

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-326

In the Matter of)
)
Implementation of the Cable) MM Docket No. 92-265
Television Consumer Protection)
and Competition Act of 1992)
)
Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

**MEMORANDUM OPINION AND ORDER
ON RECONSIDERATION OF
THE FIRST REPORT AND ORDER**

Adopted: December 15, 1994

Released: December 23, 1994

By the Commission: Chairman Hundt not participating.

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I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we consider a petition for

628(c)(2)(D) specifically applies only to cable operators' exclusive contracts. If Section 628(c)(2)(C) is read to prohibit *per se* DBS exclusive contracts, such contracts would be completely permissible in served areas but prohibited in unserved areas. As a result, the DBS operators who do not possess the exclusive rights would have to identify and "block out" the served areas (where such exclusive contracts would be valid), while their distribution in the unserved areas could continue. There is no indication in the legislative history that Congress intended the DBS industry to engage in such an odd and potentially burdensome exercise. Nor is it clear why the DBS exclusive contracts, as opposed to cable exclusive contracts, would turn on whether the area is served *by cable*.

38. Our decision is supported by the rules of statutory construction that require us to examine the whole statute when interpreting a part.⁹¹ While NRTC's interpretation of the "including" phrase, contained in Section 628(c)(2)(C), is a plausible reading taken in isolation, we believe that the more compelling rule of statutory construction is to construe the language in Section 628(c)(2)(C) in a manner most harmonious with the policies and the other provisions of the 1992 Cable Act.⁹² We agree with Opponents that Section 628(c)(2)(C), read in conjunction with Section 628(c)(2)(D), supports the common understanding of Congress' intent in this Section to restrict cable operators' use of exclusive contracts in served and unserved areas.⁹³ The stated purpose of the program access provisions is to increase competition from non-cable technologies, to increase the availability of satellite programming to persons in rural areas and "to spur the development of communications technology,"⁹⁴ such as DBS. NRTC's petition runs counter to that

⁹¹ Sutherland Stat. Const. §§ 46.05, 47.02 at 103, 139 (5th ed. 1992); *See Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) ("When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions, and give to it such construction as will carry into execution the will of the legislature."); *see also Richards v. United States*, 369 U.S. 1, 11 (1962); *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975).

⁹² *Viacom Ex Parte* at 18 n.18 (citing Sutherland Stat. Const. § 46.05 at 103 (5th ed. 1992)).

⁹³ USSB Opposition at 6-7. Indeed, the contemporaneous understanding of Sections 628(c)(2)(C) and (D), that these sections only restricted cable operators' exclusive contracts, was articulated by most parties involved in the original rule making, including DirecTV. *See Reply Comments of DirecTV in MM Docket 92-265*, filed Feb. 16, 1993, at 12 n.11 and Appendix (summary of Tauzin amendment) ("The Commission is directed to prohibit any arrangement between a cable operator and a programming vendor, including exclusive contracts, which would prevent a distribution competitor from providing programming to persons unserved by a cable operator.").

⁹⁴ 47 U.S.C. § 548(a).



KOKOSZKA *v.* BELFORD, TRUSTEE IN
BANKRUPTCY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 73-5265. Argued April 22, 1974—Decided June 19, 1974

1. An income tax refund is "property" that passes to the trustee under § 70a (5) of the Bankruptcy Act, being "sufficiently rooted in the bankruptcy past," and not being related conceptually to or the equivalent of future wages for the purpose of giving the bankrupt wage earner a "fresh start." *Lines v. Frederick*, 400 U. S. 18, distinguished. Pp. 645-648.

2. The provision in the Consumer Credit Protection Act limiting wage garnishment to no more than 25% of a person's aggregate "disposable earnings" for any pay period does not apply to a tax refund, since the statutory terms "earnings" and "disposable earnings" are confined to periodic payments of compensation and do not pertain to every asset that is traceable in some way to such compensation. Hence, the Act does not limit the bankruptcy trustee's right to treat the tax refund as property of the bankrupt's estate. Pp. 648-652.

479 F. 2d 990, affirmed.

BURGER, C. J., delivered the opinion for a unanimous Court.

Thomas R. Adams argued the cause for petitioner. With him on the briefs were *Joanne S. Faulkner*, *Joseph Dean Garrison, Jr.*, *Frederick W. Danforth, Jr.*, *John T. Hansen*, and *Michael H. Weiss*.

Benjamin R. Civiletti, by invitation of the Court, 415 U. S. 956, argued the cause as *amicus curiae* in support of the judgment below. With him on the brief was *Harry D. Shapiro*.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case, 414 U. S. 1091 (1973), to resolve the conflict among the Courts of Ap-

The Congress did not enact the Consumer Credit Protection Act in a vacuum. The drafters of the statute were well aware that the provisions and the purposes of the Bankruptcy Act and the new legislation would have to coexist. Indeed, the Consumer Credit Protection Act explicitly rests on both the bankruptcy and commerce powers of the Congress. 15 U. S. C. § 1671 (b). We must therefore take into consideration the language and purpose of both the Bankruptcy Act and the Consumer Credit Protection Act in assessing the validity of the petitioner's argument. When "interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature . . ." *Brown v. Duchesne*, 19 How. 183, 194 (1857).

An examination of the legislative history of the Consumer Protection Act makes it clear that, while it was enacted against the background of the Bankruptcy Act, it was not intended to alter the clear purpose of the latter Act to assemble, once a bankruptcy petition is filed, all of the debtor's assets for the benefit of his creditors. See, e. g., *Segal v. Rochelle*, 382 U. S. 375 (1966). Indeed, Congress' concern was not the *administration* of a bankrupt's estate but the *prevention* of bankruptcy in the first place by eliminating "an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption"⁹ and a consequent increase in personal bankruptcies. Noting that the evidence before the Committee "clearly established a causal connection between harsh

⁹ H. R. Rep. No. 1040, 90th Cong., 1st Sess., 20 (1967).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as Amended)	
)	

Second Order on Reconsideration

Adopted: June 20, 1997

Released: June 24, 1997

By the Commission:

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I. INTRODUCTION AND SUMMARY

1. In the *Non-Accounting Safeguards First Report and Order*, released on December 24, 1996, the Commission implemented the non-accounting safeguards provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996

any interLATA or intraLATA facilities or services *it is otherwise authorized to provide* to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated. Thus, in our view, section 272(e)(4) is not a grant of authority; it merely prescribes the manner by which BOCs may provide interLATA and intraLATA facilities and services to their affiliates.

43. We believe this construction of section 272(e)(4) does not have any of the defects alleged by the BOCs that might render the construction implausible. First, our reading gives effect to all of the statute's existing terms, including the key terms "may provide" and "any" on which the BOCs rely; our interpretation just does not read these terms as effectuating a grant of authority.

44. Second, our interpretation does not render section 272(e)(4) meaningless or redundant. Far from it, the provision serves precisely the same function as the other three provisions in section 272(e). As explained above, section 272(c)(1) imposes a general non-discrimination requirement on the BOCs in their dealings with affiliates. In order "to reduce litigation," however, Congress, in section 272(e), set forth more particularized non-discrimination requirements tailored to specific contexts.⁸⁷ Section 272(e)(1), for example, sets forth a non-discrimination requirement with respect to the time in which a BOC fulfills requests for local exchange or exchange access service. Similarly, section 272(e)(4) sets forth a non-discrimination requirement with respect to the provision of interLATA or intraLATA facilities and services that a BOC is otherwise authorized to provide -- services such as out-of-region services, five of the six incidental services, previously authorized activities, and perhaps most importantly, all other interLATA services as the separate affiliate requirements expire.

