WASHINGTON NEWSLETTER

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Oversight Hearing on Federal Library Programs

A good audience of participants in National Library Week Legislative Day lobbying activities prompted better than average attendance by House subcommittee members at the joint hearing on major library programs held April 3. Sponsored by the authorizing subcommittees--the House Elementary, Secondary and Vocational Education Subcommittee, chaired by Rep. Carl Perkins (D-KY), and the House Postsecondary Education Subcommittee, chaired by Rep. Bill Ford (D-MI)--the hearing focused on the need for funding for major federal library programs.

A panel of ALA witnesses testified as follows: Louise Bedford, Instructional Media Coordinator, Montgomery County (KY) High School, on the ESEA IV-B school library program; James Johnston, Director, Joliet (IL) Public Library, and Nina Ladof, Director, Camden County (NJ) Library, on the Library Services and Construction Act; Joseph Boisse, Director of Libraries, University of Wisconsin-Parkside, on the HEA II-A college library program; Kenneth Vance, Professor and Assistant Dean, University of Michigan School of Library Science, on the HEA II-B library training program; Thomas Childers, Associate Professor of Library Science, Drexel University, on the HEA II-B research and demonstration program. Russell Shank, ALA President and Director of Libraries at UCLA introduced the panel and also spoke to the HEA II-C research library program. (Carol Moss, Director of the Los Angeles County Public Library System, was also scheduled to testify on LSCA but because of an airline strike and a local commitment, was unable to attend.)

Congress will recess this week for the "EASTER DISTRICT WORK PERIOD." Take advantage of this time to visit them in their district offices and let them know of your concern over the administration's proposals to cut library programs. See pages 2 and 3 for details on the FY 1980 budget battle. Go armed with your own program's facts and figures. It will be an uphill job for survival this year. The competition is keen, and the library slice of the fiscal pie is a sliver.

Subcommittee members were generally receptive to the comments of the witnesses, but Rep. Augustus Hawkins (D-CA) warned the group not to assume that the friendly atmosphere at the hearing was representative of Congress as a whole. If your requests went to the House floor today, Hawkins continued, you'd be defeated 2 to 1. The job we face is to educate the public and the rest of Congress that we won't balance the budget or reduce inflation by cutting funds for library programs. "I hope you will tell members who haven't heard you today the same story," Hawkins concluded.

Appropriations, FY 1980 - Labor-HEW

As Jack Jennings, counsel to the House Elementary, Secondary and Vocational Education Subcommittee, explained to Legislative Day participants later on April 3, the oversight hearing held that morning (see preceeding story) was scheduled because the subcommittee felt federal library programs were among those most vulnerable to the budget cutting mood of Congress. A good chunk of the federal budget is made up of "uncontrollables" such as social security and welfare programs. If the budget is to be trimmed, this puts an undue burden on the "controllables." Among the controllable items, some (such as defense and foreign aid programs) are given much higher priority than others. This again puts an unfair burden on the controllables that are left (such as education and library programs).

Many of the controllables are major programs (such as CETA) involving billions of dollars. Some of the same people who are calling for a balanced budget are also lobbying intensely to make sure their programs are not cut. The amount of money in library programs, Jennings made clear, is "peanuts" comparatively. Get out there and defend your programs, he advised, and don't let anyone tell you that the amounts you are requesting will "bust the budget."

In testimony before the Senate Labor-HEW Appropriations Subcommittee March 28, ALA went on record in support of the amounts listed below for ESEA IV-B, HEA II and LSCA, in comparison with the FY 1979 appropriations and the administration's FY 1980 budget proposal.

	FY 1979 Appropriation	FY 1980 Budget	FY 1980 ALA Appropriation Request
Elementary & Secondary Education Act			
Title IV-B (School Lib. Resources) (Advance funded program)	$180,000,000	$149,000,000*	$197,500,000
Higher Education Act			
Title II-A (College Lib. Resources)	$ 9,975,000	$ - 0 -	$ 21,000,000
II-B (Training)	2,000,000	- 0 -	6,000,000
II-B (Demonstrations)	1,000,000	- 0 -	3,000,000
II-C (Research Libraries)	6,000,000	6,000,000	15,000,000
VI-A (Educational Equipment)	- 0 -	- 0 -	15,000,000
Library Services & Construction Act			
Title I (Public Library Services)	$ 62,500,000	$ 56,900,00	$140,000,000
II (Public Lib. Construction)	- 0 -	- 0 -	97,000,000
III (Interlibrary Cooperation)	5,000,000	3,337,000	20,000,000
TOTAL LSCA	$ 67,500,000	$ 60,237,000	$257,000,000

*Reflects proposal to transfer $18,000,000 to new ESEA IV-D guidance, counseling and testing program (formerly part of IV-B). A similar transfer is proposed for FY 1979.

While the ALA request may look very high in some instances, most of the figures are below the authorized amounts. It is also worth noting that more funds were made available for each of these programs back in FY 1973 than were appropriated last year. Meanwhile, over the past five years, the average adult book price has risen 43 percent to $20.10 and the average periodical subscription price 56 percent to $27.58. During that same time span, the overall inflation rate rose 32 percent.

ACTION NEEDED: Jennings and other congressional staff have indicated that members have not yet heard from enough library supporters to make a difference. If you were not able to come to Washington on April 3, you now have another timely opportunity to visit your members in person. The spring recess begins April 11 in the House April 13 in the Senate, and extends through April 22. It is important that all members be contacted while they are home, but especially those on House and Senate appropriations committees (see lists attached to February 28 and March 14 newsletters). Urge that funding for federal library programs in the Labor-HEW appropriations bill (no number yet) be restored to at least the FY 1979 levels. (See January 29 newsletter for FY 79 levels and proposed FY 80 budget.) If you provide written information to your legislator or write letters, send blind copies to the ALA Washington Office.

Tax Deduction for Manuscript Donations

A bill introduced in the House on February 28, HR 2498, would amend the Internal Revenue Code of 1954 to allow an author or artist who donates his/her literary, musical or artistic compositions or papers to a library or museum to take a tax deduction equal to the fair market value of the items. This condition existed until 1969 when the Tax Reform Act (PL 91-172) limited such tax deductions to the cost of the materials used to produce the compositions. Since then donations of manuscripts and papers from authors and other figures to libraries have dwindled seriously.

Similar bills have surfaced from time to time since 1969 but have not gotton anywhere. What makes this measure significant is its supporters. It was introduced by Rep. Abner Mikva (D-IL) and Rep. William Brodhead (D-MI). Another supporter is Rep. Richard Gephardt (D-MO); all three are members of the House Ways and Means Committee which would handle the bill if any action were to be taken.

ACTION NEEDED: Constituent librarians interested in HR 2498 should contact members of the Ways and Means Committee to urge that the committee take action on the bill. Include data on how the 1969 law has affected your library. Send the ALA Washington Office blind copies of your letters. Also send TWX or postcard with your name, address and phone number for possible alerts to action.

Members of Ways and Means are: Democrats - Ullman (OR), chair, Rostenkowski (IL), Vanik (OH), Corman (CA), Gibbons (FL), Pickle (TX), Rangel (NY), Cotter (CT), Stark (CA), Jones (OK), Jacobs (IN), Mikva (IL), Fisher (VA), Ford (TN), Holland (SC) Brodhead (MI), Jenkins (GA), Gephardt (MO), Lederer (PA), Downey (NY), Heftel (HI), Fowler (GA), Guarini (NJ), Shannon (MA). Republicans - Conable (NY), Duncan (TN), Archer (TX), Vander Jagt (MI), Philip Crane (IL), Frenzel (MN), Martin (NC), Bafalis (FL), Schulze (PA), Gradison (OH), Rousselot (CA), Moore (LA).

