service now reflect the importance of a direct and real local station participation in programming decisions at the national level. We have reached the point where insulated funding of the system is not only appropriate, it is essential if public broadcasting is to continue its present course to excellence and diversity.

I would now like to turn to the provisions of the Administration's proposed bill. S. 3825 is more than an appropriation for public broadcasting. It completes the basic structure established in

the 1967 Public Broadcasting Act by providing for insulated funding, with Congressional oversight every five years, and fosters the goal of local autonomy by the "pass-through" of funds to local stations.

Under this financing plan, funds would be simultaneously authorized and appropriated on the basis of a matching formula. The Federal Government would match 40 percent of the entire public broadcasting system's non-Federal income for each fiscal year. This amounts to one Federal dollar for every \$2.50 contributed to public broadcasting by non-Federal sources.

This matching fund formula insures strong Federal support for public broadcasting and, at the same time, creates an incentive to generate non-Federal contributions. As the Federal share will represent at most 28 percent of public broadcasting's total income, the matching principle also assures that Federal funds will not dominate the financing of the system.

It is clearly necessary for the Administration to propose and for Congress to set a maximum amount--or ceiling--for the Federal funds available in a given year. The annual ceilings

proposed in S. 3825 reflect the Administration's estimate of the needs of the system. The ceilings also take into account the other demands upon the Federal budget, as well as the overriding need to economize in the face of current fiscal problems. I believe that the ceilings in our bill are adequate. Naturally, those in public broadcasting believe that higher ceilings are needed. However, this is the first venture into multi-year appropriations for public broadcasting and it is prudent to establish conservative limits at the outset.

The proposed legislation also serves the essential principle of localism by building into the system checks and balances against centralization of power over programs and operations. The Administration's support of localism often has been misconstrued to mean that we are against nationally produced and distributed programs and want only those that are produced and originated at local stations. Of course, there must be a balanced mix of nationally and locally originated programming, but this is not the main thrust of the localism principle. It is that local educational stations should have a substantial role to play and a voice in national programming decisions and a meaningful choice in deciding whether to broadcast those programs

to their local audiences. This concept goes back to the Congress' own intent in the 1967 Act. The system created by that legislation was based on the concept of localism not merely because local autonomy in and of itself was seen as a desirable social goal. It is also the best way to promote the more basic concept of diversity. Only when there is assurance of substantial diversity of ideas and information will a Government-funded medium of expression be compatible with our country's values; and it is only then that exercise of governmental budgetary responsibilities can be limited to five-year intervals.

To foster the principle of localism, S. 3825 requires that a substantial percent of the annual appropriation of the Corporation be passed on to the local stations for use at their discretion. In addition to insuring significant financial support for local stations, the bill requires the Corporation to consult with the stations in making decisions regarding the distribution of the Federal funds.

I recognize that, controversial as it has been in the past, the notion of pass-through funds to enhance local station autonomy in a structure of checks and balances is not particularly controversial now. As is apparent from the enactment of the

Budget Reform Act of 1974, however a multi-year appropriation is an extraordinary request to make of both the Executive and Legislative branches. But public broadcasting, and the viewers and listeners it serves, should ask for or accept no less from those of us in Government.

The financing of public broadcasting presents rare and unique circumstances in which the Executive and Legislative branches should give up some of the control they wield over federally funded programs by virtue of the annual authorization and appropriation process. This unusual funding mechanism is essential, if the public broadcasting system as conceived by the 1967 Act is to succeed. It is that simple. For that reason the Administration has put aside its own reservations and has proposed this bill. For the same reason Congress should loosen its control of public broadcasting's pursestrings and pass this legislation.

The past seven years have brought us all to a point at which we simply must trust the people who run the stations and the national public broadcast organizations and trust the American people who would be the true beneficiaries of this funding approach. I am not asking the Congress to have blind faith in public broad-

casting; just as I did not ask that of the President in urging him to send this legislation to the Congress. But we have created the system; it is a reality. We must now give it a chance to succeed according to the original vision for a truly independent and financially insulated system of public broadcasting. To do so, I have discovered, you must be willing to respect both reality and idealism. This bill is our best effort to combine the two. I commend it to you and your colleagues.

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT

ON

S. 1167

(INDUSTRIAL REORGANIZATION ACT)

before the

Subcommittee on Antitrust and Monopoly
Honorable Philip A. Hart, Chairman
Committee on the Judiciary
United States Senate

July 9, 1974

Mr. Chairman, members of the Subcommittee, I welcome this opportunity to discuss S. 1167 and the structure of the nation's domestic communications industry. At the outset, I should point out that when I say "communications," I am referring to all segments of our electronic communications industry with the exception of broadcasting. A discussion such as this is particularly appropriate at the present time. Unlike almost every other country in the world, the United States has a reliable, widespread low-cost communications infrastructure. In that sense, one of the major goals of the 1934 Communications Act has been achieved.

But the rapid innovation and decreasing cost of electronics has now opened a host of new ways to use and augment this basic communications capability. We must therefore seriously inquire where we are to go in the future and how we will get there. Before discussing the specific problems confronting us today with regard to competition in the field of communications, I believe it would be useful to touch briefly on the development of common carrier communications in this country.

The Subcommittee has heard a great deal about the history of the Bell System, its size, and its vertical and horizontal integration, and I do not want to take a lot of time with a history or description of AT&T. Suffice it to say that Bell

is where it is today for two principal reasons. First, like most public services requiring the installation of pipelines, cable and conduits in local geographic areas, telephone service has the characteristics of natural monopoly in each community. Secondly, Bell's early telephone patent position led to its rapid ascendancy in the field of telephony and made it a prime candidate for acquiring other telephone systems in the early days of the industry. These combined factors had the effect of insulating the Bell System from competition in the provision of switched telephone service. AT&T is uniquely large in American business: It employs 1-1/2% of our labor force, uses 10% of the new capital investment each year, and has revenues of over \$20 billion annually.

You have also heard a lot about the history of communications regulation, so I do not want to go into great detail on that subject, except to note that, in the early days of the telephone industry, regulation was not a significant problem. I suppose that this was due in large part to the fact that in the era when communications services were synonymous with public telephone and telegraph service, the national policy of universal service at reasonable rates was entirely in accord with Bell's own objectives. Indeed, Title II of the 1934 Communications Act set the legal framework for FCC common carrier regulation around the assumption that telephone and telegraph service were the only feasible communications services.

It is important to emphasize that up until about the 1940's common carrier communications services consisted exclusively of telephone and telegraph, both of which were characterized by natural monopoly features. But the advent of new technologies -- new developments in radio communications, microwave transmissions, solid state circuitry, and so on -- began to provide us new methods of communication. It became possible to send a message electronically from one point to another without having to go through the switched telephone network; and it became possible to use the telephone lines for a variety of new communications purposes. These new services, made possible by advances in electronics technology, do not have natural monopoly characteristics, and it became apparent that there was no need for all communications services and equipment to be provided by a single supplier such as the telephone company.

This was recognized as long ago as 1949, when the FCC allocated frequencies for mobile radio service to various private groups, as well as to companies not affiliated with the telephone carriers for the provision of mobile radio services to the public. Ten years later, in 1959, the Commission made point-to-point microwave frequencies available to private companies having large communications requirements. More recently, the FCC has decided to permit so-called "specialized common carriers" to provide city-to-city private line services and to allow domestic

satellite communications services to be provided by non-Bell entrants. Again, this was in recognition of the fact that there was no need for having any and all communications services provided by a single company.

In the equipment area, the telephone industry originally developed as a complete two-way communications service, and the telephone company historically supplied its customers with all elements needed for system function, including terminal equipment. As I mentioned earlier, the integration of service and equipment was based historically on the original Bell patents, and for years the telephone tariffs prohibited the attachment of any non-Bell equipment to the transmission lines. This prohibition has been challenged with increasing frequency since the 1950's, as customers began to discover that newer, less expensive equipment could be used with telephone lines, and the FCC, supported by the courts, has forced Bell to make some important exceptions to this rule.