45. In light of the similar function that section 272(e)(4), under our reading, serves in relation to the other three provisions of section 272(e), our reading also draws support from the well-established canon of construction that statutory provisions are to be construed in light of the company they keep.⁸⁸ Our interpretation of section 272(e)(4) is also consistent with the overriding focus of section 272 generally. As both the text of section 272 and the

⁸⁷ See Joint Explanatory Statement at 150. As the BOCs themselves recognize in rebutting the claim that the phrase "intraLATA facilities and services" is a redundant one, it is not uncommon for Congress to want to include in a statute an "added dose of clarity." BOCs at 3.

⁸⁸ See *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) ("[A] word is known by the company it keeps"); see also *Mass. v. Morash*, 490 U.S. 107, 115 (1989) (referring to this canon as the principle of *noscitur a sociis*, which literally means "it is known from its associates").

BELL ATLANTIC TELEPHONE
COMPANIES, et al.,
Petitioners,

v.

FEDERAL COMMUNICATIONS COM-
MISSION and United States of
America, Respondents,

AT&T Corporation, et al., Intervenors.

No. 97-1432.

United States Court of Appeals,
District of Columbia Circuit.

Argued Nov. 19, 1997.

Decided Dec. 23, 1997.

Regional providers of telephone services petitioned for review of Federal Communications Commission (FCC) order construing section of Telecommunications Act of 1996 that purportedly allowed providers right to provide "any" inter-Local Access and Transport Areas (interLATA) facilities or services to its interLATA affiliate, so long as services were also provided to nonaffiliates, as limited to services that providers were otherwise authorized to provide. The Court of Appeals, Harry T. Edwards, Chief Judge, held that: (1) Act was ambiguous, and (2) FCC's interpretation of Act was reasonable.

Denied.

1. Statutes ⇄219(2)

Under *Chevron*, court reviewing agency's interpretation of statute must first exhaust traditional tools of statutory construction to determine whether Congress has spoken to precise question at issue; such traditional tools include examination of statute's text, legislative history, and structure, and purpose.

2. Statutes ⇄219(2, 4)

If search for statute's plain meaning pursuant to *Chevron* yields clear result, then

cern for judicial economy," *id.* at 739-40. Given that the second Valentine declaration involves a new set of calculations—and, depending on the district court's resolution of the bond's ambigu-

Congress has expressed its intention as to question, and deference to agency's interpretation of statute is not appropriate; if, however, statute is silent or ambiguous with respect to specific issue, Congress has not spoken clearly, and permissible agency interpretation of statute merits judicial deference.

3. Telecommunications ⇄270

Telecommunications Act was ambiguous to extent that section permitting regional telephone service providers to provide any inter-Local Access and Transport Area (interLATA) facilities or services to its interLATA affiliate, so long as services were also provided to nonaffiliates, conflicted with section permitting providers to provide in-region interLATA origination services only through separate affiliate, and Court of Appeals would thus give deference to agency's interpretation of Act if reasonable. Telecommunications Act of 1996, § 151(a)(2), (e)(4), 47 U.S.C.A. § 272(a)(2), (e)(4).

4. Telecommunications ⇄270

Federal Communications Commission's interpretation of Telecommunications Act section that purportedly granted providers of regional telephone services right to provide "any" inter-Local Access and Transport Area (interLATA) facilities or services to its interLATA affiliate, so long as services were also provided to nonaffiliates, as limited to services that providers were otherwise authorized to provide was reasonable, in view of Act's history and purpose, and particularly in view of section permitting providers to provide in-region interLATA origination services only through separate affiliate. Telecommunications Act of 1996, § 151(a)(2), (e)(4), 47 U.S.C.A. § 272(a)(2), (e)(4).

On Petition for Review of an Order of the Federal Communications Commission.

Mark L. Evans argued the cause for petitioners, with whom Michael K. Kellogg, Washington, DC, Sean A. Lev, Washington,

ty, there may yet be a third declaration—and given that the district court will likely be presented with additional evidence on remand, we find no reason to bar INA's challenge.

of *Chevron*, we will defer to the Commission's interpretation if it is reasonable and consistent with the statutory purpose and legislative history. See *Troy Corp. v. Brown*, 120 F.3d 277, 285 (D.C.Cir.1997) (agency interpretation must be "reasonable and consistent with the statutory purpose"); *Cleveland, Ohio v. U.S. Nuclear Regulatory Comm'n*, 68 F.3d 1361, 1367 (D.C.Cir.1995) (agency interpretation must be "reasonable and consistent with the statutory scheme and legislative history"). We will not uphold an interpretation "that diverges from any realistic meaning of the statute." *Massachusetts v. Dept of Transp.*, 93 F.3d 890, 893 (D.C.Cir.1996). We note that step two of *Chevron* requires us to evaluate the same data that we also evaluate under *Chevron* step one, but using different criteria. Under step one we consider text, history, and purpose to determine whether these convey a plain meaning that requires a certain interpretation; under step two we consider text, history, and purpose to determine whether these permit the interpretation chosen by the agency. Cf. *id.* (step two inquiry "depends on the nature and extent of the ambiguity" identified in step one).

We also find in the statute an implicit delegation of interpretive authority to the Commission. This result is critical to our analysis, for it is only legislative intent to delegate such authority that entitles an agency to advance its own statutory construction for review under the deferential second prong of *Chevron*. See *Chevron*, 467 U.S. at 843-44, 104 S.Ct. at 2781-83. "If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority.... Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Id.* The requisite legislative intent may be inferred when, as here, resolution of an interpretive question turns on the reconciliation of competing statutory purposes. See *id.* at 865, 104 S.Ct. at 2792-93; *City of Kansas City, Mo. v. HUD*, 923 F.2d 188, 191-92 (D.C.Cir.1991). By declining itself to strike an exact balance between the

commands of § 272(a)(2) and § 272(e)(4), Congress implicitly delegated to the Commission the authority to accommodate the interests at stake through its own interpretation of the statute.

The Commission's interpretation here is reasonable and consistent with the statute's legislative history and purpose. According to the Commission, § 272(e)(4) attaches a nondiscrimination requirement to a BOC's provision of interLATA services that it is otherwise authorized to provide. The language stating that a BOC "may provide any ... interLATA services" if it does so in a non-discriminatory manner therefore means that a BOC may provide interLATA service only if it provides the service non-discriminately.

This reading of § 272(e)(4) infers the existence of a qualifying phrase not expressed within the language of the provision. However, the inference is reasonable because it gives meaning and vitality to the provision. As noted above, if § 272(e)(4) were an independent grant of authority, it would contradict § 272(a)(2). It is reasonable for the Commission to read § 272(e)(4) as a non-discrimination requirement in order to avoid this contradiction. As for vitality, § 272(e)(4) applies both to interLATA and intraLATA services, so that even if a BOC may provide the interLATA services authorized by § 272(a) only to affiliates, the non-discrimination provision would still apply to intraLATA services that the BOC may provide to other customers. What is more, after the sunset of § 272(a)(2), BOCs will be permitted to offer all interLATA services to other customers, but a BOC may still choose to maintain its affiliate even though not required by law to do so. When such conditions obtain, § 272(e)(4) will still apply to the BOCs and will require them to provide services non-discriminatorily. Thus, even if § 272(e)(4) has no vitality when applied to interLATA services at present, the provision will possess vitality in the near future.