Energy Conservation Regulations

Final regulations for the energy audit portion of the energy conservation grant program for schools, colleges, hospitals, and buildings owned by units of local government (including public libraries) were published in the April 2 Federal Register (pp. 19340-60). The regulations, effective April 2, cover preliminary energy audits, which are to be a sort of state census of buildings eligible for

energy audits, and the energy audits themselves, for which states will develop priorities, since not all eligible buildings will be able to be assisted. The actual energy audit will require having a trained auditor visit the building and make an on-site inspection to identify changes in operating and maintenance procedures which could save energy.

The proposed regs published December 12, 1978 noted that the legislative history reflected an intention that public libraries be eligible whether or not owned by units of local government, and raised the question of whether and how libraries should be defined. This question generated 17 responses, including recommendations from ALA. As a result, the definition of "unit of local government" has been expanded in the final regs to include:

> ...libraries owned by /county, municipality, parish, borough, township, or territorial or tribal governments/; and public libraries which service (sic) all residents of a political subdivision below the State level, such as a community, district or region, free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

The regulations implement part of title III of the National Energy Conservation Policy Act (PL 95-619). Title III also includes grants for energy conservation projects for schools, colleges and hospitals, and technical assistance grants for buildings owned by units of local government; proposed regulations for these programs were published in the Federal Register on January 5 (p. 1580), and final regulations are expected to be published on April 11 or 12.

Attachments

Bills making major revisions to the Communications Act of 1934 were introduced recently in both the House and Senate. Summaries of both bills are attached.

* * * * *

President Carter's message issued for National Library Week (April 1-7, 1979).

THANKYOUTHANKYOUTHANKYOUTHANKYOUTHANKYOUTHANKYOUTHANKYOUTHANKYOUTHANKYOU

Many thanks to all those who provided specific data on postal costs in libraries in response to our recent request.

We were pleased to see that a number of librarians made excellent statements on Higher Education Act title II library programs at the HEW regional hearings on HEA reauthorization held earlier this year. Thanks to all.

WHCLIS - New Dates

It was recently announced that the White House Conference on Library and Information Services has been rescheduled for November 15-19 and moved to the Washington Hilton Hotel. The original hotel, the Sheraton-Park, is undergoing construction and may not be ready in time for the original dates of October 28 to November 1.

THE WHITE HOUSE

WASHINGTON

National Library Week, 1979

With its 21st consecutive observance, National Library Week comes of age. It is particularly appropriate that this milestone comes in 1979, the year of the first White House Conference on Library and Information Services.

Books were among the most treasured possessions of our country's earliest settlers. They were the means of creating a culture in the wilderness. Benjamin Franklin, who founded the initial subscription library in America, was among the first of many generations of self-educated people who overcame humble beginnings by their love of books.

Every library is filled with success stories. Every library is filled, too, with the possibilities of success for all who can read. Literacy for all our people is a basic priority of our government, and the considerable accomplishments of the American Library Association in this regard can be a source of pride to all Americans.

On behalf of all our citizens I welcome this annual opportunity to applaud all the nation's librarians and thank them for their major contribution to the vitality of our democratic way of life.

Jimmy Carter

National Library Week — April 1-7, 1979

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, THURSDAY, MARCH 29, 1979 No. 40

House of Representatives

H.R. 3333, THE COMMUNICATIONS ACT OF 1979

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. VAN DEERLIN) is recognized for 5 minutes.

● Mr. VAN DEERLIN. Mr. Speaker, I have introduced today H.R. 3333, a bill to revamp the communications laws of this country. I have been joined in this effort by Mr. COLLINS of Texas, the ranking member of the Communications Subcommittee, and by Mr. BROYHILL. The new bill is a redraft of legislation which I introduced in the last Congress joined, at that time, by our distinguished former colleague Lou Frey.

H.R. 3333, the Communications Act of 1979, is based on two key principles—competition and deregulation. At no other time in our Nation's history have we seen the on-rush of new technology that we see in the telecommunications industry today. It is appropriate that we allow full and fair competition to create new services and bring new choices to the consumer. It is also appropriate that we provide a diminished role for regulation, so that new technology will not be stifled.

The existing Communications Act, written in 1934, is based on two premises which are now largely obsolete—regulated monopoly in the telephone industry and scarcity of spectrum space for broadcasting. New services and new technologies cannot be properly dealt with within the framework of the 1934 act. H.R. 3333 looks to the future, rather than to the past.

A summary of major provisions in the bill follows:

THE COMMUNICATIONS ACT OF 1979

The proposed legislation is the first comprehensive revision of communications law and policy in 45 years. The bill covers several policy areas, with its general findings and purpose set forth in Title I, which is cited below. A summary of key provisions from other parts of the legislation follows.

GENERAL PROVISIONS

Findings and purpose

Sec. 101. (a) The Congress hereby finds that the regulation of interstate and foreign telecommunications is necessary, to the extent marketplace forces are deficient, in order to—

(1) make available to the people of the United States nationwide and worldwide telecommunications services which are diverse, reliable, and efficient, and which are universally available at affordable rates; and

(2) meet the needs of United States foreign policy, the national defense, and the safety of life and property.

(b) It is the purpose of this Act to establish certain requirements relating to the regulation of interstate and foreign telecommunications to the extent that marketplace forces fail to protect the public interest.

REGULATORY REFORM

Authorizes regulation of interstate and foreign telecommunications only when "marketplace forces fail to protect the public interest."

Abolishes the Federal Communications Commission, and replaces it with the Communications Regulatory Commission (CRC), a body of five commissioners appointed by the President to nonrenewable 10-year terms.

Establishes the National Telecommunications Agency, (NTA) as an independent agency in the executive branch charged with developing and implementing a national telecommunications policy, a responsibility now distributed among several federal agencies. The NTA replaces the National Telecommunications and Information Administration, in the Commerce Department.

Sets up a reimbursement program for participation in CRC tariff hearings and rulemaking proceedings. Available to both public and industry representatives, the program provides funds for persons who: (a) have an interest that would not otherwise be heard; and (b) could not afford to participate without such financial assistance.

Establishes a $10 million fund to increase minority ownership of television and radio stations. Two programs may receive funding: (1) a loan guaranty program administered by NTA; and (2) an investment program allowing NTA to purchase equity interest in Minority Enterprise Small Business Investment Corporations.

TELECOMMUNICATIONS CARRIERS

Finds that "competition shall be relied upon to the maximum extent possible to determine the variety, quality and cost of telecommunications services and facilities".

Finds that telecommunications services should be "universally available at affordable rates".

Allows local telephone companies to establish an access charge to assure that all intercity (interexchange) carriers make a fair contribution to maintaining low-cost local telephone service. States oversee access charges according to a fixed formula.

Deregulates all terminal equipment and establishes a customer's right to connect their own terminals.

Deregulates all intercity (interexchange) *carriers*, except for "dominant carriers" (defined so as to apply only to AT&T at present). Reduces and streamlines regulation of dominant carriers. Eliminates all regulation of intercity (interexchange) markets after 10 years.

Deregulates all intercity (interexchange) *services*, except those provided by a dominant carrier; provides for unregulated resale and shared use of facilities or services obtained from a dominant carrier.

Limits state regulation to basic voice telephone service; deregulates all other services offered by local telephone companies (*interexchange carriers*).