None of these decisions to adapt the Communications Act to new technologies and new services seems remarkable in retrospect, but the difficulty and the slowness with which they were made show how the regulatory apparatus of the 1930's has come to be a major impediment to the natural growth of new communications services.

All of these decisions of the FCC and the courts are expressions of the fundamental public policy that consumers are more likely to get the services and products they want, and get them more quickly and at lower cost, if they are available from diverse sources. We have traditionally viewed monopoly as an exception to the general rule of competitive free enterprise, and the Supreme Court and the Congress have repeatedly stressed the broad public interest benefits of anti-monopoly policies. Monopolistic industry structure has been sanctioned historically only in key public services where necessary and where justified by the presence of natural monopoly characteristics. In short, the burden has been on the monopolist to justify his monopoly status, and regulation has been directed at protecting customers and other businesses from the monopoly.

But a curious and perverse twist has occurred in the communications industry. The Communications Act vested the FCC with regulatory jurisdiction over all interstate electronic communications. This was perfectly acceptable in 1934 when communications meant telegraph and switched telephone services, both of which were and are characterized by conditions that justify a monopolistic industry structure and, hence, extensive economic regulation. But with all communications services by statute under a regulatory umbrella, affirmative authorization is required before any new service can be offered -- to a few desirous customers or to the general public -- by a new entrant.

The FCC has thus been placed in the posture of "permitting competition," a posture that is entirely antithetical to our basic traditions. The burden and the benefit of regulation have shifted: The would-be provider of a new communications service, rather than the monopolist, is now required to justify his existence, and the monopolist, rather than the would-be customer of that new service, receives the protection of the regulatory machinery.

We have had a surge in innovation and cost-reduction in electronics; already it is finding its way into consumer products and business services. But the public benefit will be cut short if our regulatory mechanisms keep these electronic devices from being used in electronic interstate commerce over communications lines. The natural pressure from customers and would-be suppliers for competition with monopoly carriers is, under the existing provisions of Title II of the Communications Act, turning the Government into a cartel manager, apportioning markets among the "competitors." Indeed, we are even seeing the perverse phenomenon of many new entrants seeking regulated status in order to secure the protections and benefits that such status accords. In short, the 1934 regulatory apparatus works reasonably well for the purpose for which it was designed, namely, regulating basic telephone service; but that same

regulatory apparatus has become a barrier to competition and innovation required for the future direction of communications.

The end result is that innovation is discouraged; and customer needs, especially small-market needs, are not translated into incentives for new services. The major expense of developing a new communications service for the public is often the legal expense of fighting established carriers in the regulatory process for permission to offer the service to would-be customers, rather than the development of the service and equipment itself.

What, then, should be the fundamental principles upon which our future communications policy should be based? I believe there are four basic principles that should apply:

1. The public-utility monopoly in conventional telephone service is still appropriate today. The natural monopoly conditions that originally dictated this industry structure remain unchanged, and no one suggests that basic local telephone service be provided on anything but a monopoly basis. Indeed, thanks to the Bell System and to the regulatory policies of the past, the United States has universal, low-cost telephone service that is unparalleled throughout the world.

2. The monopoly concept should not be extended to other communications services. As I have indicated, we have traditionally viewed monopoly as the exception, not the rule, and unless the would-be monopolist or the public can demonstrate special public policy considerations that justify monopoly, it should not be permitted. Communications was once a homogeneous service that could properly be viewed as a public utility. But this is no longer the case. Most everyone wants or needs a telephone; but not everyone wants a private branch exchange, or access to data processing equipment, or a private line between two cities, or an automatic answering device, or a phone in his car, or any of the special capabilities which electronic technology can make available to particular users, packaged to meet their particular needs. At present there does not appear to be any service other than the local public telephone service where monopoly rather than competition would best serve the public interest.

3. Any new entrant should be free to offer any service except conventional public telephone service. In the absence of a showing of need to protect the monopolist from competition, there is no public policy basis for prohibiting customers and suppliers from doing business with one another. Indeed, industry innovation to meet a wide variety of customer needs

and interests will take place only if the customer is free to seek out whichever company offers him the service best suited to his needs and means.

4. Any telephone customer should be allowed to buy and use any communications device over the telephone lines. The natural monopoly features inherent in local switched telephone service relate to the installation of transmission lines and switching facilities; they are not present in the production and sale of terminal equipment. There are no technical or economic considerations which dictate that a consumer be prohibited from acquiring terminal equipment from whatever source he chooses to use with his telephone line to suit his particular needs. The consumer should pay for his access to the line and for the demands he places on the switching and transmission facilities of the telephone company. But what he does with the communications capability he pays for is his business -- just as what he does with his water, his electricity, and his gas is his business.

The established carriers have taken issue with the last three of these principles, and I would like briefly to address their arguments. Regarding the second principle limiting monopoly to public telephone service, the carriers have variously and from time to time both welcomed and eschewed competition in non-telephone services. Most recently, some of them have called for a moratorium on new entry, urging that competition in

communications should be permitted only if it can be shown that no adverse impact will result. This, of course, places the would-be competitor in the impossible position of having to prove the negative. But more importantly, what the carriers are saying in effect is that competition, rather than monopoly, has to be justified; this flies squarely in the face of the fundamental presumptions of our free enterprise system, and is clearly contrary to the FCC and court decisions, to which I have referred, establishing competition as the appropriate environment for non-telephone communications service.

It is certainly the American way for businessmen to seek preeminence in their businesses and to outdo their competition, and the telephone companies, including AT&T, are no exception. But the whole basis for our free enterprise system is that business success should be won competitively in the marketplace by providing the goods and services that customers want. It is unbecoming for a company the size and the stature of AT&T to use its legal, political and economic power to seek to extend its monopoly by governmental fiat into areas where monopoly is not called for. In my judgment, the Government cannot let such an effort go unnoticed or unchecked.

There is little doubt that the recent aggressive campaign by AT&T and other telephone companies to declare a moratorium on competition will have a deleterious effect on the development of new communications services by slowing the infusion of capital and raising the legal fees required to challenge the established carriers in the courts and at the FCC. It would be a wiser and more constructive course for these established carriers to promote and facilitate all kinds of communications -- expanding their business by expanding the use of their facilities.

With regard to the third principle -- that any new entrant should be free to provide any communication services other than telephone service -- it has been suggested that competition will cause a departure from nationwide rate averaging. The allegation is that competitors in the private line, inter-city communications market will seek to serve only low cost, high-density routes between urban centers which until now have subsidized other routes. If this is true, I would simply say that it is not clear that there is or has been a national policy encouraging business users in urban centers to subsidize business users elsewhere. The policy of nationwide rate averaging may well continue to be appropriate within the standard public telephone service. However, it is inappropriate to extend that concept beyond conventional telephone service, and the argument that competition will destroy rate averaging is just not true.

It is also alleged that business users of communication services subsidize residential telephone users, and that competition in private-line and business terminal equipment markets would destroy that subsidy. Again, assuming the subsidy exists, I question whether its elimination would have any noticeable impact on the rates paid by residential users, particularly since the competitive markets involved here account for only about 5% of total Bell System revenues.

Consumers end up paying for most of the service anyway as business users pass on their higher communications costs in the form of higher prices for the goods and services that they offer to the public. Moreover, such averaging gives the telephone companies incentive to focus their new products and services on the more lucrative, higher-profit area of service to businesses rather than residential users.

In the final analysis, I do not believe that these subsidies, if in fact they exist, are so significant or desirable as to warrant denying the public the benefits that a competitive environment will make possible.

Finally, as to the interconnection of non-Bell equipment into the Bell network, it is said that this practice will result in "harm to the network". I cannot conclude that this problem is really significant. How is it, for example, that a radio can be moved from one State to another and still work, despite

the fact that no one has a national monopoly on either the supply of electricity or the manufacture of radios? How is it that telephone users in those areas of the country served by non-Bell telephone companies can call anywhere in the country? There are any number of mechanisms, formal and informal, by which standards can be agreed upon that will protect the telephone network from harm. These standards are very simple technically, and are well within the capability of our sophisticated electronics industry. In any event, Government, through the FCC, the National Bureau of Standards, and the National Science Foundation, is well equipped to assist the industry.