As observed above, the legislative history of the statute is inconclusive. The Commission's interpretation is therefore not inconsistent with it. Finally, the Commission's inter-

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COMMUNICATIONS SATELLITE ACT OF 1962

JUNE 11, 1962.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 11040]

The Committee on Commerce, to whom was referred the bill (H.R. 11040) to provide for the establishment, ownership, operation, and regulation of a commercial communications satellite system, and for other purposes, having considered the same, report favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—SHORT TITLE, DECLARATION OF POLICY AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "Communications Satellite Act of 1962".

DECLARATION OF POLICY AND PURPOSE

SEC. 102. (a) The Congress hereby declares that it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

(b) The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the

The House of Representatives passed H.R. 11040 on May 3, 1962, and this bill was referred to your committee. In acting on H.R. 11040, the bill herein being reported, we struck out all after the enacting clause and inserted in lieu thereof the body of S. 2814, as amended.

GENERAL STATEMENT

Our Nation's research and development program with respect to the peaceful uses of outer space, and communication satellites in particular, has brought us to a point where we can confidently look forward to the establishment within the next few years of an operational capability for space communications. Such communications, which will use the microwave portion of the frequency spectrum, hitherto unusable over large expanses of water, will provide the world with a tremendous new resource to meet the steadily increasing need for worldwide communications facilities. This development will be among the first and foremost practical applications of space technology for the benefit of all mankind. It will enable this Nation, together with other nations of the world, to greatly increase the capacity of existing worldwide communications networks and thereby accommodate the rapidly growing volume of international public correspondence. It will provide the means by which it will be technically and economically practical to institute on an international scale new and expanded telecommunications services, such as transmission of high-speed data and television, which today are provided domestically. An operable system also promises to provide a practical means by which the smaller and newly developing nations of the world may have direct communication with the rest of the world.

Further experimentation in the use of communication satellites must be accomplished before an operable communications satellite system becomes a reality. Such experimentation is well underway. The American Telephone and Telegraph's Project Telstar and NASA's Projects Relay and Syncom are scheduled for trial in the near future and will resolve a number of the most critical technical and operating problems which must be resolved before an operable system can be realized.

However, if the existing and potential competence within the United States with respect to this technology is to be most effectively translated into practical application, it is necessary now to enact legislation which will guide further developments toward this goal. It is important that the roles of private enterprise and the Government be defined at this time and that an appropriate instrumentality be created by which such national policies are to be effected. It is to these ends that your committee recommends enactment of this legislation.

H.R. 11040 herein being reported provides for the creation of a private corporation for profit which will not be an agency or instrumentality of the United States but which will be subject to specified governmental regulation. It will be the purpose of the corporation to plan, initiate, construct, own, manage, and operate, in conjunction with foreign governments and business entities, a commercial communications satellite system, including satellite terminal stations when licensed therefor by the Federal Communications Commission. It will also be its purpose to furnish for hire channels of communication to United States communication common carriers who, in turn, will

use such channels in furnishing their common carrier communications services to the public. Provision is also made whereby the corporation may furnish such channels for hire to other authorized entities, foreign and domestic.

Provision is made in this bill to insure among other things (1) that the corporation will observe such policies and practices as will preserve competition in its procurement of equipment and services; (2) that all communications common carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations (whether licensed to the corporation or to individual carriers) under just and reasonable terms and conditions; (3) that communications service to foreign points by means of the satellite system and terminal stations will be established whenever the national policy so requires; and (4) that the activities of the corporation shall be consistent with relevant foreign policies of the United States.

To prevent any single interest or group of interests from dominating the activities of the corporation, and to afford the general public opportunity to participate in the ownership of the corporation, H.R. 11040 contains safeguards and limitations with respect to voting stock ownership of the corporation and the composition of its board of directors. The specific measures in this respect are designed to blend ownership by the public with ownership by communications common carriers, who will be the principal users of the corporation's facilities and so have a vital stake in the success and efficiency of the corporation.

Thus, with respect to the financing of the corporation, it is authorized to issue, in such amounts as it shall determine, shares of capital stock without par value which will carry voting rights and be eligible for dividends. The shares of such stock initially issued shall be sold at a price not to exceed \$100 per share in a manner to encourage the widest possible distribution to the American public. At the same time it should be recognized that purchase of such stock will be speculative. Purchasers should understand that the corporation is entirely a private corporation for profit and that they assume the same risks as are taken by those purchasing stock in any private corporation.

The bill further provides that 50 percent of the shares of the voting stock offered at any time by the corporation shall be reserved for purchase by communication common carriers authorized by the FCC to own shares of stock in the corporation and that such carriers shall in the aggregate be entitled to make purchase of these reserved shares in a total number not exceeding the total number of nonreserved shares of any issue purchased by other persons. At any time after completion of the initial issue, the aggregate ownership of the voting stock by all authorized carriers, directly or indirectly, shall not exceed 50 percent of all issued and outstanding voting stock.

With respect to the board of directors of the corporation, provision is made for 15 directors, 6 of whom shall be elected by the carriers (with no carrier being permitted, directly or indirectly, to vote for more than 3 candidates), 6 to be elected by other stockholders, and 3 to be appointed by the President with the advice and consent of the Senate.

Recognizing the need for Federal coordination, planning, and regulation in order to carry out the purposes of the legislation, H.R. 11040 enumerates and delineates the powers and responsibilities

COMMUNICATIONS SATELLITE LEGISLATION

HEARINGS
BEFORE THE
COMMITTEE ON
AERONAUTICAL AND SPACE SCIENCES
UNITED STATES SENATE
EIGHTY-SEVENTH CONGRESS
SECOND SESSION

ON

S. 2650

A BILL TO AMEND THE NATIONAL AERONAUTICS AND SPACE
ACT OF 1958, AS AMENDED, WITH RESPECT TO SPACE COM-
MUNICATIONS FACILITIES, AND FOR OTHER PURPOSES

AND

S. 2814

A BILL TO PROVIDE FOR THE ESTABLISHMENT, OWNERSHIP,
OPERATION, AND REGULATION OF A COMMERCIAL COMMUNI-
CATIONS SATELLITE SYSTEM, AND FOR OTHER PURPOSES

~ FEBRUARY 27, 28, MARCH 1, 5, 6, AND 7, 1962

Printed for the use of the
Committee on Aeronautical and Space Sciences



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COMMUNICATIONS SATELLITE LEGISLATION

WEDNESDAY, MARCH 7, 1962

U.S. SENATE,
COMMITTEE ON AERONAUTICAL
AND SPACE SCIENCES,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 235, Senate Office Building, Robert S. Kerr (chairman) presiding.

Present: Senators Kerr, Symington, Young, Smith, and Case.

Also present: Everard H. Smith, Jr., chief counsel; Carter W. Bradley, chief clerk; William J. Deachman and Dr. Glen P. Wilson, professional staff members; and Richard R. Wolfe, technical assistant.

The CHAIRMAN. The committee will be in order.

Our first witness this morning will be Mr. Katzenbach.

(The biography of Mr. Katzenbach appears on p. 473.)

STATEMENT OF NICHOLAS deB. KATZENBACH, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, ACCOMPANIED BY ROBERT SALOSCHIN, ATTORNEY, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. KATZENBACH. Mr. Chairman, I have a prepared statement of my own (see p. 459). I also have a statement which was prepared by Dr. Welsh, who is unable to testify. I wonder if it would be all right if I could read that statement, or have Mr. Saloschin, accompanying me, read the statement.