Allows carriers to provide any telecommunications service or facility, or any service or facility *incidental* to telecommunications—including provision of terminal equipment, data transmission, retransmission of broadcast signals, and electronic mass media services (with some restrictions).

Overrides restraints imposed AT&T and Western Electric by 1956 Consent Decree; requires AT&T and affiliated companies to deal with each other on arms-length basis and to make available to others products, services or facilities on the same terms which they provide to each other.

Establishes reimbursement program for consumer groups, users and small businessmen in all rulemaking or tariff proceedings related to telecommunications carriers.

INTERNATIONAL TELECOMMUNICATIONS

Abolishes gateway city concept allowing all international carriers to serve domestically (and vice versa, including Western Union); also abolishes the regulatory distinction between international voice and record services.

Affirms COMSAT's role as the U.S. designated entity for INTELSAT (as a carriers' carrier) and for INMARSAT (as a connecting carrier).

Allows COMSAT to establish a separate subsidiary for the provision of services to the public through both satellite and submarine cable facilities.

Creates a task force on International Telecommunications Facilities Planning; substitutes discretionary retrospective review of dominant carriers' international facilities for prior approval of construction of such facilities by the Commission; allows the President to veto the construction of international facilities for reasons of national security or foreign policy.

Requires carriers to file with the CRC and NTA copies of agreements entered into with foreign administrations.

RADIO

Deregulates radio stations in all markets immediately, eliminates Fairness Doctrine, equal time and EEO regulation by Commission.

Requires radio broadcasters to pay a fee based on spectrum use.

Provides for indefinite licenses which are subject to revocation only for violation of technical standards.

Eliminates current restrictions on the number of radio stations which can be owned by a single owner.

Restricts ownership of stations within a market to one AM and one FM.

Requires CRC to expand opportunities for new radio stations.

Eliminates comparative hearing.

Provides a random selection process for assigning new stations, eliminating delays which exist in the current comparative hearing process. Provides minority applicants with two chances in the random selection process.

Combines license application and construction permit, streamlining the process required to get a new station on the air and reducing paperwork.

Eliminates current ascertainment rules.

TELEVISION

Provides for two five-year licenses and then indefinite terms subject only to revocation (Petitions to deny are allowed at the time of the remaining renewals).

Requires the payment of a spectrum resource fee to cover the costs of regulation and the value of the spectrum being used; fixed by a formula in the legislation, the fee is phased in at the rate of 10 percent a year over ten years.

Reduces regulation of television by eliminating equal time requirements (except for paid time) and by limiting review under the Fairness Doctrine to renewal (rather than on a case-by-case basis).

Replaces "public interest" standard with a requirement that broadcasters provide news, public affairs and locally produced programs throughout the broadcast day.

Streamlines EEO enforcement, giving the CRC authority to enforce EEO for television licensees over a ten-year period.

Eliminates all regulation of television after ten years, when the spectrum resource fee is fully phased-in.

Limits multiple ownership to seven television stations (thereby enacting into law the existing Commission rule); permits the ownership of no more than one television station, one AM and one FM station in a market.

Requires the CRC to ensure that at least one VHF television station is assigned to each state and to expand the opportunities for new stations.

Replaces the comparative hearing with a random selection process for assigning frequencies; minority applicants are assured two chances in the random selection process.

Combines license application and construction permit, streamlining the process required to get a new station on the air and reducing paperwork.

Eliminates current ascertainment rules.

SPECTRUM RESOURCE FEE

Establishes an annual spectrum resource fee that is phased-in at 10 percent annually over a 10-year period. The fee is determined by the cost of processing a license application and the scarcity value of the spectrum used. Revenues from the fees go to the general fund of the U.S. Treasury.

Broadcasting

Scarcity value is a reflection of a broadcaster's gross annual revenues. The specific formula is:

"0.25 percent of annual revenues under $1 million plus 2.5 percent of annual revenues from $1 to $10 million plus 10 percent of annual revenues over $10 million."

Fees are phased-in at 10 percent a year for spectrum users During the first year, a user pays 10 percent of the scarcity value; during the second year, 20 percent, and so on.

Under the 10 percent phase-in plan, a television station grossing $20 million annually would pay $122,750 the first year for the scarcity value of the spectrum, $613,750 during the fifth year, and $1,227,500 at full phase-in, during the tenth year. (These estimates do *not* include the cost of processing license applications).

Under the formula, a radio station grossing $500,000 annually would pay $1,250 per year for the scarcity value of the spectrum used. A television station grossing $20 million annually, would pay $1,227,500.

In 1977, broadcasters' spectrum resource fees would have totaled approximately $150 million had the schedule been fully phased-in.

Land mobile users

Land mobile users are also subject to the 10 percent, 10-year phase-in. However, their spectrum resource fee has a "cap" and the CRC may assess below that cap.

The cap for land mobile users is 1/360 of the lowest spectrum resource fee paid by a UHF television station operating in the same area. The cap is based on the fact that one UHF channel is roughly equivalent to 360 land mobile channels.

In 1977 the average UHF station grossed $1.8 million, which yields a corresponding spectrum resource fee of $22,500. Under the fee formula, the *cap* for the average land mobile user would have been $22,500 divided by 360—or $62.50 per year per channel. Under the 10-year phase-in, a land mobile user would have paid $6.25 per channel during the first year and $62.25 per channel during the tenth year of full phase-in.

LAND MOBILE RADIO

Gives explicit recognition of this important radio service. Sets up rules for spectrum management and spectrum assignment in land mobile which take into account the differences between land mobile and broadcasting.

Preempts duplicative state regulation of land mobile equipment and facilities.

Gives the Commission flexible tools to deal with the special problems of land mobile. Such flexible tools include industry coordinating committees.

Imposes spectrum resource fees on all commercial users of the spectrum. A cap is placed on the spectrum fees charged land mobile users.

CABLE TELEVISION

Prohibits all federal regulation of cable, including signal carriage and pay services.

Preempts state and local regulatory authority over cable television, including rate regulation.

Allows cable companies to compete fully with telephone companies for the provision of all services, including basic voice service.

Permits cable operators to provide both equipment and programming services for a cable system.

Allows cable television companies to offer services that are incidental to telecommunications—such as, burglar alarms, fire alarms and data transmission—without regulation.

Provides expanded protection of cable operators' rights to attach their cable to telephone company poles by requiring access at "just and reasonable" rates, terms and conditions for pole attachments. Permits the CRC to regulate pole attachments when a state does not.

Prohibits retransmission or rebroadcast of a program without the express authority of the person who owns or controls exclusive rights to the program.

ADMINISTRATIVE AND JUDICIAL PROCEDURES; PENALTIES

Gives exclusive authority to the Commission rather than the United States Attorney to commence or defend all civil actions necessary to enforce the Act.

Substantially increases penalties and forfeitures for violations of the Act.

Lifts restriction that allowed appeals from some Commission decisions to be taken only to the United States Court of Appeals for the District of Columbia.

PUBLIC BROADCASTING

Creates a new statutory class of "public broadcast stations" to be operated on a nonprofit basis for educational and cultural purposes.

Abolishes the Corporation for Public Broadcasting after fiscal year 1983, replacing it with the Endowment for Program Development, a private nonprofit corporation that funds the development, production and acquisition of television and radio programs and services.

Endowment-supported programs are available exclusively to public broadcasters for one year after production; then, rights revert to the producer.

Provides for a five-fold increase in funding program production and acquisition through the Endowment.