The inescapable conclusion, Mr. Chairman, is that competition and monopoly must coexist in our communications industry. In such an environment, the major policy issues are: (1) which non-monopoly services should the telephone companies be allowed to offer, and on what basis; and (2) what are the responsibilities of monopoly telephone companies in facilitating the use of their lines?

One obvious approach is simply to exclude Bell from offering any other than switched public telephone service, but I believe this is an unacceptable course. The Bell System has given us the finest, most modern telephone system in the world, an accomplishment of which it can justifiably be proud. We should be most reluctant to deprive the Nation of the productive

potential of such an organization. Bell, like any other company, should be allowed to compete in the offering of any non-telephone service where compelling public policy reasons do not dictate otherwise.

Once it is found that there are no such compelling reasons, the principal regulatory problems involve the possibility of purposeful or inadvertent abuse of monopoly power to gain unfair advantages in the competitive sphere. One such problem is the potential for cross-subsidy -- the pricing of competitive services below cost and making up the difference by charging higher rates for monopoly services. The identification of cross-subsidies is not easy, involving conflicting methods of cost allocation and problems of availability of and access to proprietary cost information. The FCC, for example, has been considering the pricing policies of the established common carriers for at least the last six years, and no definitive results have yet been forthcoming.

The Communications Act itself compounds the difficulty of the cross-subsidy problem. For example, the Commission may lawfully suspend a tariff only for ninety days while it investigates the reasonableness of the new rates, but after the ninety-day period the tariff automatically goes into effect. If the Commission has not completed its investigation by that time, it may issue an "accounting order" whereby revenues under the new tariff are subject to refund to customers if the rates are found to be

unreasonably high. What may have been an appropriate procedure for protecting the public against unreasonably high rates for monopoly services is of no value in protecting competitors against lost customers if the rates are found to be set below costs, or if inappropriate costing methods have been used.

A second major problem that arises when the telephone company participates in competitive markets is its opportunity to restrict the use of its monopoly telephone network by its competitors. This Subcommittee has heard charges and counter-charges regarding access by specialized common carriers to local loop service and discriminatory practices directed against users of non-Bell terminal equipment. It would be inappropriate for me to comment on the merits of any of these allegations, except to say that liberal, non-discriminatory interconnection with and access to the switched telephone network is feasible and essential. Moreover, there appears to be no legitimate reason for restricting the shared use and resale of the telephone company's services; entrepreneurs who wish to develop new markets or facilitate the use of communications services by serving as brokers should be permitted to do so. Anti-competitive practices that restrict access should be dealt with vigorously.

The thrust of my testimony to this point, Mr. Chairman, is that competition can, and indeed must, work in the communications

business if the American public is to secure the benefits of new services and lower costs. Outmoded regulatory mechanisms that protect monopoly rather than constrain it cannot be allowed to carry over into the assumption that it is somehow "natural" for all communications to be a monopoly. The problems posed by the existence of a monopolist in a competitive atmosphere are enormously complex, but this should not cause us to abandon the effort to accomodate the two. As I mentioned earlier, the advantages offered by Bell's participation in some markets are significant, and the task that confronts us now is to find new ways to insure that Bell's participation is fair and equitable.

It would be easy, as many have done, to ascribe the problems that confront us today to inept regulators and greedy businessmen; but that would be incorrect and unfair, and would mislead us. In my judgment the FCC and the courts have done a commendable job trying to fit the 1934 Communications Act to the needs of a more modern economy; and the businessmen of AT&T are among the most competent and dedicated I have come in contact with. Rather, the problems stem from the fact that our regulatory mechanisms and the structure of our common carrier communications industry are becoming obsolete. We should seek to redefine the regulatory framework within which the FCC and the industry operate, rather than cast blame on those who seek to do the best they can under an outdated regulatory framework.

This updating of our communications policy can be achieved in several ways. Title II of the Communications Act should be revised, systematically and thoroughly, to specify separate regulatory mechanisms for monopoly services and competitive services, and to establish firmly the principles I outlined earlier. Also, the anti-trust laws should be enforced to ensure that regulatory mechanisms cannot become a haven for escape from competition. And the FCC should be encouraged by the Congress to continue to facilitate the availability of a wide range of communications capabilities.

Finally, a restructuring of the communications industry may be necessary if competition and monopoly are to coexist constructively. However, I do not believe that the precise measures contemplated by S. 1167 are appropriate. Specifically, I seriously question the advisability of establishing yet another Government agency, such as the Industrial Reorganization Commission that is contemplated by this bill, to deal with these problems. We should first streamline and modernize our existing regulatory machinery before we add additional layers of regulatory control.

We in Government should reaffirm that in the absence of compelling unusual circumstances our economy will be based upon competition, and insist that that policy be pursued. If we modernize our

Communications Act and our regulatory process to conform to that policy, we can expect that we will continue to have the finest telephone system in the world and will have, in addition, a host of other diverse communications services available to those in industry and the public who want or need them.

Judy

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
ON
PUBLIC BROADCASTING AUTHORIZATIONS

before the

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

June 12, 1973

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the proposed authorization for public broadcasting.

As you know, OTP supports the principle of long-range financing and acknowledges the inadequacy of current funding arrangements for public broadcasting. We have, nevertheless, taken the position that long-range funding cannot be undertaken before there exists a greater proximity between the goals of the 1967 Public Broadcasting Act and the public broadcasting system's present structure and operation.

Appearing before this Subcommittee in February of 1972, I attempted to outline the areas in which the public broadcasting legislation and public broadcasting operation had gone their separate ways.

I noted at that time that lack of CPB financial support for station operations seriously undermined the autonomy of local stations, the keystone of public broadcasting; that a fixed-schedule, real-time network was coming to

pass, despite the plain meaning of the 1967 Act; that homogeneity through centralized program centers and mass audience techniques existed where the Act called for diversity; that public broadcasting too often failed in striking a reasonable balance between local and national programming, and among cultural, entertainment, informational and instructive programs.

Now this is not to say that public broadcasting did not have many substantial achievements. Along with the achievements there has been continued support from the Administration in the form of requests for appropriation from \$5 million in 1969 to \$45 million in 1974. I think this demonstrates a real recognition of the achievements of public broadcasting, and demonstrates the falsity of the charge that we are trying to dismantle the system. We must recognize, however, that public broadcasting is meant to be more than a government-funded, high-class variation on the commercial network theme. Therefore, we have taken the position that, until there is whole-hearted compliance with the policies of the 1967 Act and the future directions for public broadcasting are clear, the Congress should not be expected to adopt a plan of long-range insulated funding.

Permit me then, against such a background to turn to the CPB-PBS agreement, which has dealt with some of these concerns, and which, I am delighted to say, has made progress in some areas. For example, OTP had called for a graduated distribution formula to assure local stations of financial support for their local operations. The CPB-PBS compromise incorporates this proposal, and strengthens the autonomy and independence of local public television stations by permitting local stations to share CPB funds on a proportion which increases as the level of Federal funding increases.

The consultative process created by the Agreement may not be the final answer to the problem of local station participation in program decision making, but it does remove some of the obstacles and inspires confidence that CPB and the local stations can work together in finding an equitable solution. Yet the strength of local stations in a public broadcast system of checks and balances will not be felt until the stations have realistic programming alternatives to the programs fed by the national network. We shall continue to work toward that goal.

Similarly, the Agreement's approach to the interconnection problem is a positive step in attempting to minimize the dangers of a fixed-schedule, real-time network, although there remain questions which only time and experience can answer. Whatever your opinion of the CPB-PBS compromise, several major areas require watchful waiting; indeed, if the compromise itself calls for quarterly review by the Partnership Review Committee, is it not appropriate for Congress to review that partnership in an authorization hearing one year from now?