The CHAIRMAN. You are at liberty to do what you like.

Mr. KATZENBACH. I would like to do that. If there are any questions on either my statement or Dr. Welsh's statement, I would be delighted to answer them.

The CHAIRMAN. You may proceed as you wish.

(The biography of Dr. Welsh is as follows:)

DR. EDWARD C. WELSH, EXECUTIVE SECRETARY, NATIONAL AERONAUTICS AND SPACE COUNCIL

Data: Born in Long Valley, N.J., March 20, 1909; married; residence, Arlington, Va.

Education: A.B. (Lafayette College), M.A. (Tufts College), Ph. D. (Ohio State University); magna cum laude. Phi Beta Kappa (national scholastic honorary), Beta Gamma Sigma (national business administration honorary), Pi Delta Epsilon (national journalistic honorary); major field, economics.

University faculties: 12 years on university faculties. in economics departments: taught pricing policies and theory. money and banking. international trade and finance, economic history.

Government experience: National Resources Committee (1937). Temporary National Economic Committee (1940). Office of Price Administration (1942-47).

Mr. KATZENBACH. If the communications industry as it exists in this country were totally unwilling to make use of the facilities of this carrier, it would present a most difficult situation. I cannot conceive that to be the case, Senator.

Senator SYMINGTON. The present carriers are regulated completely by the FCC, Government regulation, are they not?

Mr. KATZENBACH. Yes, sir.

Senator SYMINGTON. That includes regulation of their profit, amortization rate, in effect their operations, does it not?

Mr. KATZENBACH. Yes, sir.

Senator SYMINGTON. So there is no question now whether we should have a bill which would or would not come under government supervision from the standpoint of monopoly, or anything of that character? They already are regulated, right?

Mr. KATZENBACH. From the standpoint—well, they are regulated, sir. That part I agree with. I do think that there are issues of monopoly present. We have to form a corporation here that is essentially going to be a monopoly, whether it is under a proposal of Senator Kerr's bill or under the administration bill.

PUBLIC UTILITIES HAVE OVERTONES OF A MONOPOLY

Senator SYMINGTON. Any public utility is a monopoly, is it not?

Mr. KATZENBACH. No, sir.

Senator SYMINGTON. You don't think so?

Mr. KATZENBACH. No, sir. RCA and Western Union compete with American Telephone & Telegraph in various services.

Senator SYMINGTON. Are these people competing with each other?

Mr. KATZENBACH. Yes, sir. But in response to your question that anyone is a monopoly, I said, "No, sir." There are areas of competition.

Senator SYMINGTON. The premise of my question was, this would be a monopoly; your inference would be that the others weren't.

Mr. KATZENBACH. I didn't intend that inference. I said that there would be a monopoly in the sense that there would be one corporation engaged in the transmission of messages by satellite, performing services for all authorized communications carriers in this country and for communications carriers abroad, subject to agreements for operation.

Senator SYMINGTON. Thank you, Mr. Chairman.

WESTERN UNION IS ONLY TELEGRAM COMPANY

The CHAIRMAN. What other telegraph companies do we have operating in this country in the domestic field of telegrams than Western Union?

Mr. KATZENBACH. In straight telegraph business?

I believe it is just Western Union. There are other areas, for example—

The CHAIRMAN. I am talking about the area of telegraph service. What other companies do we have?

Mr. KATZENBACH. I believe just Western Union.

The CHAIRMAN. Then what does that lack being a monopoly?

Answer. A.T. & T. has stated that the Andover station has cost \$15 million. The British Post Office estimates the cost of its Goonhilly station at \$2,100,000. The capabilities of the stations are not similar. For instance, the British station is entirely dependent on NASA for prediction data. With this spread in function and cost, it is difficult to answer the question specifically.

17. Question. Would enactment of communications satellite legislation this year either speed up or necessarily retard development of a workable communications satellite program?

Answer. Failure to enact it would unquestionably retard it. It is essential that America's communications satellite management policies be fixed as soon as possible so we can claim our international rights. A more complete answer will appear in the debate.

18. Question. Does the bill make possible the ownership of ground stations by A.T. & T.?

Answer. Yes. Decision is left to FCC with public interest as criteria.

19. Question. Is the Andover, Maine, station owned by A.T. & T.?

Answer. Yes.

20. Question. Is there any public ownership involved in the communications satellite bill?

Answer. Government (FCC) control, not ownership.

21. Question. Is there a limitation on the amount of bonds that the A.T. & T. could buy?

Answer. All securities except initial offering must be approved in advance by FCC and must meet the public interest criteria. To this extent the Commission can exercise control over all securities to be issued after the initial offering.

22. Question. Will research and development expenses, such as those incident to the Telstar program, be included in rate base?

Answer. They can. This is for the FCC to determine, based on Commission's present rules and policies.

23. Question. What Government agency would be responsible for regulating this rate base so that corporation would only earn a reasonable return?

Answer. FCC.

24. Question. Has the Federal Communications Commission been successful in regulating rates charged in the past by A.T. & T.?

Answer. Fairly well—could be better. Is getting better.

25. Question. If the high-orbit system were found to be more economical, would it be possible to compel A.T. & T. or the corporation to abandon the low-orbit system?

Answer. Yes.

26. Question. Will the international television programs broadcast through the system owned by the corporation require the use of commercials to pay their way?

Answer. This legislation does not affect this question.

27. Question. Is the distinction properly made between telephone communications relayed overseas being chargeable to the particular users, and television broadcasts having to rely on commercials?

Answer. Yes; they will have to be treated separately; have different policies and regulations.

28. Question. Can the policies of the Federal Communications Commission, as developed heretofore in the television field, properly be applied to the international broadcasting of television programs under the authorizations in this bill?

Answer. This legislation does not affect this policy one bit.

29. Question. Is the basic purpose of the legislation a profit by the corporation as distinguished for other public purposes?

Answer. No; the basic purpose is to provide the most useful international communications system.

30. Question. Would an enactment of this bill make it impossible for the U.S. Government to develop, install, and operate a complementary communications system as an alternate to that set up by the corporation under this bill?

Answer. No. See section 102(a) of the bill.

Mr. PASTORE. Mr. President, on Saturday, August 11, 1962, the Senator from Tennessee [Mr. KEFAUVER] raised certain questions concerning H.R. 11040 as reported by the Senate Commerce Committee. In order to avoid any misunderstanding as to the intention and meaning of various provisions of the bill, I submit for the RECORD at this time an explanation to the various points raised by the Senator from Tennessee.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

ITEM 1

Senator KEFAUVER asserted (CONGRESSIONAL RECORD, p. 16239) that H.R. 11040 is relying upon section 214(d) of the Communications Act to insure the extension of service to economically less developed nations. He contends that section 214(d) is not sufficient for this purpose because, even with that provision, the FCC has never been able to get A.T. & T. or the other telephone companies to expand their service into rural areas of the United States where the service may not be so profitable.

Comment: First, in general, the Bell system companies have provided service in the territories in the United States where they have been franchised to operate. This includes both urban and rural areas and profitable and unprofitable areas. There is no question that today the Bell system companies, as well as the independent companies are furnishing service in many high cost, uneconomic areas of their franchised territories, and that these operations are being subsidized in large measure by their profitable operations.