Strengthens the insulation of public broadcasting from political interference by establishing new funding sources and Board-appointment procedures.

(1) Provides the Endowment with a *permanent* annual authorization of $1.50 for every U.S. resident. This would yield more than $330 million annually.

(2) Establishes a nine-member Endowment Board, with three members appointed by the President and six members appointed by the Board.

(3) Allows public broadcasters to become more self-sustaining by seeking limited advertiser support. Advertising may not interrupt programs; it is limited to not more than three percent of the broadcast day and must be clustered into no more than three periods daily.

Removes restriction that prevents public broadcasters from editorializing.●

COMMUNICATIONS ACT OF 1979

HR 3333, a bill to revamp U.S. communications laws, was introduced March 29 by Rep. Lionel Van Deerlin (D-CA), Chair of the House Communications Subcommittee, and Rep. James Collins (R-TX), ranking minority member of the subcommittee.

Based on two key principles, competition and deregulation, the bill is a redraft of legislation introduced in the 95th Congress. Van Deerlin's introductory statement includes a summary of the 237-page bill.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, MARCH 12, 1979 No. 29

Senate

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself, Mr. CANNON, and Mr. STEVENS):

S. 611. A bill to amend the Communications Act of 1934, as amended, to provide for improved domestic telecommunications and international telecommunications, rural telecommunications development, to establish a National Commission on Spectrum Management, and for other purposes; to the Committee on Commerce, Science, and Transportation.

COMMUNICATIONS ACT AMENDMENTS OF 1979

Mr. HOLLINGS. Mr. President, I send to the desk a bill designed to modify the Communications Act of 1934. This bill is introduced on behalf of myself and the distinguished chairman of the Commerce Committee, Mr. CANNON of Nevada.

Mr. STEVENS. Will the Senator add me as a cosponsor?

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the distinguished Senator from Alaska be added as a cosponsor of our communications bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. I thank the Chair.

Mr. President, we are in the midst of an explosion in telecommunications technologies and applications. As this occurs, we see the tremendous opportunities they will make available to us, and we see the increasing convergence of various technologies. We are coming to appreciate both the new and improved services, and the better, cheaper methods to deliver these services. It is much like the effect computers and calculators have had, but because communications touches a larger part of our lives—the effects of change will be that much more profound.

Times are changing and we must all change with them.

Natural monopoly and economy of scale are ideas of the past.

Competition and diversity are ideas of the future.

The basic communications policy of this country is embodied in the 1934 act, and the time has come to renovate the act to meet this new age.

The major impact of the changes are reflected in title II of the bill which deals with domestic, rural and international telecommunications policy.

Further, a number of problems have plagued us in broadcasting—such as license terms and comparative renewals and signal carriage rules. Title III of the bill would deal with these problems.

The electromagnetic spectrum is a resource owned by the public and allocated to specific private users by the Federal Communications Commission. While this allocation is predicated upon a number of varying factors, it is generally agreed that the users derive a significant personal financial benefit from its use. In commercial television broadcasting, for example, 728 licensees earned $1.4 billion in 1977 profits. It does not seem proper for such benefits to accrue to private users while the public, who owns the resource, receives nothing. Accordingly, the bill would create a public resource fee program. The nonbroadcast license fee would relate to the market value of the license received. Television licensees would pay a fee based upon a formula which takes into consideration the nature of the market and the extent of each licensee's competition within the market. Radio licensees would pay a fee calculated on their 1 minute spot rate.

In order to encourage a fresh look at spectrum allocation policies and procedures, and avoid jurisdictional jealousies and stigmas, the bill would create a Spectrum Commission to conduct an 18-month study of spectrum allocation practices and policies and to make recommendations to Congress and the administration for improvements therein.

Before I go into a more specific discussion of the bill and the theory behind it, I want to make it clear that while we believe this bill is a major step toward accomplishing a renovation of the 1934 act, it is by no means the final word. We are looking forward to the hearings which will start in a month or so to further enlighten us and to improve upon the bill as introduced.

TELECOMMUNICATIONS POLICY

The closely related worlds of telecommunications and information processing are undergoing an enormous technological revolution. This revolution has already:

First, greatly increased the variety of telecommunications and information processing services being offered and demanded;

Second, greatly increased the number and diversity of the firms entering the telecommunications and information processing area; and

Third, greatly changed the nature of a wide variety of activities in the private and public sector—banking, insurance, police, et cetera.

In so doing, events have severely undermined the rationale for a sanctioned monopoly in the provision of telecommunications services. Many telecommunications-related markets are either already well on the way to becoming competitive or could become competitive. Innovation is coming from small and medium sized firms as well as the largest, and many potential competitors are waiting to enter the field—which promises to be a major driving force of the economy during the next 100 years. Wherever competition has occurred in telecommunications and related fields, it has resulted in increased quantity and diversity of services, a downward pressure on prices and a sharp spur to technical innovation and development. We now face a structure so dynamic and fluid that it is not possible to ordain the best technological and institutional framework for future communications. Instead, public policy should create an atmosphere in which flexibility, enterprise, and innovation can flourish but within an orderly national framework.

Clearly, this requires changes to be made in the existing Communications Act which was written 45 years ago when technology appeared relatively limited and conditions of natural monopoly were believed to exist and "telecommunications" had only two meanings: radio and twisted copper wires carrying telegraph and voice telephone. To continue to maintain, unchanged, the structure of regulation created under the totally different circumstances of four and a half decades ago can only serve to retard or distort progress in an area whose importance can hardly be overstated—an area in which, it should be noted, the United States currently enjoys a substantial lead over the rest of the world.

However, while increasing the scope for competition is desirable in general, there are several important concerns which cannot and must not be overlooked:

PUBLIC INTEREST GOALS

The 1934 act set forth important public interest goals for telecommunications policy—universal basic telephone service at reasonable rates, and the creation of a nationwide network. This policy and the system created to achieve it has been so successful that universal access to cheap, reliable telephone communication has been a basic necessity of American life. These goals must be maintained under any revised scheme. Increased competition is a means to an end; it is not an end in itself. Where an important public goal is not well served by competition, regulatory tools must still be available to insure that essential public needs are met.

UNIQUE MARKET STRUCTURE

We cannot ignore the overpowering presence of integrated monopoly carriers—particularly A.T. & T., the world's largest corporation. Although full competition is ultimately feasible in most telecommunications markets, it does not currently exist. Nor, will it come into being overnight simply because Congress declares it to be national policy. Easy entry by competitors is a prerequisite for a fully competitive market. Yet if all regulation were removed, existing telephone monopolies and especially A.T. & T. could hinder entry into many if not most telecommunications markets because of their size, market presence and because they control access to the existing network. These companies are not to be criticized because of their overwhelming market power. It was in large part a deliberate result of prior policies which were appropriate at the time they were designed.

However, as the 1934 policies are modernized, this market dominance is a fact which must be faced and addressed. While some potential competitors may be able to hold their own against A.T. & T. in totally unrestrained market (e.g., IBM, Zerox, RCA), many could be crushed before they had a chance, and even the large ones might well be unable to withstand the advantages the existing telephone monopoly enjoys as a result of the peculiar history of the last 45 years.

Telecommunications is not like trucking or airlines where no carrier has ever had an overwhelmingly dominant position, let alone a sanctioned monopoly. A.T. & T. alone has nearly $100 billion in fixed plant—equal to or surpassing that of all other telecommunications and information processing companies combined. This plant not only can be used to provide both monopoly and competitive services—but access to it is essential for almost any other carrier wishing to provide these services. Business Week, dated March 19, 1979, cited A.T. & T as the top U.S. "corporate giant" in earnings for 1978 with $5,240,000 profits. The No. 2 "giant" was GM at $3½ million. Thus, the situation is rather like having one airline which owned all the big city airports, or one trucking company which owned the Interstate Highway System.