But there are additional reasons why a one year authorization would be appropriate at this time. The future of public broadcasting is still left somewhat uncertain by this compromise. It is only realistic to adopt a wait and see attitude when faced with something which promises to do so much in so vast an enterprise as public broadcasting. It was appropriate in 1967 when Congress wrote the Public Broadcasting Act; it is appropriate now. Indeed, it is not inappropriate to recall that the one time Congress did provide multi-year authorizations, public broadcasting moved to centralized program production and fixed-schedule networking, the two major causes of our present difficulties.

Although the CPB-PBS agreement represents a step forward in dealing with such problems, the new PBS must use caution or else it could itself become a centralized bureaucracy, unresponsive to the needs of its members and forcing them to remit a portion of their grants from CPB to finance PBS operations.

Further, still unresolved is the question of journalistic public affairs programming on a taxpayer-supported broadcasting system. While the Agreement's plan to monitor objectivity and balance in programming is a good faith effort to deal with the problem, it is still fraught with danger.

If Federal funds are used to produce controversial public affairs programming without strong assurances of the objectivity and balance called for in the 1967 Act, the government has abdicated its responsibility to see that public broadcasting is used for all citizens. If the government itself oversees the balance and objectivity, it by that very fact has a chilling effect on vigorous broadcast journalism. It is a dilemma inseparable from government-funded news and information programming.

With this background, let me turn to the specifics of H.R. 2742 and H.R. 5045, which are identical, as well as S. 1090, which was passed by the Senate and referred to the House. First, the level of funding in these bills is too high. When all other demands in the federal budget are considered, it is unfortunately not possible to devote \$340 million to public broadcasting for Fiscal Years 1974, 1975, 1976 and 1977 (H.R. 2742; H.R. 5045), or \$130 million for Fiscal Years 1974 and 1975.

Appropriations at this level would represent an extraordinary increase in the rate of funding. Moreover, until the basic problems underlying public broadcasting are resolved, and until the CPB-PBS Agreement can be assessed in its operation over a year, the Congress should review the funding authorization next year and observe the Corporation's progress in its new partnership role with PBS.

The Administration's bill, H.R. 4560, provides for the healthy development of public broadcasting by extending for one year and by significantly increasing CPB's current authorization. This period would allow public broadcasting a real test under its new agreement and allow Congress time for evaluation. The Administration's bill requests \$10 million increased funding for public broadcasting, for a total of \$45 million. In addition, the HEW request for Fiscal Year 1974 funding of the Educational Broadcast Facilities Program will be at a \$13 million level, even though other HEW programs are feeling severe budgetary pressures.

Mr. Chairman, Dr. Killian has referred to the CPB-PBS compromise as beginning a new era in public broadcasting. I have noted necessary reservations to certain provisions of that Agreement, but I should like to say for the record that public broadcasting has demonstrated real progress in getting its house in order. The time is now right for the Administration, the Congress and the CPB Task Force on Long-Range Funding to renew our joint efforts at achieving a meaningful, long-range funding program for public broadcasting. We hope that with all of us facing up to the problems there can be a more constructive mood among government, CPB, and the local educational stations.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY
ON
PUBLIC BROADCASTING AUTHORIZATIONS

before the

Subcommittee on Communications
Honorable John O. Pastore, Chairman
Committee on Commerce
United States Senate

March 28, 1973

Mr. Chairman, and members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the two pending public broadcast authorization bills, S. 1090 and S. 1228.

Federal funding of public broadcasting presents a dilemma. On the one hand there is a need for the government to support public broadcasting. On the other hand it should be insulated from government interference. The Public Broadcasting Act of 1967 attempted to deal with this dilemma by creating a system based upon the "bedrock of localism" and, by creating an institution--the Corporation for Public Broadcasting--to serve the needs of local stations.

Unquestionably, the Corporation in the few years of its existence has made important contributions to our nation's educational and cultural life. In view of these achievements and the promise of educational broadcasting in general, this Administration has demonstrated its support. We have sought increased appropriations for the Corporation, from \$5 million in Fiscal Year 1969 to the present \$45 million requested in Fiscal Year 1974. Moreover, the Administration has supported steady increases

in funding for the Educational Broadcast Facilities Program.

Nonetheless, despite public broadcasting's positive achievements, there remained serious deficiencies. The purpose of the 1967 Act was to prevent local stations from ever becoming mere conduits for the programming of centralized production sources. But there was a tendency toward centralized program decision-making by CPB and PBS, its wholly-funded interconnection service.

Interconnection was viewed by the Congress primarily as a means of program distribution and not as a means of establishing a fixed-schedule network. But the distribution of programming over the interconnection system by PBS amounted to precisely the kind of federally-funded "fourth network" which the Congress sought to avoid. Such a monolithic approach to public broadcasting is inimical to the letter and spirit of the Public Broadcasting Act.

Another problem area is the funding of public affairs programs. Public affairs and current events programs are important components of public broadcasting's contribution to the flow of information. Indeed, this type of programming is recognized as part of every broadcaster's responsibilities under the Communications Act of 1934. But there

is great concern regarding the use of federal appropriations to produce and disseminate such programming at the national level. This is especially true in view of the tendency to centralize its production in New York or Washington. In short, reliance on federal monies to support public affairs programming is inappropriate and potentially dangerous. Robust electronic journalism cannot flourish when federal funds are used to support such programming.

All of these problems affecting the structure and operations of public broadcasting vitally affect the issue of long-range funding. It is, of course, possible to amend the Public Broadcasting Act to convert the system into one built upon the concept of a centralized network. The Congress could then consider long-range funding for such a system. But unless and until Congress abandons public broadcasting as a community centered enterprise, multi-year funding must await the resolution of the present uncertainties and deficiencies. The problems facing public broadcasting in 1973 are quite similar to those that confronted the Congress in 1967. There is no greater rationale for large-scale, multi-year funding now than there was then.

In 1967, the question of public broadcasting's role was vigorously debated. The debate was thorough and resulted in legislation which placed the stress on localism--a system in which control would flow upward from strong local stations to the national entities. The future funding of such a system, which was the result of much thoughtful and constructive debate, should be right rather than rapid.

We must support public broadcasting, both for what it has accomplished and for its future promise. This is the reason the President is requesting measured increases in funding for CPB.

With this as background, let me turn to the specifics of S. 1090. First, the level of funding, is in my judgment, too high. When all of the demands of the Federal budget are considered, it is impossible to devote \$140 million to public broadcasting in Fiscal Years 1974 and 1975. Second, until the basic problems that I have discussed are resolved, the Congress should review the funding authorizations annually and observe the Corporation's progress in dealing with these problems.

The Administration's bill--S. 1228--provides for the sound development of public broadcasting by extending for

one-year CPB's current authorization. This one-year extension would allow for the growth of public broadcasting to proceed soundly while all elements of the system make progress in resolving the issues under debate.

Continuing the Administration's record of requesting increased funds for public broadcasting, the authorization would add \$10 million to CPB's current level of funding, for a total of \$45 million. Unfortunately, CPB did not receive its full authorization for Fiscal Year 1973. Recognizing that CPB appropriations were caught up in the President's veto of the Labor-HEW appropriations, we now ask for the same increase requested in Fiscal Year 1973 and regret that it is now one year later. In addition, the HEW request for Fiscal Year 1974 funding of the Educational Broadcast Facilities Program will be at a \$13 million level, despite severe budgetary pressures affecting other HEW programs.

Mr. Chairman, I should like to close on a hopeful note by alluding to the efforts now underway to rationalize and improve the relationship between CPB and the local stations. The Corporation must take into account and respond to the needs of all classes and categories of public broadcasting stations around the country. In undertaking these efforts,

a fundamental principle must be maintained. It is that decentralization of programming activities is the cornerstone of the public broadcasting structure. Local stations should play a major role in decision-making in matters of programming and ultimately must have a realistic choice available in deciding whether to broadcast any CPB-supported or distributed programs. But this cannot be accomplished if the role of the local station is limited to some form of representation in national entities that make program decisions.