It is true that there have been a number of rural areas in the United States where there was no obligation of any carrier to provide service. The typical example is an agricultural, farming or cattle raising area where the costs of extending service would be prohibitive by any standard. In many of these areas, the residents of the area constructed their own lines which in turn were connected into the nearby switchboards of the telephone companies. Many of these operations have taken the form of rural corporations and have received substantial assistance through the lending programs of the Federal Government. It must be remembered that in the main the establishment of service in a particular area is a matter for the franchise authorities of the several States. It is not a matter in which the FCC is competent to act. The FCC responsibilities relate entirely to interstate and foreign service.

Second, in the field of international telephone and telegraph service, the coverage of the international telephone and telegraph carriers is comprehensive. Service is available, through direct or indirect circuits, to almost every point in the world where a country has the desire and means to communicate with the United States. This includes not only the well-developed areas, but many, many sparsely populated areas. U.S. carriers are alert and anxious to provide service to foreign points and there is no reason to expect that this attitude will not obtain in the era of satellite communications.

Third, under H.R. 11040, as a practical matter there is little probability that section 201(c)(3), which contemplates the in-

vacation of section 214(d) of the Communications Act, will have any applicability. The erection of ground stations on foreign soil will ordinarily be a matter for the foreign country involved. Of course, the latter may receive technical or financial assistance from the U.S. Government and perhaps from the corporation. But that would not come within the province of the Commission.

With respect to affording a foreign country access to the satellite system itself, there would be no need to employ the administrative remedies of section 214(d). This is because under section 201(a)(4) and (5) of the bill, the President could require the establishment of such service or at least could direct the corporation to take the lead in endeavoring to open such communication.

Where it may be necessary to launch an additional satellite to make service available to a foreign point, the Commission upon advice of the Secretary of State or upon its own motion, could, as contemplated by section 201(c)(3) institute proceedings under section 214(d) of the Communications Act to require such addition. But it is important to remember that the satellite corporation will not have sole control of the system. Other nations will participate in ownership. Accordingly, those nations will have a voice with respect to any discussions that may relate to ownership, use, or expansion of the system. These decisions will most likely be made at the international conference table rather than administratively by the FCC.

ITEM NO. 2: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16239, COLUMN 3

His point: The language on page 21, line 16 that activities "of the corporation shall be consistent with the Federal antitrust laws" is inadequate because it does not provide that the corporation shall be responsible under those laws, "so the apparent intent here is not to bring this corporation under the antitrust laws."

The answer: The point is not well taken, as both the corporation and the carriers who own stock in it will remain fully subject to the antitrust laws, including the penalties provided in those laws, aside from the fact that the creation of a single corporation is authorized in which communications carriers will be authorized to own stock to carry out the purposes of the legislation. This is confirmed by testimony of Deputy Attorney General Nicholas deB. Katzenbach at the April hearings of the Senate Commerce Committee on this legislation, at page 350, and further confirmed by Mr. Katzenbach's letter to Senator PASTORE of May 7, 1962, printed at page 30 of the Commerce Committee's report on this bill, Report No. 1584. In addition, section 403(b) of the bill explicitly states that "the sanctions which the bill provides do not relieve any one of the punishments or liabilities under any other laws."

ITEM NO. 3: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16239, COLUMN 3

His point: On page 21, subsection (d) of section 102 which declares that it is not the intent of Congress to preclude the use of the satellite system for domestic services is unsatisfactory in that it will deny the public the benefits of cheaper rates which satellite services could bring in long-distance domestic service.

The answer: This interpretation of subsection (d) is simply not correct. As the report of the Senate Commerce Committee, Report No. 1584, shows on page 14, this language was put into the subsection as clarifying language to avoid any possible inference that the use of the system is to be limited to international communications and to preserve the public benefits that may eventually become possible through the extension of the

receive a salary from any other source during his employment is inadequate to prevent conflicts of interest and should be revised to provide that no person holding a financial interest in communication carriers can become an officer or director of the corporation.

The answer: The present provision represents the wisest line that can be drawn expressly by statute for a corporation intended to fulfill the unique mission of this program. If additional precautions against conflicts of interest should be needed, bearing in mind that this corporation in effect will operate in a goldfish bowl, they can be taken through bylaws or by resolution, preserving the flexibility of case-by-case adjustment. In addition, there are the usual remedies of stockholders against disloyalty to the corporation. The present provision is the most that it is necessary or practicable for Congress to provide at this time.

ITEM NO. 17: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16242, COLUMN 1

His point: The provisions for the issue of voting stock on page 33, line 5, are defective in that the requirements for a price of not over \$100 a share and for wide distribution to the public only apply to the initial offering, which might be in a very small amount, and therefore the provision does not protect the rights of the public to participate in subsequent offerings.

The answer: The public is protected in participating in the purchase of subsequent issues as well as the initial issue, because subsection 302(b)(2) provides that no more than half of the voting stock may be owned by the carriers at any time, necessitating sales to the public. As to specifying the price of the voting stock in the terms of the bill, it is not practicable to do this for issues subsequent to the initial issue, because the offering must be related to the current market price of shares already outstanding.

Also see section 201(c)(8) requiring FCC to pass on the issuance of securities and borrowing by the corporation after the initial offering of stock.

ITEM NO. 18: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16242, COLUMN 1

His point: The public has no right to purchase the nonvoting securities provided for on page 34.

The answer: While it is true that the public does not have a "right" to buy into any particular issue of nonvoting securities under the bill, the bill does not preclude the sale of nonvoting securities by the corporation to the public. Under the bill, the directors of the corporation may sell nonvoting securities to the carriers, to the public, to financial institutions, or to any one else, as may seem at a given time most advantageous to the corporation.

ITEM NO. 19

Senator KEFAUVER questions the provisions of section 304(b) (p. 33, l. 12) which permit only those carriers "authorized" by the FCC to buy voting stock in the corporation. He urges in effect that there is no reason why authorization by a Government agency should be necessary in order for any carrier to participate in ownership of the stock reserved for carrier purchase.

The ownership structure of the corporation was designed to reflect a dichotomy between the carriers, on the one hand, who have extensive experience in communication operations to contribute to the corporation and will be the principal customers of the corporation; and, on the other hand, the general public whose interests will be principally investment for profit. Inasmuch as there are some 3,500 carriers in the United States with varying degrees of interest in the satellite system as a communication facility, the draftsmen of this legislative structure believed it desirable to establish a pro-

cedure with respect to the carriers that may participate in ownership in order to preserve this dichotomy. In other words, it is the objective of our bill to allow those carriers to participate in voting stock ownership, where such ownership will not defeat the structural balance between the carriers who have a special expertise to contribute and those investors whose principal motivation is corporate profits rather than service.

For this reason, section 304(b) merely requires a finding by the Commission that ownership of stock by a particular carrier "will be consistent with the public interest, convenience, and necessity." And all 3,500 carriers can apply. Accordingly, there is no reason to assume that only large carriers or only international carriers will qualify as authorized carriers.

ITEM NO. 20: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16242, COLUMN 1

His point: The provision on page 34, line 13, limits public stockholders to owning no more than 10 percent of the outstanding voting stock of the corporation, and this limit should also be applicable to carrier stockholders.

The answer: There is a need to assure the successful financing of this corporation by encouraging investments in it, and the carriers represent an important potential source of such investments. There is no need to fear that a carrier would dominate the corporation by an investment of more than 10 percent, in view of the limitation to 3 directors of any 1 carrier out of a total of 15, and because of other precautions. Should any carrier obtain an excessive part of that portion of the voting stock of the corporation which is reserved for carrier ownership, the FCC is empowered by section 304(f) to order divestiture. The bill directs the FCC, in so doing, to promote the widest distribution of the stock among the carriers.