On the other hand, some observers argue that A.T. & T. is handicapped rather than aided by the huge albatross of "obsolete" plant which is not fully depreciated and can only be very slowly unwound because of regulatory constraints and tariffs, construction, and depreciation rates. While there is probably some truth to this, it is doubtful that it outweighs the tremendous power which A.T. & T.'s position confers. Because of this power, the potential risks of unfettered entry by A.T. & T., and other large regulated telecommunications monopolies, into competitive markets are so huge and unforeseeable that it would be irresponsible to totally deregulate such markets on the naive belief that full and fair competition would magically appear overnight.

The goal, then, of the Communications Act of 1979 is to create a process whereby regulation can be responsibly and realistically reduced while at the same time protecting both the growth of competition and the important social considerations such as universal affordable basic service. This goal requires a transition mechanism which recognizes that, because of the unique history of telecommunications, all carriers cannot be treated alike, at least initially.

EXCEPTIONS TO THE RULE

We do not see that full competition will be possible within the foreseeable future in the international sphere, because half of all international communications is controlled by foreign government entities who are deeply opposed to competitive arrangements. Further, so long as foreign carriers are able to bargain from a monopoly position and U.S. carriers are not, the U.S. interests will be vulnerable in the negotiation and planning process.

The second sphere where full competition may never be possible is in rural areas where population density is so low that Federal assistance may continue to be needed in order to construct at least one viable system of modern facilities. Hence, full competition may not be possible, but it should not be abandoned as a goal.

The heart of the bill is the establishment of a procedure which systematically identifies major markets and submarkets within the telecommunications equipment and service industries and establishes the conditions under which carriers may participate in these markets. These conditions for participation are designed to preserve competitive market conditions where they exist, and to foster them where they are possible. The nature and scope of regulatory supervision is adjusted to suit actual market conditions and public interest concerns. This proceeding would begin with a classification by the Commission of services and carriers based on the degree of competition and the extent to which particular services are so essential to the public interest that their availability at reasonable rates must be assured.

The Commission is given the duty and the flexibility to tailer regulation to the needs of each class of carriers and is directed to use regulation to guarantee the provision of essential services and to encourage competition where it is feasible. Further, the Commission is placed under the obligation to (a) impose the minimum regulatory burden necessary to do the job in each case and (b) to regularly review and reduce regulation as competition develops in each market.

None of this flexibility exists now. Under the existing act, a carrier is either subject to full panoply of regulation—including rate regulation and facility authorization—or is subject to no regulation at all. In effect this bill creates a series of half-way houses, each with progressively less regulation, together with an orderly process for moving from one to another as competition develops.

REGULATORY JURISDICTION

Interstate and intrastate long-distance telecommunications are so completely interwined that it no longer makes sense to separate the two. Indeed, it is not really possible to do so in any rational manner. When a call from Philadelphia to Pittsburgh can be (and frequently is) routed through New York City, what sense does it make to pretend that the former is an "intrastate" call and the latter is "interstate?" For analogous reasons, the Congress last year ended similar irrational jurisdictional boundaries in the Airline Deregulation Act. Those boundaries make even less sense in the case of telecommunications where facilities are far more integrated nationally than is the case for airlines.

Under current conditions and realities, the logical distinction is between local exchange facilities and services and long distance or "intercity" facilities and services. The former serve the day-to-day social and business needs of a local community of interest, on a highly integrated basis, and they are likely to remain generally noncompetitive for some time to come.

In addition to their significance to interstate and foreign commerce, long distance, or intercity facilities and services on the other hand, are far more diverse and are rapidly becoming competitive.

This bill would define the FCC's jurisdiction to include all intercity communications. The States continue their authority over intracity matters such as the definition of exchange or franchise areas and the regulation of charges and practices for intraexchange services. This exchange definition is subject to review by the FCC only upon complaint by an interested party and evidence that the State has grossly abused the concept of an "exchange area." The FCC would have responsibility for intercity rates and charges and for the charges paid by intercity carriers to local carriers for access to local exchanges.

PURPOSES

The purposes of the Communications Act of 1934 remain as vital and appropriate today as they were 45 years ago and the "Communications Act Amendments of 1979" accordingly leaves them substantially unchanged. Instead the bill adds to them by stating that it shall also be the purpose of the act to encourage diversity of ownership of telecommunications media and to promote competition in the provisions of telecommunications equipment and services.

DEFINITIONS

Perhaps most notable is removal of the term and concept "common carrier," as testimony to the fact that this is a new era. The replacement, "category II carrier" is different in significant ways; it does not carry the connotation of an automatically sanctioned monopoly nor will it necessarily imply the full panoply of regulation.

The key sets of definition introduced in

the bill are "information" and "information services" on the one hand and "telecommunications" and "telecommunications services" on the other hand. The former pair refers to the creation, manipulation, and marketing of intelligence in electronic form. The latter pair refers wholly to the electronic transfer of information from one location to another.

At first glance this appears similar to the data processing-communications distinction which has caused much concern in the past. That distinction has been contentious for two reasons. First, it has determined A.T. & T.'s ability to offer services in compliance with the 1956 consent decree. Further, there was no flexibility in the consequences. If a service was deemed to be unregulated or noncommunications, then A.T. & T. could not offer it. Where it was desirable that A.T. & T. be allowed to offer a service, the FCC was forced to manipulate the meaning of "communications." Second, the boundary of "communications" services determined the FCC's jurisdictional limits.

The bill significantly alters both of these consequences. The bill significantly alters both of these consequences. Under this bill A.T. & T. would be allowed to enter any market it wished—including unregulated information services. However, if it chooses to enter a competitive market it would have to set up a "fully separated subsidiary." A "fully separated subsidiary" is one which is owned or controlled by another entity but does not have common directors, officers, employees or financial structure or commonly owned facilities, and which deals with its parent or affiliate on an arms length basis in the same manner as it deals with any unaffiliated entity. In other words, if A.T. & T. wished to enter the information services market they would have to set up a separate subsidiary. If the subsidiary wished to use telecommunications facilities owned by its parent, another affiliated entity, or nonaffiliated entity, would have to do so by leasing these facilities on a basis which does not discriminate in favor of that subsidiary.

Further, unlike the 1934 act the bill clearly makes the distinction in the statute itself on both counts. Both the lack of clarity and the contentionness of the distinction between information services and telecommunications services will be much less than has been the case in the past for communication/noncommunication.

The second important set of new definitions is "exchange telecommunications area," "exchange telecommunications," and "interexchange telecommunications." An "exchange telecommunications area" is defined as a local area having a community of interest for economic, social, et cetera, purposes. In other words an "exchange" or "local exchange area" for the purposes of this act would frequently be larger than a single "exchange" as that term is sometimes used to mean the area served by a single switch and having a single three-digit prefix to the telephone numbers found within it.

CLASSIFICATION PROCESSES

In addition to these two definitional distinctions, the Commission is empowered to undertake two important classifications—of services and carriers.

TELECOMMUNICATIONS SERVICES

The Commission is required to examine the nature of telecommunications services and markets to determine:

First, the amount of competition that exists in a given market;

Second, the feasibility of developing competition in a presently uncompetitive market;

Third, the nature of the carriers in the market; and

Fourth, the importance of insuring that a particular service, which is essential, is universally available at a reasonable rate.