The best way to proceed is to implement the plan of the Public Broadcasting Act and its rejection of use of interconnection facilities for fixed-schedule networking. This would give local stations the autonomy and authority for complete control over their program schedules. In particular, it would be unfortunate if we were to have a centralized bureaucracy through which the Corporation would have to deal with the stations. The goal should be to create an environment in which the Corporation works directly with all the stations and seeks at all times to preserve their independence and autonomy.

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Communications and Power
The Honorable Torbert H. Macdonald, Chairman
Committee on Interstate and Foreign Commerce
House of Representatives

February 3, 1972

Mr. Chairman, Members of the Subcommittee, I welcome the opportunity to appear before you today to discuss the pending public broadcast funding bills--H.R. 7443, H.R. 11807, H.R. 12808--and the Administration's plan for increased financing of public broadcasting in Fiscal 1973.

Mr. Chairman, I realize that you have been critical of us for not coming forth with a long-range financing plan for public broadcasting. I regret the delay. I have wrestled with this problem for almost a year. Others have tried for years. I need not tell this Subcommittee that it is an exceedingly complex and difficult problem--one that involves basic assumptions about the role and structure of the public broadcasting system in our country and how Government should interact with that system. We expect to solve this problem before the end of Fiscal 1973. With due deference, I do not believe that the Bills under consideration solve it. In order to comment specifically on the Bills, let me discuss briefly the background of our efforts over the past year.

BACKGROUND

Last year, the President's budget message stated that an improved financing plan would be devised for the Corporation for Public Broadcasting (CPB). My Office worked closely with representatives of CPB, the National Association of Educational Broadcasters (NAEB), HEW, the FCC, and other interested groups. But we were not able to develop an acceptable long-range

financing bill. One of the principal issues concerned the method for CPB distribution of operating funds to local educational broadcast stations, and whether the method should be specified in the statute. We feel strongly that a distribution formula should be set out in the statute to assure that the local entities would have the financial strength to counterbalance the growing dominance of CPB and its network arm--the Public Broadcasting Service.

Indeed, the Carnegie Commission felt so strongly about the need to disburse operating funds free of the Corporation's discretion that it recommended an approach that would have had HEW distribute all operating grant funds to the stations. As Dr. Killian stated in his testimony on the 1967 Act, the principal reason for this separation of funding responsibilities was a fear that, if the stations had to look to the Corporation for their "daily operational requirement," it would lead "naturally, inevitably, to unwise, unwarranted and unnecessary centralization of educational broadcasting." However, the Congress provided for operating funds to come from CPB, and operating support was to have been one of CPB's principal responsibilities. Unfortunately, CPB has never devoted enough funds to this purpose.

By October it was clear that we were not making any progress toward an acceptable financing plan, and I wanted

to explain the situation to the educational radio and TV stations, many of whom are in severe financial difficulty. I did so at the annual NAEB Convention. The particular financing controversy was only illustrative of the underlying issues concerning the shape the Congress wanted public broadcasting to take, and I focused on these fundamental issues.

Reduced to their essentials, my concerns are that:

1. The independence of the local stations has suffered because CPB has not devoted sufficient funds to station support grants and grants for purely local program production.
2. Local station autonomy has been undercut by the CPB and PBS use of interconnection facilities to establish a fixed-schedule, real-time network contrary to the intent of the 1967 Act.
3. Program diversity has not been enhanced, since national programs are produced or acquired in effect by CPB's "in-house" production entities, which are also local broadcast stations. Moreover, the national programming seeks a mass audience for news, public affairs, and entertainment programs.
4. Not enough attention is devoted to achieving two important balances: the balance between local and

national programming, and the broad balance among cultural, entertainment, news, public affairs, educational and instructional programs.

H.R. 7443 and H.R. 11807

With this as background, let me turn to the specifics of H.R. 11807 and H.R. 7443. First, as to both, the level of funding is too high. When all of the other demands on the Federal budget are considered, it is unfortunately not possible to devote a total over five years of \$500 million (H.R. 7443) or \$575 million (H.R. 11807) to public broadcasting. Moreover, H.R. 7443 provides all of these funds to CPB, without specifically requiring any distributions for station support. H.R. 11807 is better, since it requires CPB to earmark at least 30 percent of its funds for this purpose, but here too the amount and nature of the distributions to particular licensees are left to CPB's discretion, albeit a discretion that must be exercised in consultation with public broadcasting representatives. First, we think that a more substantial share of CPB's funds should be passed on to the local stations. When CPB funding gets as high as \$65 million, as it would in the first year of funding under this bill, at least half should go to the stations. Thereafter, an even greater proportion of CPB funds should be distributed to the stations.

Second, H.R. 11807 does not specify the criteria and methods of distributing operating funds to the stations. We prefer to see a matching formula set out in the statute, as it is in the facilities grant portion of the Communications Act. This would give the stations the incentive to generate financial support at the local level. The stations would know that Federal matching funds would come directly to them instead of being disbursed from a Treasury fund to CPB. There's no immediacy to it when CPB then has to set aside a fraction of the match and distribute it to all licensees pursuant to industry-wide criteria. The stations are likely to be more enthusiastic about local fund raising when there is an immediate prospect of a direct match. Finally, it would heighten the local stations' sense of autonomy and independence if they had available a stable source of funds of a known quantity, as a matter of statutory right and not CPB discretion.

Furthermore, H.R. 7443 would not allow CPB to foster the use of new communications technologies, such as video-cassettes, broadband cable, and communications satellites. H.R. 11807 is preferable in that it authorizes CPB to encourage educational and instructional uses of these technologies.

H.R. 12808

Turning now to H.R. 12808, we have not yet assessed the full import of some of the modifications this Bill would make in the present Act. However, the Bill addresses some very real issues, such as the restoration of balance between the local stations and CPB. The Bill would take the interconnection and station support functions away from CPB, and have HEW support the operating costs of the stations. The stations could then make their own interconnection arrangements. Indeed, a number of educational broadcasters are considering the feasibility of just such an arrangement. Some other features such as station representation on the CPB Board of Directors; prohibitions on promotional and lobbying activities, as well as on funding of programs on partisan political controversies, are worthy of consideration. Other features of the Bill, such as the limitation on funding from a single source and the mandatory GAO audit, may be too restrictive. In any event, the cumulative effect of all these features might be to erode the functions that are both necessarily and properly performed at the national level by CPB.

ADMINISTRATION PROPOSAL

In addition to the specifics of the pending long-range financing Bills which I have discussed, as a general matter, we do not believe that a long-range financing plan should be pressed at the present time. This is not to say, however, that the difficulty in devising such a funding approach should stand in the way

of continuing the sound development of public broadcasting at a time when its responsibilities are many but its resources are spread thin. Therefore, the Administration's Bill provides for a oneyear extension of CPB's authorization at an increased funding level and directs operating support grants to the local stations. The reasons we have not submitted a long-range financing plan are neither complex nor devious. One reason the Congress chose to defer long-range financing in 1967 was that CPB was an unknown quantity. It would have to go through a development phase before its structure would be sufficiently set to warrant such a financing plan. Today that development process is continuing. The relationships between the central organizations and the local stations are still relatively unclear. Indeed, the CPB Board has just authorized a study to define these relationships. Until these matters are clarified and the directions are better defined, we believe that it would be more sound for the Congress not to rush forward with a long-range plan during this Session.

The 1967 Act needs substantial refinement to provide a stable source of financing, to define clearly and carefully the respective roles of CPB and the local stations, and to take account of technological changes that have occurred since 1967. While these revisions are under consideration, our one-year extension Bill would allow the growth of the public broadcast system to proceed soundly, during the critical development stages it is now in. Continuing the Administration's

record of increasing funds for public broadcasting--the appropriations will have increased by \$40 million from Fiscal 1969 to Fiscal 1973--the present Bill adds \$10 million to CPB's current level of funding, for a total of \$45 million, of which \$5 million must be matched by funds derived elsewhere.