ITEM NO. 21: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16242, COLUMN 2

His point: Under the provisions of the issuance of nonvoting securities on page 34, line 17, nonvoting securities might be issued and sold to a single carrier so as to give it control or dominance over the corporation. Also, the carrier purchasing such nonvoting securities might receive a double return, first in the form of interest or dividends, and second by the inclusion of the securities in a rate basis.

The answer: Issuance of nonvoting securities will depend upon the discretion and business judgment of the corporation's board of directors, which will not be dominated by a single carrier, and will depend on the financial market and on the policies of Congress reflected in the bill, with freedom to sell nonvoting securities to any investors, including institutions and the public. The question whether a carrier which purchases such nonvoting securities might receive a double return is a matter which would certainly be prevented by the FCC. The FCC, under section 201(c)(8), must approve all issues of nonvoting securities in the light of the public interest and the purposes and objectives of the bill, and would also regulate their inclusion in a carrier's rate base.

ITEM NO. 22: KEFAUVER'S POINTS OF AUGUST 11, CONGRESSIONAL RECORD, PAGE 16242, COLUMN 3

His point: On page 35, line 10, the relation of the percentage of the stock which a stockholder must otherwise hold under the District of Columbia business corporation law in order to have inspection and copying rights should have been written also to cover a stockholder's right to a statement of the affairs of the corporation.

The answer: The only respect in which the bill modifies the provisions of the District of Columbia law as to stockholders' rights of inspection of the books of the corporation is

to eliminate the percentage requirement for inspection and copying the list of stockholders. This was done because the bill contains provisions affecting the distribution of the corporation's stock. Stockholders will be able to obtain ample information about the corporation, not only through the usual corporation reports, but also through reports to the FCC and the detailed reports to the President and Congress provided in section 404(b) of the bill.

ITEM NO. 23

Senator KEFAUVER contends that section 304(f) (p. 35, l. 18) could be administered by the FCC to require other carriers owning stock in the corporation to transfer their stock to A.T. & T. This is clearly not the intent or effect of this provision.

Its sole purpose is to avoid the situation wherein any one carrier will own an unduly large proportion of the stock and thereby freeze out other authorized carriers from stock ownership.

The explicit standard of this section which will guide the FCC is stated as follows:

"In its determination with respect to ownership of shares of stock in the corporation, the Commission, whenever consistent with the public interest, shall promote the widest possible distribution of stock among the authorized carriers."

The report of the Senate Commerce Committee also makes it clear that this provision is intended to prevent any carrier from gaining a dominant position in the corporation (S. Rept. 1584, p. 22).

Also a letter from executive vice president of the U.S. Independent Telephone Association regarding the position of the 3,100 companies who would be affected by the legislation:

UNITED STATES
INDEPENDENT TELEPHONE ASSOCIATION.
Washington, D.C., July 30, 1962.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: The enclosed resolution relating to communication satellite legislation was unanimously adopted by our 36 man board of directors on March 9. It calls for preservation of private enterprise in connection with this vital matter.

Although the resolution was adopted before the pending bill, H.R. 11040, was reported to the Senate, I am of the opinion that the sentiment of our managing body is favorable to the form which the legislation takes.

Our association, in its 65th year, is the national trade organization which represents the Independent telephone companies of the country. A total of 3,100 such companies provide telephone service in more than 10,000 cities and towns, including 5 State capitals. Although by far the smaller segment of the telephone industry, the companies comprising this segment have the responsibility for servicing more than 50 percent of the geographical area of the country. Thus, without the Independent companies the communications network of the Nation would not be a complete one.

While we have warm and cordial relations with our friends in the Bell System, the membership of our association is limited to Independent telephone companies together with their Independent manufacturers and suppliers.

Sincerely yours,

CLYDE S. BAILEY,
Executive Vice President.

"RESOLUTION ADOPTED BY USITA BOARD OF DIRECTORS ON MARCH 9, 1962, RELATING TO SPACE COMMUNICATIONS

"Whereas the free enterprise system in this country has nurtured individual ingenuity and initiative and thereby immeasurably aided the progress of mankind throughout the world; and

COMMUNICATIONS SATELLITES

HEARINGS
BEFORE THE
COMMITTEE ON
SCIENCE AND ASTRONAUTICS
U.S. HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
FIRST SESSION

JULY 14, 17, AUGUST 1, 9, AND 10, 1961

[No. 19]

PART 2

Printed for the use of the Committee on Science and Astronautics



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1961

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And if there is no objection, we will include that at this point in the record.

(The biographical sketch is as follows:)

Nicholas deB. Katzenbach is the Assistant Attorney General in charge of the Office of Legal Counsel of the Department of Justice. Also, Mr. Katzenbach has been a member of the American Bar Association Committee on the Law of Outer Space since its inception some years ago. When he was a professor of law at the University of Chicago, he served as special consultant to the Secretary of State in connection with the United Nations Ad Hoc Committee on the Law of Outer Space. As coauthor with Prof. Leon Lipson of Yale, Mr. Katzenbach did a study entitled "Legal Literature of Air Space" which was published by the Committee on Aeronautics and Space Science in Senate Document 26 on March 22, 1961. The American Bar Foundation had this study done for NASA.

Mr. Katzenbach was born in Philadelphia, Pa., on January 17, 1922. He received his A.B. degree from Princeton University in 1943, his LL.B. degree, cum laude, from Yale University Law School in 1947, and was a Rhodes scholar at Oxford University from 1947 to 1949.

Before coming to the Department of Justice, Mr. Katzenbach was a professor of law at the University of Chicago. Prior to that he had been an associate professor of law at Yale University, an attorney-adviser and consultant to the Office of General Counsel to the Secretary of the Air Force, and a law associate in the firm of Katzenbach, Gildea & Rudner in Trenton, N.J. Also, Mr. Katzenbach was in the U.S. Air Force from 1942 to 1945.

STATEMENT BY NICHOLAS deB. KATZENBACH, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY JOHN JAMES, ATTORNEY, ANTI-TRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. KATZENBACH. Thank you, Mr. Chairman. I have a statement, and I am accompanied this morning by Mr. John James, who is an attorney in the Justice Department, with the Antitrust Division.

I appear today in response to the request of Congressman Brooks to discuss some of the problems of space communication satellites from the standpoint of the Department of Justice. The Department is well aware of the great opportunities before the Nation in this field, not only in its purely economic aspects but also in expanding global communications of all types—personal, educational, political, recreational—which together can help in consolidating our international relations and even in transforming the world environment in which we must live into more peaceful and productive directions. These opportunities must be pursued with speed and vigor.

Work of the Department of Justice will, of course, follow the guidelines set forth in the President's policy statement of July 24, 1961. Indeed, at the invitation of the Vice President in his capacity as Chairman of the Space Council, the Attorney General participated in formulating those recommendations for the President. But, as the President's statement itself makes it clear, the program for carrying out these policies is still in the process of evolution, many of the principles are general, and many of the details are by no means complete. I think this is necessarily the case whenever we approach problems as new and as challenging as those involved in the conquest of space. It does not mean that we should not now be working to develop the details involved in those policies as urgently as possible.

The Department's activities in this field are, in my view, broader than those which are identified with the law and policy of our anti-

Attorney General is extremely interested in the space program and anxious that it be expedited and moved forward with all possible speed and vigor.