The amendments make the presumption that all long-distance switched telecommunications services are already competitive or are capable of becoming competitive.

The first such classification procedure must take place within 180 days of the enactment of the act, and monitoring and reconsideration are to take place regularly thereafter.

The classification of services is intended to provide an informational and analytical framework for the classification of carriers, to prevent the carrier classification from becoming purely ad hoc, and to insure that carrier classification is a planned, logical activity in which the main objective, service to the public, is kept clearly in view. As such it is extremely important.

With regard to carrier classifications, telecommunications carriers are firms (persons) who provide telecommunications services. In order to determine the extent of regulation or freedom from regulation, such carriers are grouped by the amendments into the two broad categories (category I and category II carriers) based upon: The degree of effective competition to which they are subject, their dominance in their own service market or markets, and the extent to which their service is deemed to be essential to the public.

Category I carriers are those which provide services for which the market is largely competitive or which are too small to dominate their market and which do not offer a service which has been to dominate their market and which do not offer a service which has been deemed both "essential" and incapable of being adequately provided under competitive conditions. Category II carriers are carriers which so dominate their market that they are not subject to effective competition or which provide essential services which cannot be left to competition.

Category II carriers may be further subdivided by the FCC if it sees fit, but the broad outlines of these two categories are set out in the bill as are clear criteria to guide classification of specific carriers and the extent of regulation to be applied to each category.

Together these two sets of distinctions from the nucleus of the proposed amendment to title II of the Communications Act of 1934:

First. The distinction that divides the industry between information services and telecommunications services and further divides the telecommunications industry into category I and category II telecommunications carriers, and

Second. The distinction between (local) exchange telecommunications services and interexchange telecommunications services.

APPLICATION OF THE BILL TO VARIOUS GROUPS

First. Companies which do nothing but provide information services, information equipment, software, et cetera would be completely unregulated (as they are now).

Second. Category I telecommunications carriers are subject to no restrictions other than (a) the obligation to submit to the FCC such information as is necessary for the FCC to monitor the market; (b) further, the FCC may, if necessary and after a hearing, reclassify any of them as a category II carrier. This precaution is essential because competition is very new in telecommunications, and most markets are still very "thin."

It is not possible to say whether markets or carriers which now appear to be competitive—or "proto-competitive"—will remain competitive in the new, less regulated environment or whether some carriers which, while apparently competitive now, may rapidly become monopolistic. Nor is it completely clear how well essential service will be maintained in a competitive environment. Thus the FCC must be able to step back in where it has become clear that competition is not working in the public interest or not developing at all. Apart from (a) and (b) above, category I carriers would be completely free of regulation—they would not have to get approval for tariffs, facilities, or anything else.

Third. Category II carriers would be regulated—up to and including the full array of tools now in use, such as facilities authorization, tariff regulation, and so forth. The Commission would have authority over the switching equipment of category II carriers as well as "lines." Switching equipment is not included under the existing act which has created an anomaly as technology has developed and more and more of the telecommunications investment moved into the switching and out of the "lines."

However, while the Commission would have the authority to employ the full array of regulation it would not be required to do so.

Instead, with respect to category II carriers, the Commission would have much more flexibility to reduce regulation than it now has for common carriers. The Commission would be charged with imposing the minimum burden necessary and appropriate in each case or class of carriers—and particularly with respect to those concerns which formed the basis of the carrier's classification as a category II carrier. Further the Commission must regularly review and where necessary revise, reduce or eliminate rules where the need for supervision has declined. This means that, as competition develops, the FCC is obligated to reduce regulation on cate-

gory II carriers individually or as a class—moving them closer and closer to category I status and, ultimately, we hope into it.

In general, category II carriers would be allowed to offer information services, manufacture and sell telecommunications or information equipment or enter service markets where the other carriers are category I carriers, but only if (a) they do so through fully separated subsidiaries which have separate officers, employees, facilities, and finances, and which deal with the parent and any other affiliated carriers through nondiscriminatory arms-length arrangements, or (b) the Commission prescribes, after a hearing, appropriate accounting or structural safeguards to be undertaken by the category II carrier—which the Commission considers necessary to protect the competitiveness of the market in question as well as the ratepayers of the carrier's rate regulated services.

A skeptic might say that the domestic telecommunications policy contained in this proposed bill amounts to a giant handicapping scheme. To which one would reply—that is exactly what is needed. The telecommunications markets are such that one cannot simply declare "there should be competition" and expect it to occur overnight. Indeed, if one were to remove all regulation, the probable result would be a speedy end to the budding competition that has begun to emerge. An intelligent, flexible handicapping system with built-in mechanisms for tightening or loosening the restraints as competition flourishes or flounders in each market in precisely what the telecommunications industry most needs during the next one or two decades of transition to what we hope will be full competiion.

ACCESS CHARGES AND THE BASIC EXCHANGE MAINTENANCE PROGRAM

The bill provides for a transition from the current process of separations and settlements (wherein A.T. & T. collects the fees for long-distance calls and distributes funds to the local carriers which originate and terminate such calls) to a system where the local carriers charge intercity carriers directly for the cost of handling their traffic.

Under the existing system of separations and settlements, the payment by A.T. & T. from the central pool to a local carrier is made up of two parts: (a) those costs to the local carrier which can be clearly identified as being related to interstate service, and (b) an adjustment factor which includes both inallocable common costs and "subsidy." The bill provides for the identifiable costs to be paid directly to the local carrier (as an access charge) by any interexchange carrier seeking to interconnect for the origination or termination of an interexchange message.

In other words, a local telephone company would charge A.T. & T. long lines, MCI, ITT and all other interchange carriers directly if they wished to connect with the local network company. These access charges would be regulated by the FCC as an essential part of interexchange service.

That portion of separations and settlements which accounts for inallocable costs and "subsidy" would be replaced by a basic exchange maintenance program administered by a permanent Federal/State joint board. The size of the pool would be fixed at the level of 110 percent of the inallocable costs reimbursed by settlements in the year prior to the passage of the bill. The gross revenues into the pool would not increase—hence, the pool would gradually decrease in real terms. For cost-settling telephone companies, each company would receive an amount equivalent to the difference between what the company actually received in the year prior to passage and what it would have received if it had been based solely on relative use of exchange facilities between exchange and interchange traffic.

For no-cost-setting companies each company will receive an amount which is the same percentage of their prior year settlements as the amount computed above for similarly situated cost-setting companies. In addition, small companies with less than 30 subscribers per route mile (about 1,000 out of the 1,550 independents) would get a pro rata share of the money remaining in the pool after inallocable costs have been reimbursed. It is anticipated that this would amount to between $200 million and $300 million and the reason for this extra payment is to insure the viability of the small rural system.

Since all intercity carriers rely upon the existence of universal, local networks whether or not they connect with them for any particular service, the money for the basic exchange maintenance program would be collected by a surcharge on all intercity traffic handled by each in the previous year.

II. INTERCONNECTION

Every category II carrier which is not subject to effective competition is required to establish physical connections of its facilities with any other carrier upon request.

The interconnection fee is a regulated charge. In the event that the carriers are unable to reach agreement as to the amount of the charge, the Commission may, after a hearing, set a reasonable charge for the interconnection.

Pending the outcome of any such hearing the Commission may prescribe an interim charge or assist the carriers in public negotiations over the disputed sum.

III. TARIFFS

No new or revised tariff proposed by a category II carrier which is not subject to effective competition shall take effect until it has been conditionally accepted or finally approved by the FCC.