In addition to the extension and increase in authorization for CPB, our Bill would provide a significant portion of Federal funds to local educational broadcast stations. CPB currently distributes over \$5 million in general support grants to the stations. Our Bill would add \$10 million for Fiscal 1973 and establish a mechanism for distributing a total of \$15 million to the local stations, so that they will be effective partners with the Corporation in the development of educational broadcasting services for their communities.

The Bill provides for \$2 million to be distributed to public radio stations--almost doubling the general support funds which the Corporation now provides them. Because of the large number and enormously diverse nature of public radio operations, the manner of distribution of these radio funds is left to the discretion of the Corporation, to be exercised in consultation with station representatives. The proportion of the \$15 million devoted to radio represents the approximate share of total non-Federal public broadcasting support which goes to radio.

The statutory mechanism would also make available \$13 million to approximately 140 licensees of public television stations. Two types of grants would be used for this purpose. First, there would be a minimum support grant of \$50,000 or one-quarter the licensee's total non-Federal, non-CPB supported Fiscal 1971 budget, whichever is less. Second, the licensee would be entitled to a supplemental grant based on the proportionate amount which his Fiscal 1971 operating budget, exclusive of Federal and Corporation grants, bore to all licensees' operating budgets during Fiscal 1971. There would, however, be an upper limit on the amount of the supplemental grant, since no licensee's operating budget would be considered to exceed \$2 million for grant purposes.

We anticipate that, taking both types of grants into account, and with a total non-Federal Fiscal 1971 budget of over \$117 million for all licensees, the minimum distribution in the typical situation would be around \$50,000 and the maximum would be approximately \$180,000. Station support at this level of funding would give the licensee some breathing time to work with all of us in devising a more long-range financing plan.

CONCLUSION

Mr. Chairman, I have endeavored to summarize the Administration's position on public broadcast funding. I hope that I have given you some idea of the problems that concern us,

and why we believe it is better for now to seek increased funding for another year. We will continue to work constructively and earnestly next year with educational broadcasters to resolve some of the issues that your hearings have aired.

The Congress in the 1967 Act attempted to give practical effect to the Carnegie Commission's eloquent plea for freedom in the public broadcasting system, excellence in its programming, and diversity within that excellence. Despite the arguments of some that diversity and decentralization are impractical and unworkable, or at least not the best way to enhance the national impact of public broadcasting, the Administration is not yet ready to abandon the Congress' grand design. CPB has made major strides in the relatively short time since it was created. The programs it has supported show that it has a great potential in helping the educational broadcast licensees meet their public interest obligations. There should be no doubt on this point. I have focused attention on problems with the public broadcast system because there are problems. But there are also accomplishments and successes that would have been beyond the capacity of educational broadcasting if there had been no CPB.

CPB is still going through that extraordinarily difficult process of self-examination and self-definition. Whether this maturation process evolves an entity that can live up to the

potential envisioned for it depends to some extent on determinations reached by Government. We are continuing to play our role in a way that we feel best serves CPB, the local stations, and the public. We agree with the view, expressed strongly during these hearings, that there must be a workable long-range financing plan, as contemplated by the Public Broadcasting Act of 1967, and the Administration intends to submit one before the proposed extension of authorization expires.

7/14/70
Steve Doyle

QUESTIONS

(A) * 1. How much money is spent on government communications each year?

2. *What will be the role of the*
~~How do you visualize your relationship with the~~
Department of Commerce?

~~3. What will you be doing in the immediate and long-range future about computer communications?~~

~~4. What are your views on the adequacy of the Communications Satellite Act of 1962 and the rest of our communications law?~~

(A) * 5. We have heard considerable discussion about a radio frequency crisis, and particularly, with respect to satellite communications, concern has been expressed about the problems of orbital parking slots and adequate available frequencies. Will you comment on these problems? *[If necessary or approp]*

~~6. As the functions of OTP are contemplated, one of its principal responsibilities will be to work in the area of spectrum management. Can you comment generally on what you propose to do in this area?~~

7. What do you think of the Rostow Report recommendations on merger of the U. S. international carriers into a single "chosen entity"?

Friendly Questions

As you know, there has been little positive progress during the past ten years of so on cable. All of a sudden, it seems, we had a breakthrough, a compromise agreement. Now, as I understand it, you had a definite role in bringing about an interim solution in the dispute between cable, broadcasters, copyright people. We have been able to move ahead in this area and of course we look forward to the Cabinet report on cable. Would you describe this dispute and how this agreement was reached. I am very curious and I think you are to be commended for this.

The domestic satellite technology greatly interests me. I realize that the technology has been there for some time. The political and economic considerations are, of course, another matter, and when you mix technology with these matters, well, there will always be delays. Every consideration must be taken into account. Now as I understand it, you favored an open entry approach, that is, anyone who has the technology should be able to put up a satellite. I approved of this approach rather than the imposition of severe restrictions favored by some people. Would you tell us all that you know about this issue? The role you played in bring about a solution to this very difficult problem?

Since I have been in the Congress there have always been discussions about the need for an effective agency in the Executive Branch for communications policy making. Truman proposed it, Kennedy established something called the Office of Telecommunications Management, Johnson retained it and commissioned a task force to study this problem, but still there was no one agency which could effect long range, intelligent policies in this very complicated area of communications. Now, President Nixon set up your Office. He approved it and I would like to say that you have done a marvelous job. You have stirred controversy, but how else can we get public discussion going unless ideas and proposals are put forth? Tell us a little bit about what you consider to be some of the high achievements of the Office and what you are going to address in the coming year.

I have read a great deal about your proposals to deregulate radio. It just seems to me to make a lot of sense in this day and age to regulate radio differently than television. First of all, there are a great number of stations with no comparative lack of frequencies such as we have in television. Secondly, the economic concentration of television networks is different than anything we see in radio. In Washington, D. C. area, there are some sixty radio stations, both AM and FM. Would you tell us a bit about these proposals and has anything been done about them?

There has been some serious complaints that broadcasting stations feel that recent FCC and court decisions have contributed significantly to instability. Now, the Congress has had bills before it for a number of years. In 1969, the Chairman had hearings on S. 2004 which was designed to restore stability to the license renewal process. Unfortunately, we didn't get too far in this area and I am happy to see you address this problem. I have seen your bill. I support its objectives, although I cannot say I can comment on its specifics until we have had a chance to discuss it in full detail at hearings. However, I would like you to give us a brief description of the bill and what it would do to correct this very unfortunate situation.

I am concerned about proposals that would permit counter-advertising. I am concerned because I fear once we get into this area, there will be complete confusion as to who can or cannot counter-advertise, and I would hypothesize that the next step would be counter-counter-advertising. Would you care to comment on this?

I would like you to explain your position on the Fairness Doctrine. As I understand it, you believe that it should be enforced on an overall basis. I agree with this. I think what we have seen over the past several years, this trend toward issue-by-issue, case-by-case enforcement, is unfortunate. I don't believe the Communications Act is read that way. Would you comment?

You have been critical of the prime-time access rule. I must say that I had some misgivings when it was proposed and came into effect. I fear that my reservations have been realized.

We see game shows, reruns, all the things that it was not supposed to do -- the development of local programming. What are your feelings on this? Should the FCC repeal it? What is the industry feeling on this?

As I understand, you have completed your rerun study. I am concerned that this is getting into program content. I would like to believe that the purpose of the study was to consider the economic considerations that have led to the increase of television reruns. Would you comment?

What is your position on cigarette advertising. I noted in reading your exchange with (Senator Ervin last year) cigarette advertising that you had serious reservations about this. Senator Ervin, who as we all know, is a great constitutional expert, agreed with you. Would you care to comment?