The CHAIRMAN. Thank you very much, sir, for your statement. You bring up every conceivable problem of a legal nature that I can see without giving us much hope of immediate solution of the problems. It reminds me very much of when I was practicing law. I would tell a client why he couldn't do something and his answer was, "Don't tell me why and how I can't do it; tell me how I can solve it."

Mr. KATZENBACH. You are quite right, Mr. Chairman. I don't wish to be a lawyer who is raising a difficulty for every solution. I believe these problems can be solved, but I merely wish to point out that there is a wide variety of solutions, and a wide variety of choices which can be made.

The CHAIRMAN. I think your statement does show this: Even though we might have a domestic monopoly, you are not going to have a worldwide monopoly under any circumstance; isn't that right?

Mr. KATZENBACH. It would seem unlikely; yes.

The CHAIRMAN. We are going to have competitive forces at home and abroad in handling this problem. Any monopoly is coming from Russia. Now, you express fear there of the charge that we are monopolistic, coming from Russia, but such a charge hardly could come from a totalitarian state such as Russia; isn't that correct?

Mr. KATZENBACH. I think that is right, Mr. Chairman, but I think one should say this with regard to the monopoly problem. It may not be an international monopoly in the sense of operating in all countries of the world. You may well have under this system a number of countries in which all of the local communications service is in the hands of one company, that is, there is no competition within that particular area. This is true of many countries today.

The CHAIRMAN. Like, for instance, the Western Union.

Mr. KATZENBACH. With regard to what?

The CHAIRMAN. Telegraph communications.

Mr. KATZENBACH. Yes.

The CHAIRMAN. Well, we have established that policy. That brings me to this: Aren't a good many of the problems that you refer to problems that we have accepted in our own domestic economy in the past and have done nothing to alleviate or done very little about, for instance, Western Union in telegraphic communications? I think the President is right in referring to the control of these communication utilities. Isn't it a system that we have developed and accepted in our own domestic economy?

Mr. KATZENBACH. It is true, Mr. Chairman, that control is one possibility and regulation is one possibility for guaranteeing that private interests do serve the public interest. Competition is another way of achieving this. There is no incompatibility between as much competition as is possible and still certain controls. The view of the Department of Justice is the fact that you have a single satellite communications system does not mean, insofar as American participation is concerned, there has to be simply one company involved in this. There can be several and we feel that there would be benefits in having several.

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COMMUNICATIONS SATELLITE ACT OF 1962

HEARINGS
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 11040

**AN ACT FOR THE ESTABLISHMENT, OWNERSHIP, OPERATION,
AND REGULATION OF A COMMERCIAL COMMUNICATIONS
SATELLITE SYSTEM, AND FOR OTHER PURPOSES**

AUGUST 3, 6, 7, 8, AND 9, 1962

Printed for the use of the Committee on Foreign Relations



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1962

87607

Senator MORSE. I am perfectly willing to accommodate them and also the public interest.

Let me make one thing clear: I think there should be a thorough examination of the top spokesmen. I do not intend to have brief appearances of the witnesses before the committee as a substitute for a thorough investigation of this bill. We either have to have a thorough investigation and not a sham or we will have to explain to the American people what apparently the administration's program is—to rush through here with a very brief hearing while their top spokesmen can go on vacation.

Senator SPARKMAN. I can assure you it is the intention to make it as thorough as we can, but we are working under time limitations by instructions from the Senate. I am prepared to start early, run all day, and have evening sessions, in order that that may be done.

Certainly we will do our best to make it as thorough as possible, and, yet, I think we do need to accommodate both ourselves and the witnesses, whom we are calling on such short notice.

Now, Mr. Minow, if you have a statement and you would proceed, we would appreciate it.

STATEMENT OF NEWTON N. MINOW, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY T. A. M. CRAVEN, COMMISSIONER; MAX D. PAGLIN, GENERAL COUNSEL; HENRY GELLER, ASSOCIATE GENERAL COUNSEL; BERNARD STRASSEBURG, ASSISTANT CHIEF, COMMON CARRIER BUREAU; AND MARION H. WOODWARD, CHIEF, INTERNATIONAL DIVISION, COMMON CARRIER BUREAU

Mr. MINOW. Mr. Chairman and members of the committee, we are here today to present views on H.R. 11040, the communications satellite bill. Commissioner Craven and I are here to discuss certain foreign policy aspects of the bill.

As you know, the FCC has been involved in satellite communications. Last year we ran some experiments, including Telstar. We are actually engaged in plans for the 1963 International Conference on Space Communications.

I emphasize that we are not experts on foreign policy. We have testified at length on all other regulatory aspects of the bill.

I think this is our 11th appearance before committees of the Congress. We think you are generally familiar with our views on the other aspects of the bill and our support of this legislation.

We will be glad to answer any questions that the members of the committee might care to ask.

Our statement today is directed principally to those provisions of the bill which deal with the Commission's duties with regard to the provision of international communication service via space satellite.

PRESENT WORKINGS OF INTERNATIONAL TELECOMMUNICATIONS

First, as background, I should like to describe briefly how international communications work today. You can pick up the telephone in your office and be connected with 98 percent of the telephones of

provides that the Commission may, after full opportunity for hearing, order a carrier to provide facilities or extend its line if it finds that the public convenience and necessity so require or that the extension of facilities or line "will not impair the ability of the carrier to perform its duty to the public." The provision stems from the Interstate Commerce Act and is traditional with respect to common carriers.

HOW THE SATELLITE SYSTEM WORKS

Before discussing how 201(c)(3) might work in actual operation, I should like to give you a simplified picture of how the satellite system works. In terms of communication between this country and a foreign point, there are three essential elements: A foreign entity having a ground station; the satellite; and the U.S. carrier with access to a U.S. ground station. It is important to remember that in this respect the satellite corporation is a common carrier's common carrier. It will make available its relay facilities—the satellite and any ground terminals which it operates—to the international carriers, both foreign and United States. But these carriers—that is, the foreign entity and the U.S. carrier—must also work out an agreement between themselves, just as they do today in the case of cable and radio. Indeed, the satellite system will not replace cable or radio in the immediate future. The systems will complement each other, and the carrier will have the choice of sending a communication via cable or high-frequency radio or satellite. That is the case today where cable and high-frequency radio are capable of being used interchangeably by the carriers.

To communicate by satellite, the foreign entity must have a ground station and must obtain capacity in the satellite facilities. The U.S. carrier must also obtain capacity in the satellite system. Such capacity must be obtained, of course, from the satellite corporation. And, finally, the foreign entity and the U.S. carrier must have an agreement with each other whereby each will receive and send messages to the other.

With this as background, I will now discuss how 201(c)(3) might work in actual operation as to the three elements: (1) The foreign entity or ground station; (2) the satellite corporation; and (3) the U.S. international communications common carrier.

APPLICABILITY OF SECTION 201(C)(3) TO FOREIGN GROUND STATIONS

First, as a practical matter, we believe that section 201(c)(3) would, in all probability, have no applicability to the foreign ground station, and specifically to the question of constructing such a station. That will ordinarily be a matter for the foreign country. Of course, the latter may receive technical and financial assistance from the U.S. Government and perhaps from the corporation. But that would not come within the province of the Commission.