The authority of the Commission is expanded to include the ability to prescribe a fair tariff as well as the continuing authority to accept, modify, or reject the proposed tariff. Also, any tariff rejected by the Commission shall not go into effect, and any tariff previously in effect for the same or like service will remain in effect.

Category II carriers which seek to provide an interexchange service for which it is subject to effective competition will still have to file those tariffs with the Commission but the regulatory burden is considerably less than those imposed on their tariffs for noncompetitive success.

IV. SECTION 214 AUTHORITY

Section 214, which will apply to category II carriers, is expanded to allow carriers to file a long-term facilities construction plan rather than single authorization requests. Once the plan is authorized by the Commission, the carrier need not obtain separate certification for each new construction or improvement plan. The carrier is not required to file a long-range plan; he can continue to apply for individual authorization for new or extended facilities. Further, the Commission would have authority over switching as well as lines.

A.T. & T. DIVESTITURE

The bill does not change the corporate structure of A.T. & T. Rather, it attempts to mitigate abuses which might arise because of the Bell System's size and monopoly power by providing for behavioral and structural requirements (including accounting and fully separated subsidiaries, where appropriate) which must be complied with by the Bell System and other telecommunications monopoly carriers seeking to offer competitive telecommunications services.

REGULATION OF POLE ATTACHMENTS

Because of the increasing opportunities for the construction of coaxial cable facilities and the cross-ownership of cable programing by the telephone industry, their monopoly access to cable poles and conduits presents a serious opportunity for anticompetitive activities. Accordingly, the bill amends the existing act to require utility pole owners to provide reasonable access. Further, the bill includes cooperative telephone companies under the pole attachment provisions of the act in light of the expanding opportunities for the cooperatives to obtain Federal funds for the construction of cable facilities.

TREATMENT OF CABLE TELEVISION

The primary services provided by the cable television industry, as it presently exists, are either extensions of, or substitutes for, conventional radio and television broadcasting; that is, one-way distribution of entertainment or public interest programing via coaxial cable. In providing this service, however, the cable television operator also functions as a telecommunications carrier providing a transmission or retransmission service for hire.

While it is thus similar to both, cable television also exhibits certain characteristics different from conventional forms of either broadcasting or telecommunications carriage. Unlike broadcast operations, cable systems typically neither originate their own programing nor exercise the same degree of control over program content. Unlike telecommunications carriers, cable systems typically are not granted a monopoly franchise nor are they regulated as to facilities, rates, construction, universal or other service obligations, even though there seldom exists direct competition for the services they provide.

In the future, it is anticipated that the

coaxial transmission facilities used by cable television systems will be capable of providing a variety of services that will more nearly resemble telecommunications carrier services, and that cable system operators will find it attractive to offer such services. On the other hand, it is anticipated that existing voice telephone telecommunications carriers may find coaxial cable, fiber optics or other high-capacity transmission systems attractive for providing both conventional telephone services and a variety of specialized information exchange and retrieval services up to and including on-demand or two-way video services, as well as retransmission of broadcast signals and other one-way video entertainment. It is apparent that the main services provided by cable television systems and telecommunications carriers will overlap to an ever-increasing extent, and that in fact many now fall, and will continue to fall, within the concept of telecommunications carriage; that is, the transmission of information for hire.

The bill recognizes this convergence trend as well as the uniqueness of the broadcast signals proposed to be carried, for the present, by incorporating within both the telecommunications and broadcast provisions of the revised 1934 act (titles II and III, respectively), guidelines and provisions for regulating, to the minimum extent necessary, the offering of cable television-type services.

Broadcasting retransmission and the underlying carriage relating to it would be regulated primarily in title III, while basic facility operation and other information or telecommunications services offered over the cable system would be regulated pursuant to the telecommunications carrier provisions of title II. The result is to move away from increasingly obsolete categories for industries based on the kind of hardware they use today, and to employ new categories based upon the services being provided.

Apart from the provision of one-way video entertainment services, any other activities of cable companies would be dealt with under title II of the bill. For instance:

Whether or not a cable company would be classed as a category II carrier would depend upon whether there were other entities within the same geographic market providing alternative or "substitutable" services. Hence, the Commission could look at locally available services from television broadcast facilities and translator facilities as well as from telephone coaxial or optional fiber facilities.

Whether an entity providing cable television services would be classified as an intraexchange or interexchange carrier with respect to its telecommunications carrier functions (transmission for hire) would depend primarily upon whether the facilities were located within one local exchange area as defined by the State. It is not necessary that the cable "local exchange area" be identical to a telephone "local exchange area"—this matter would be left to each State.

BROADCAST-LIKE ACTIVITIES

Regardless of how a cable company's telecommunications facilities are classified, the activity of carrying distant or local broadcast or other nonbroadcast entertainment programing is a special service. Regulation of this activity would remain in the exclusive province of the FCC and title III contains, for example, a provision authorizing the Commission to impose signal restrictions if a local broadcaster can demonstrate harm to local program service. The Commission's "must carry" signal carriage rule for local TV broadcast stations would not be disturbed by the bill, nor would the Commission's exemption for small systems from any signal carriage rules. Nonbroadcast programs imported into the local community by a channel programmer unaffiliated with the cable facility owner would generally be treated as an information service. Interconnection with local faciliteis by interexchange carriers would be regulated by the FCC, if at all, depending upon whether the local carrier is classified as a category II carrier for cable service.

Local matters such as basic subscriber fees, franchise fees, local access and additional service requirements that do not affect the broadcast signal retransmission rules of FCC would be regulated at the State or local level—if at all.

Facility and service ownership combinations—if not prohibited under cross-ownership rules—may exist but under arms-length subsidiaries.

CROSS OWNERSHIP

Because of the desirability of media ownership diversity, the Commission may continue or prumlgate rules relating to telephone/cable television and cable/broadcast cross-ownership combinations.

Pay TV would also be a Federal matter. Whether it would be regulated at all would depend primarily upon the relationship between the local company and the pay provider, which if arms-length and unaffiliated and billed to subscriber by local company would probably make pay an information service. Local matters, such as basic subscriber fees, franchise fees, local access and additional service requirements that do not affect the broadcast signal retransmission rules of FCC would be regulated at the State or local level.

As to the provision of cable television services by a telephone company, the current rule of the FCC preventing cross-ownership of telephone and cable interests with waivers in certain cases is not affected by the bill and could remain in force. Based on a current rulemaking, even if the FCC were to create a blanket waiver of cross-ownership in smaller communities, and continue, under relaxed filing requirements, its case-by-case review in larger communities, the telephone companies must show that the program service would not be provided without the waiver. The bill cautions the Commission to assure itself, in the interest of media diversity, that waiver is the only way to assure delivery of the services. Once a telephone company begins to provide cable television services, it becomes subject to the aforementioned regulation, particularly in title III, as to that cable television service. Likewise, if a cable television system were to offer other telecommunications services, it would be regulated in the same way as other telecommunications carriers and similar class services.

RURAL TELECOMMUNICATIONS

This bill encourages and assists growth in rural telecommunications in three ways:

First. A Federal program is established to facilitate State planning for telecommunications—what services are needed and how best to deliver them, modeled after the Coastal Zone Management Act.

Second. Amendments are offered to the REA act which broaden the REA program to include nontelephone carriers and facilities and to encourage the identification of rural requirements and the use of the most appropriate technologies to meet these requirements.

Third. The FCC is directed to review and revise any of its rules which are impeding development of rural telecommunications services (such as cross-ownership or translator origination rules).