You have been outspoken on public broadcasting. You have received a great deal of criticism in this area. Yet, I remember during our discussions in 1967, and constantly since then, of the serious reservations about public funds being used for news and public affairs. In fact, one of the most outspoken critics, Fred Friendly, expressed an opinion during the 1967 hearings that public funds should not be used for such programming. I find this curiously inconsistent in light of recent criticisms. I would like to have your thoughts on the matter.

I am concerned that public broadcasting has developed into a fourth network. When we began discussions on this issue of public broadcasting in 1967, we made every attempt to ensure that local stations have the right to program. Today, 91% of prime time programming comes from seven stations out of some 230; a third of the programs come from New York -- one station. Interconnection costs continue to soar. We have here a very serious situation. A government funded, in part, medium has more stations than any of the commercial networks. What are your thoughts?

There has been criticism that the President has tried to force public broadcasting to conform to Administration policies by placing only Republicans on the Corporation for Public Broadcasting Board. Would you care to comment on this?

I am concerned about the limited news outlets. There is a lack of diversified opinion, although certain changes have been made, things like CBS Spectrum, Would you comment on this?

Do you think cable television may in fact, provide a solution to network convention?

It strikes me as quite curious that all of a sudden we hear about Administration efforts to criticize and stifle the media. I can vividly remember each Administration being critical of the media. This is nothing new. I can remember an instance when one President called up a network commentator during his broadcast criticizing a news story. I think this Administration has been critical, like all others before it. Would you comment on the Administration's views on the media, in particular your Office's attitude toward public and commercial broadcasting.

There was some criticism that the Administration wanted to place into every American home a warning device which could be attached to a television or radio set. However, I am led to believe that the Administration did not approve this proposal because it did raise substantive 1st Amendment considerations. Am I right on this? Would you please explain?

The Nixon Doctrine as we have seen it in effect emphasizes that countries should not become dependent upon the United States for its needs. Now in the international communications area. I think we see this in such things as AEROSAT and INTELSAT where nations and communication in cooperation with the U.S., not dependent on us, are moving ahead in this area. Would you say this is the direction we are going, and if so, is it commendable? Has OTP been involved within, and to what extent?

During the past several months there have been serious debates about the use of satellites to broadcast directly into homes throughout the world. In the United Nations for example, the Soviet Union and many third-world nations have expressed their feelings that restrictions on program content must be effected. I understand that the U.S. has taken the position that broadcasts must be free and unrestricted. Is that right? Would you explain OTP's role in this area? Have you publically addressed yourself to this question?

In the area of international communications has OTP worked with various departments and agencies in formulating policy? With the FCC?

The relationship between cable and satellites offers an exciting opportunity to improve communications throughout the United States. You have addressed this issue and I would like to hear what OTP has done in this area.

In your confirmation hearings in 1970, you indicated that one area of concern would be the area of government communications. Now the government is the single largest user of the spectrum, much of it duplicative and unnecessary. As I understand the government use of the spectrum has been reduced by some 50%. Is this right. Please explain.

Congressman Goldwater last year criticized the government, particularly DOD, for its use of audio visual equipment. He said that some 200 million dollars a year are expended in this area, causing duplications, unemployment in the private industry. Your Office has studied this issue. What are your recommendations?

For too long now citizens in distress have been faced with a variety of telephone numbers; police; hospital; fire, etc. 911 has been implemented in many areas, but it is by no means unresolved. What has OTP done about this?

Not too long ago there was a false emergency warning which came from Colorado. Needless to say the occurrence of this will be something like the story of the boy who cried wolf once too many times. We can't afford this to happen. What has your Office done in this area? What is the difference between the warning system and the Emergency Broadcast System.

A little known effect of communications is the area of environmental impact, such as radiation. Have you studied this at all?

Mr. Whitehead, I am a bit confused about this area of executive involvement in communications policy. There are those who see executive involvement as an infringement upon the FCC and the Congress. Would you submit for the record a short history of executive activity in this area? Place an emphasis on the Executive Order which established OTP. If you have that now, all the better, I would like to hear about so that some of this criticism can be cleared up?

Do you work closely with other agencies and departments. I would hope so because not to do so would I think miss the whole point of the Rostow Report recommendation and, of course, the purpose of your office?

I must say in listening to you today, Mr. Whitehead, that I am thoroughly impressed by your frankness, your knowledge of this tremendously complicated area. I am curious about your budget needs and staff requirements. I am told you have a professional of some 30 people and if this is so I believe you have done more, with so few in this area. Can you tell us about your requirements? What has the President recommended for FY 1974?

Opening Statement for Senate Oversight Hearing

This is the first occasion that I have had to appear before ~~the~~
~~this subcommittee to discuss~~
~~Congress, other than to discuss a specific measure or issue, and~~
~~I am glad to do so.~~ I have prepared for the Committee a rather
lengthy statement covering the activities and programs of the Office
~~of Telecommunications Policy~~ in 1972 - 1973 which, with your
consent, I would like to submit for the record. The statement covers
all of the areas that OTP has been involved in, which I will briefly
summarize ~~for you.~~ *if you would like.*

The first is common carrier communications. This ~~particular~~
sector of the communication industry has been dominated historically
by traditional telephone and telegraph services, ~~largely~~ provided on
a monopoly basis by vertically integrated companies. *<* As a
consequence, the traditional posture of government has been extensive
economic regulation of common carriers in order to prevent potential
abuses. *>* In recent years, however, new communications technologies
have been developed and specialized services and service concepts
such as computer ^{*time sharing*}, telephone answering, interconnection, and
brokerage have come into being. *<* These are not provided on a
monopolistic or vertically integrated basis, and therefore do not
justify any government regulation. *>* Indeed, vigorous competition in
this new field is economically inevitable, unless artificially

constrained by past policy. ~~In the common carrier field,~~ OTP's efforts are for the purpose of coming to grips with the difficult policy question of how ~~their~~ new competitive sector, and the traditional sector which may remain monopolistic, can co-exist in a manner that brings the benefits of both technological innovation and competition to the public. Two points are involved in determining regulatory policy which will protect the competitive sector from destruction by the monopolistic sector, and fashioning new regulatory techniques for the monopolistic sector to cut down on cross-subsidization and over-investment and to provide a incentive to promote overall economic efficiency.

Cable TV is a second area of OTP involvement. Cable has the potential for becoming a medium of major significance in its own right, ~~It can~~ provide the technological basis for more consumer choice and diversity, ~~in programming.~~ ~~In the future,~~ cable can also be the vehicle for new communications services, for wide-spread access to computers, and for delivery of new public services in such areas as education, health, and law enforcement. However, cable's potential is being frustrated from achievement by the current lack of clear division of authority between the Federal Government and the States, and by the narrow perspective taken by the FCC in regulating cable as ancillary to over-the-air broadcasting.

We have been working precisely to determine a plan for cable development which will establish clear lines of governmental authority and which will get cable out of its current narrow confines. In particular, we are near completion with the report of the President's Cabinet committee on cable television, which will provide the President with recommendations on long-range cable growth.

In the broadcasting field, we have been examining various aspects of the regulatory environment to determine where it is possible to lessen government involvement in the process of getting information -- news and entertainment -- to the public. We are attempting to find ways of enhancing first amendment rights and interests. One recommendation which I made in late 1971, for example -- the experimental lessening of radio regulation -- has been actively pursued by the FCC. I think it may also have played a role in the refreshing re-examination of FCC regulation of small broadcasters that Congress is now undertaking. Another recommendation, the modification of license renewals policies and procedures, has been translated into a legislative proposal. After clearance through the OMB, it will be presented to the Congress for its consideration.