SECTION 201(C)(3) AND THE SATELLITE CORPORATION

Second, as to the satellite corporation, it is also doubtful whether, as a practical matter, there will be occasion to resort to section

87:2

Section

S-10-45

COMMUNICATIONS SATELLITE LEGISLATION

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HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2814

(AS AMENDED BY SPACE COMMITTEE)

A BILL TO PROVIDE FOR THE ESTABLISHMENT, OWNERSHIP, OPERATION, AND REGULATION OF A COMMERCIAL COMMUNICATIONS SATELLITE SYSTEM, AND FOR OTHER PURPOSES

AND

S. 2814, Amendment

(IN THE NATURE OF A SUBSTITUTE)

INTENDED TO BE PROPOSED TO THE BILL, S. 2814 TO ESTABLISH A COMMUNICATIONS SATELLITE AUTHORITY TO PROVIDE FOR THE DEVELOPMENT OF A GLOBAL COMMUNICATION SYSTEM, AND FOR OTHER PURPOSES

APRIL 10, 11, 12, 13, 16, 24, AND 26, 1962

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COMMUNICATIONS SATELLITE LEGISLATION

WEDNESDAY, APRIL 11, 1962

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to recess, at 10:05 a.m., in room 5110, New Senate Office Building, by John O. Pastore presiding.

SENATOR PASTORE. We have as our witnesses this morning Mr. Newton N. Minow, Chairman of the FCC, accompanied by other members of the Commission.

We are very happy to have you here this morning to testify on S. 2814. You may proceed, Mr. Minow.

STATEMENT OF HON. NEWTON N. MINOW, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY COMMISSIONERS ROSEL H. HYDE, T. A. M. CRAVEN, FREDERICK W. FOND, AND JOHN S. CROSS, FEDERAL COMMUNICATIONS COMMISSION, AND BERNARD STRASSBURG, ASSISTANT CHIEF, COMMON CARRIER BUREAU; MAX D. PAGLIN, GENERAL COUNSEL

Mr. Minow. Mr. Chairman, we are very pleased to be here today. As you know, this is a matter of the utmost importance. We are very anxious to give our views to the committee as it considers the legislation of this matter.

The Commission appreciates the opportunity to appear today and present its views on S. 2814, as reported favorably with amendments by the Senate Committee on Aeronautical and Space Sciences and referred to this committee, as well as on the amendment in the nature of a substitute for the original S. 2814 proposed by Senator Kefauver. These bills would provide for the establishment of a commercial communications satellite system, one by private enterprise under regulation and the other through a Government corporation.

As you know, the Commission on February 28 appeared before the Senate Space Committee and gave its views on S. 2814, as introduced, as well as its views on S. 2650, an alternate bill on the same subject. We also testified on this important matter last March 14 before the House Committee on Interstate and Foreign Commerce during its consideration of H.R. 10115, a bill identical with S. 2814. On April 8, we testified on this subject before the Senate Subcommittee on Antitrust and Monopoly.

In essence, we urged before these committees that commercial communications via satellite should be the responsibility of private enterprise under Federal regulation, and within such framework, a space

Senator YARBOROUGH. Mr. Minow, wouldn't it increase competition here to have Western Union in, to be permitted to buy this, and compete with A.T. & T.?

Mr. MINOW. Commissioner Hyde?

Mr. HYDE. There is a special problem in this field, when the old Postal Telegraph Co. and Western Union were permitted to merge there was the apprehension in Congress and among the other carriers, of whom there are a number, that if the local, you might call it monopoly, the merged telegraph service which does the domestic pickup was also engaged in international communications that they would favor their own international circuits as against the other competing ones and that was the reason why Congress indicated that the Commission should take steps as conditions would permit to obtain any divestiture of the Western Union international business.

Senator YARBOROUGH. Isn't the shoe on the other foot now?

Hasn't the Postal Telegraph and Western Union merger gotten weaker and the other competitors gotten stronger?

Government intervention at that time was to keep Postal Telegraph and Western Union from dominating the field. However, we have a reverse situation now.

Mr. HYDE. We have recommended to Congress that the international telegraph carriers should be permitted to merge to strengthen their competitive position as against telephone communication.

Senator YARBOROUGH. I believe there are about eight of them that you recommended?

Mr. HYDE. That is right.

Senator YARBOROUGH. Now, does the FCC like to throw this over so the Western Union could come back into the international communications business for buying stock in this class A or that first 50 percent?

Mr. HYDE. Well, there will be—if the divestiture case works out the way we are hopeful it will, and it seems to be in the last stages of it, there will be a new carrier, it will be known as Western Union International, which would be eligible to participate in this new venture.

Senator YARBOROUGH. Let's look at it from the standpoint of the FCC as the regulators, and your years of experience in these matters. I want to ask you, Is there any reason, in the public interest, why the A.T. & T. should be allowed to retain its international operations and the Western Union should be barred?

Mr. HYDE. I believe that the reasons which Congress gave for requiring this divestiture are sound still because I think you have an entirely different situation in respect to telegraph services from what you have on telephone.

Senator YARBOROUGH. You have voice communications; what we have seen here.

Mr. HYDE. Principally you already have competition in the telegraph services. In telephone it is all handled by the telephone company in the international field.

Senator YARBOROUGH. What I am driving at is this: If we are putting up one space satellite system, you will not have competing cables across the sea. You will only have one commercial communications satellite?

Mr. HYDE. It is my understanding that this space vehicle, or this space system, will provide channels to the companies which now

compete in these services. It is true you would have one single, you might call it, a wholesaler of communications services to carriers, but the same competitive relationships that now exist would continue; the only difference being that part of the communications would be handled via the satellite.

Senator YARBOROUGH. If one company owned 50 percent of the stock how could you keep it from favoring the company as against competing companies? It is not a Government-owned corporation; it is a privately owned corporation.

Mr. HYDE. There have been provisions provided in both the bill that was suggested by the Commission or the approach suggested by us and by the administration bill, which are designed to prevent any one carrier from having an untoward influence.

Senator YARBOROUGH. It seems to me that you gentlemen are expecting human nature to change. Do you expect that result the way this bill is drawn? These men, the officers of these companies, are elected, they are picked as people to go out to make the most profit for the stockholders. If they don't make it they will get thrown out.

Mr. HYDE. Nevertheless, the entire project is to be in the utility or common carrier field and is to be subject to regulation and you are in this very committee undertaking to provide some safeguards that would prevent any abuses that human nature might otherwise create.

Now, I think that the protection that you are concerned about, Senator, will have to be found in these provisions which are designed to prevent any one carrier from having a position of dictatorship in it, and as I understand it, the provision for the directors in it, the provision for Government inspection—I think that would be an appropriate word here—are all designed to prevent the kind of abuse which I believe is a matter of concern here.

Senator YARBOROUGH. Mr. Chairman, in the interest of time I will waive further questions at this time.

Senator PASTORE. Could you give us a list of the communications common carriers that are authorized or licensed by the FCC?

Mr. MINOW. Oh, yes, sir; we will supply that for the record.

Senator PASTORE. How long is that list?

Mr. MINOW. On the international side there would only be 8 or 9; on the others, there are 3,500 independent telephone companies in the United States, most of which are small, but we will be glad to supply a list.

Senator PASTORE. All right.

(Information supplied by FCC letter dated April 19, 1962, is as follows:)

U.S. INTERNATIONAL TELEGRAPH CARRIERS

RCA Communications, Inc.
 The Western Union Telegraph Co.
 American Cable & Radio Corp. subsidiaries:
 All America Cables & Radio Inc.
 The Commercial Cable Co.
 Globe Wireless, Ltd.
 Mackay Radio & Telegraph Co.
 Press Wireless, Inc.
 Tropical Radio Telegraph Co.
 United States-Iberia Telegraph Co.
 South Puerto Rico Sugar Co.