RURAL TELECOMMUNICATIONS DEVELOPMENT ACT

A 4-year program is authorized at $10 million per year, in order to provide grants for State telecommunications planning activities. It is generally agreed that planning at the State and local level in advance of new facilities construction can make a significant contribution to the ultimate ability of the facilities to be of maximum benefit to the rural residents. Such planning will also increase the opportunity for social services to benefit from telecommunications facilities and such planning facilitates the aggregation of user needs within each area. This planning is especially timely in light of the greatly increased spending for rural telephone/cable facilities which is likely to result from the changes in REA lending rules and Commission rules proposed in the amendments.

The bill provides for each State planning project to receive Federal funds for 2 years, which is ample time for a State to undertake overall planning as well as to support local planning activities designed to identify specific local requirements. These planning activities could integrate into a complete profile of the rural areas: Their service requirements, what telecommunications facilities can meet these requirements, and their relative costs and benefits. Planning would include all rural areas within the State and would encourage local input into the process.

The Departments of Commerce and Agriculture and directed to establish a joint procedure for the implementation of this program. Thus, the valuable experience of REA and NTIA will be drawn upon.

The planning program will also provide information and experience which will be useful in administering the REA construction program. However, a State planning program is not a precondition to the receipt of REA construction assistance unless the State so requires. At the present time telephone carriers must receive State approval of proposed REA

equipment by domestic business entities, transborder data flow and other issues in which it has developed an expertise.

Section 222 would be repealed as soon as the corporation is operable and the facilities have been transferred to the carrier consortium. International carriers may then engage in domestic telecommunications through a fully separated subsidiary. Similarly, a domestic carrier which obtains operating agreements may engage in international telecommunications and join the consortium, through a fully separated subsidiary.

AUTHORITY OF THE COMMISSION

The Commission has authority to regulate the rates, terms and conditions of interconnection between international telecommunications carriers and all other domestic carriers including the international carriers' domestic subsidiary.

The Commission has the authority to classify carriers and services and subject them to different requirements based on their classes.

The Commission may not approve facilities construction, or plans therefor, on an individual basis. They may not involve themselves in the day-to-day operations, rates, terms, conditions by which international telecommunications facilities or services being provided, except as specifically stated above regarding the interrelationship between international record carriers and domestic carriers.

The Commission may assure that facilities and capacity that is essential to the national security and to meet emergency and disaster assistance needs are constructed and maintained.

The Commission may step back into the regulation of international facilities where there has been a pattern of serious mismanagement and imprudent business investments in facilities.

TITLE III—BROADCASTING

No comprehensive revision in the regulation of broadcasting is proposed. The bill makes those selected revisions which are generally recognized as necessary such as license terms, comparative renewals, license fees, and cable-signal importation.

LICENSE TERMS

Both radio and television stations are currently licensed for 3-year terms. The bill would extend the term for television licenses from 3 to 5 years. Radio stations would be given an indefinite license term subject to an annual random audit of 5 percent of the 8,550 radio licensees.

The audit would be a full license renewal review, with the Commission authorized to reduce the matters to be reviewed consistent with insuring fulfillment of the public trust. The indefinite license term is a major deregulatory action, and it is consistent with the maintenance of the public trusteeship. The longer terms for TV and radio will permit the Commission to review more closely those fewer licenses being renewed each year. At present the Commission annually reviews approximately 3,230 licenses (330 TV licenses and 2,900 radio licenses.) Under the bill they would review 634 licenses (198 TV licenses and 435 radio licenses.) License terms for other nonbroadcast users of the spectrum (for example, private land mobile radio would be extended from 5 to 10 years.)

COMPARATIVE RENEWAL

The initial WESH decision raised the question whether the Commission must consider other media holdings of the renewal licensee in a comparative renewal proceeding (for example, incumbent versus challenger for same license). The unfairness arises because general Commission rules prohibit newspaper TV cross-ownership and other cross and multiple ownership rules and "grandfather" certain existing ownership combinations. The WESH decision made those licensees vulnerable to attack of the 'grandfathered" cross-ownership at renewal time. The bill would bar consideration in any comparative renewal hearing of broadcast/nonbroadcast media ownership interests of the renewal applicant if the Commission has general rules in existence and it bars review of management-ownership integration at renewal time.

WESH questioned whether a licensee would receive any credit at renewal time for his conduct during the license term. The Court, however, issued a "clarification" of its initial decision saying FCC may use different procedures for renewal proceedings and could give weight to the licensee's prior performance. Arguably, the WESH case has been mooted, but, to be certain the issue does not recur, the bill contains a provision that would incorporate the Court's "clarification," and permit different procedures for renewals without statutorily defining the acceptable levels of performance. The bill does not specify the procedure or the level of performance as it would be unwise to enter the mire of "meritorious" versus "superior," "presumption" versus "plus of major significance," and equivalent legislative impounderables.

CABLE SIGNAL IMPORTATION

The bill would reverse the present burden of proof by making it incumbent on the local broadcaster to demonstrate how signal importation will harm or is harming the licensee's local programing. Upon such a showing the Commission can restrict the cable system's imported signals. The bill would allow such relief to broadcasters on the theory that local programing is in the public trust responsibilities, and if a licensee is serving the public interest that licensee should be protected. Presently, cable systems must prove that their operations will not harm local broadcasting. Since the local broadcaster has exclusive access to the records of his station, he is in the best position to carry the burden to show damage.

CONSTRUCTION PERMITS (CP)

A major modification of section 319 is made to remove an anomalous situation whereby the FCC cannot grant a permit covering construction undertaken prior to grant. In the past a CP applicant who builds a facility without prior approval was barred from ever using it for broadcasting. This situation is corrected in the bill. However, any prior construction will be at the applicant's own risk. The FCC may not be pressured into granting a CP, because of any expenditure which would be wasted without a CP grant.

Other general provisions; Public resource fees (sec. 106). The bill finds that "licenses granted by the Commission for the exclusive or shared use of the electromagnetic frequency spectrum convey benefits to licensees above and beyond those accruing to the public at large, and that the United States shall receive payment from licensees for such benefits." In both broadcast and nonbroadcast services, the fee applies only to commercial users of the spectrum. Police, public TV, ham radio, CB radio, and the like are exempt.

Fee formulas are specified for TV and radio stations. For nonbroadcast users of the spectrum, because of the wide and varying range of users, it is not desirable to present specific statutory fee schedules. Rather, the FCC is instructed to establish fee schedules for the various services based on several itemized criteria. This is similar to, and patterned after, several existing precedents of congressional and executive directives to establish fee schedules to promote the efficient use of our natural resources (for example, timber, grazing lands, and oil, gas, and mineral leasing).

Mr. HOLLINGS. Mr. President, on the National Commission on Spectrum Management (title V), a National Commission on Spectrum Management is created to conduct an 18-month study and recommend appropriate administrative and legislative action to the end of improving the allocation, assignment, and authorization of use of the frequency spectrum. This is especially timely, because of the upcoming World Administrative Radio Conference (WARC) and the need for further study of the many issues raised by the rapidly increasing demand for the spectrum. The Commission would have no regulatory authority, and it would disband when the study has been completed and the recommendations have been submitted.

COMMUNICATIONS ACT AMENDMENTS OF 1979

S. 611, the Senate version of Communications Act revision, was introduced March 12 by Sen. Ernest Hollings (D-SC), chair of the Senate Communications Subcommittee. Briefly, the 115-page bill is based on competition and regulation, as Hollings' introductory statement explains in detail.