Government is a fourth area in which OTP has been active. There has long been a concern that the Federal Government needed better management and policy direction of its own multi-billion dollar communications resources. In the last year, we took several specific actions or made specific decisions that will save the government considerable expense and improve its communications capability. We sorted out the various problems in the EBS and warning procedures, brought the FTS/AUTOVON controversy to a conclusion by deciding against merger, and instituted numerous technical and managerial improvements in the spectrum allocation process. We also established the institutional framework for coordinated decision-making on government satellites and navigation systems. In addition to taking specific actions, we also made progress in improving the general manner in which government communication policy decisions are made. We determined that the best approach to government communications is a perspective one -- anticipating needs and planning for them in advance. To this end, last year we created the Government Communications Policy and Planning Council. This will bring together key Federal agencies in a forum where we can evolve policy in a uniform and consistent manner, and institute sound principles of management on a broad basis throughout the entire Federal Government.

Finally, our last major area of activity has been in international communications. We are witnessing more and more the growth of communications as an important component of foreign policy in two ways: first, it is a basic industry in which we have an economic and technological superiority that contributes to our overall diplomatic and strategic position; second, it is an industry that shapes what other nations learn of us, and what we in turn learn of them. We have reviewed the structure of the international communications industry and have developed recommendations for improving its performance and efficiency. I am announcing these recommendations today on behalf of the Administration. I believe that our policy in this area will provide a solid foundation for a better foreign policy in the communications field, a stronger industry, and a higher quality of service to the public.

Mr. Chairman, I have reviewed only some of the more important aspects of OTP's work and briefly at that. But I do feel,

Mr. Chairman, that even in this short amount of time you have been able to get a good picture of how we are trying to play a role in the development of communications policy in the executive branch, and how we are engaging in a dialogue with the Congress, the FCC, and the public. Given the relative newness of our Office, and its

uniqueness, perhaps as a government agency charged with long range policy planning for a major industry, we have been reasonably successful. I am particularly proud of the development of our relation with the FCC. Where the FCC has undertaken to determine basic long range policy, as in the development of domestic satellites, we have participated in the proceeding and have submitted the views of the Administration. Otherwise, where the FCC is considering an individual case, or an action of short range or narrow applicability, we have stood aside. This I think satisfactorily maintains a balance between the FCC's independence in administering the Communications Act and its functions as an arm of the Congress, on the one hand, and its ability to evaluate and integrate long range policy on the other.

To conclude, Mr. Chairman, I believe we have made a start in grappling with some of the basic questions we are facing. Only recently have we come to understand how extensively communications affects us as a people: how we deal with one another, form our national character and identity, engage in our political process and make our economy more productive. In all of these areas, communications is growing in importance, and at a tremendous rate. We can provide for effective policy making only if there is enlightened and

informed public debate and discussion. We have to get decision-making and basic communications policy issues out of the constraining limits of technical jargon and complex legal proceeding.

This is what we have been doing. We have a responsibility to assure that planning and policy making is carried out. I am glad that together with the Congress, the FCC, industry, and the public we are making good progress.

OPENING STATEMENT FOR SENATE OVERSIGHT HEARING

This is the first occasion that I have had to appear before ~~the~~ the Congress, other than to discuss a specific measure or issue, and I am glad to do so. I have prepared for the Committee a rather lengthy statement covering the activities and programs of the Office of Telecommunications Policy in 1972-1973 which, with your consent, I would like to submit for the record. The statement covers all of the areas that OTP has been involved in, which I will briefly summarize for you.

The first is common carrier communications. As you know, this particular sector of the communications industry has ^(T&T) historically been a monopoly, and consequently, has traditionally been regulated by the Government in order to prevent ~~any~~ potential abuses to the public. In recent years, however, new communications technologies have been developed, as well as new markets ~~for~~ communications services, and competition in many sectors of the industry has become possible. ^{indeed, new markets for products} OTP's efforts in the common carrier field ^{HAVE} ~~has~~ been undertaken in order to keep pace with these changes, and to assure the development of policy for making the benefits of technological innovation and competition available to the public. We are seeking to determine those areas of the

industry where competition can be viable. For those areas where it can ^{NOT} -- and therefore where monopoly ^{or shall} will continue -- we are attempting to find new regulatory techniques for making monopoly services more efficient and ^{MORE} responsive to consumer demand, and less costly as well. *than in areas. except comm.*

Cable TV is a second area of OTP involvement. Cable has the potential for becoming a medium of major significance, and ^{FOR} providing the technological basis for improved ^{AND} expanded consumer choice and diversity in news and entertainment programming. In the more distant future cable can also be the vehicle for new two-way communications, for wide spread access to computers, and for delivery of new public services in areas such as education, health, and law enforcement. What we need to translate this potential into reality is a basic plan for cable development which sets out an environment of law and regulation that is suited to its economic and technical characteristics, its First Amendment implications, and its overall impact on our society. We are working in this field to provide the President and the Congress with the information that will enable this plan to be developed. In particular, we are near completion with the report of the President's Cabinet Committee on Cable Television, ~~which may result in recommendations~~ ^{WHICH WILL PROVIDE THE PRES} ^{WITH RECS ON L-R CABLE GROWTH,} ~~to channel cable growth.~~

Why?

Government is a third area in which OTP has been active.

There has long been a concern that the Federal Government needed better management and policy direction of its own multi-billion communications resources. Our goals are to assure the effectiveness of government communications to enhance the productivity of government agencies using government communications resources and to provide for national security ^{etc} on the one hand, and to assure economy and efficiency in operation and management on the other. To improve the planning and management process, last year we created the Government Communications Policy and Planning Council which will bring together key Federal agencies in a forum where we can evolve policy in a uniform and consistent manner.

In the broadcasting field, we have been assessing various aspects of the regulatory environment to determine where it is possible to lessen government involvement in the process of getting information -- news and entertainment -- to the public. One of our proposals, the experiment of lessening of radio regulation has been actively pursued by the FCC and has spawned a refreshing re-examination of FCC regulation of small broadcasters.

Another of our proposals, the modification of license renewals policies and procedures has been translated into legislation ^{and effort} to submit soon.

After clearance through the OMB, we will present this proposed legislation for the Congress' consideration.

Finally, our last major area of activity has been international communications. We are witnessing more and more the growth of communications as an important component of foreign policy in two ways: first, it is a basic industry in which we have an economic and technological superiority that contributes to our overall diplomatic and strategic position; second, it is an industry whose function determines what other nations learn of us, and what we in turn learn of them. We have reviewed the structure of the international communications industry and have developed ^{policy which can lead to} recommendations for improving its performance and efficiency ~~which I am announcing today on behalf of the Administration.~~ I believe that our policy in this area will provide a solid foundation for a better foreign policy in the communications field, a stronger industry, and a higher quality of service to the public.

Mr. Chairman, I have reviewed only some of the more important aspects of OTP's work and briefly at that. ~~But I do feel, Mr. Chairman, that even in the short amount of time,~~ ^{Hope} you have been able to get a ~~good~~ picture of how we are trying to play a role in the development of communications policy in the executive branch, and

how we are engaging in a dialogue with the Congress, the FCC,
and the public. *Imp issues needing attn, dir; not buried in tech reports. don. doherty.*

~~Giving the relative newness of our Office, and its uniqueness, perhaps, as a Government agency charged with long range policy planning for a major industry, we have been reasonably successful.~~ *good start*

I am particularly proud of the development of our relation with the FCC. Where the FCC has undertaken to determine basic long range policy, as in the development of domestic satellites, we have participated in the proceeding and have submitted the views of the Administration. ~~Otherwise,~~ where the FCC is considering an individual case, or an action of short range or narrow applicability, we have stood aside, *unless signif noted int or precedent is involved.*

This I think satisfactorily maintains a balance between independence in the administration of the Communications Act and the function of the FCC as an arm of the Congress on the one hand and the evaluation of long range policy on the other.

Reuben canyon kid

To conclude, Mr. Chairman, I believe we have made a start in grappling with some of the basic questions we are facing. Only recently have we come to understand how extensively communications effect us has a people -- how we deal with one another from our national character and identity, conduct our political process and develop our economy. All of these areas, communications is growing in importance, and at a pace which makes it all the harder

to plan and make policy. Our responsibility is to assure that this planning and policy making is carried out. I am glad that together with the Congress, the FCC, industry, and the public we are making good progress.