

Such authority is particularly appropriate given that, in many cases, an ultimate determination of the unlawfulness of a tariff increase goes to only part of the increase, rather than the entire tariff change.

We do note, that the language of the proposed amendment is somewhat unclear. The report of the Administrative Conference states that temporary increases should be authorized "only when the agency makes a preliminary judgment, on the basis of a written showing by the regulated company and an opportunity for comment thereon by affected persons, that a proposed increase is justifiable at least in part." (See Report of the Administrative Conference of the United States for 1971-72 at p. 86, emphasis added.) The language of the proposed amendment differs from this recommendation, in certain respects. The amendment, for example, eliminates the "preliminary judgment" aspects of the Administrative Conference recommendation, and the proposed standard of "just, fair, and reasonable" is somewhat ambiguous. We suggest that a more precise standard be developed, lest the deliberations regarding a partial or temporary authorization become as protracted as an overall rate inquiry.

The Office of Management and Budget advises that it has no objection to the submission of this report from the standpoint of Administration's program.

Sincerely,

JOHN EGER,
Acting Director.

FEDERAL COMMUNICATIONS
COMMISSION,
Washington, D.C., January 25, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment upon the letter submitted by the Office of Telecommunications Policy concerning S. 2054, a bill to amend sections 203 and 204 of the Communications Act of 1934.

Essentially, OTP supports as appropriate and desirable the provisions of S. 2054 to extend the notice period to ninety days and to enable the Commission to grant partial or temporary authorizations of tariffs. It expressed concern, however, that the proposed nine-month suspension period is too long and might result in greater regulatory delay than currently exists.

The period of nine months was chosen because it was felt that during such a period the Commission could realistically come to a conclusion on the lawfulness of a tariff. However, as I testified, there is nothing sacred about the period of nine months.

We have discussed this matter with OTP. While the Commission would prefer the nine-month suspension period. We believe an extension of the present three-month period to five months would be helpful and in the public interest. I understand OTP agrees that the five-month period would meet their earlier objections.

I trust that, with such change, you will be in a position to move promptly in enacting S. 2054.

If further information is needed, I would welcome the opportunity to provide it.

Sincerely,

RICHARD E. WILEY,
Chairman.

OFFICE OF TELECOMMUNICATIONS POLICY EXECUTIVE
OFFICE OF THE PRESIDENT,
Washington, D.C., March 22, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that Chairman Wiley of the Federal Communica-

tions Commission has informed you of discussions between his staff and this Office regarding the objections to S. 2054, a bill to amend Sections 203 and 204 of the Communications Act of 1934, set forth in my September 17, 1975 letter to Senator Magnuson. Briefly stated, those objections centered around the proposed extension of the tariff suspension period to nine months and the consequent adverse effects of lengthening the delay between the time when increased costs occur and the time when they can be reflected in higher tariffs.

For reasons I stated in my letter to Senator Magnuson, the adverse impact of such "regulatory lag" on the financial structure of a carrier can be significant, and can result ultimately in inadequate service to the public. We are still not convinced that the present three month suspension period is inadequate in cases of proposed tariff increases. However, we do believe that the adverse effects of the extended delay originally suggested by the FCC would be reduced significantly by limiting the proposed extension of the suspension period to five months.

Accordingly, the Office of Telecommunications Policy would not object to an extension of the suspension period of Section 204 of the Act to five months. The Office of Management and Budget has no objection to the submission of this letter.

Sincerely,

JOHN EGER,
Acting Director.

FEDERAL COMMUNICATIONS
COMMISSION,
Washington, D.C., May 11, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your request for the Commission's views on a proposed Committee amendment to S. 2054 which, in extending the notice period from 30 days to 90 days, makes clear that the Commission may allow changes in tariffs on less than 90 days notice but not more than 90 days notice. This clarification is consistent with the Commission's intent in seeking the 90-day notice period and we support the Committee's amendment.

Thank you for the opportunity to present our views.

Sincerely,

RICHARD E. WILEY,
Chairman.

COMMUNICATIONS ACT AMENDMENT—TRANSLATOR BROADCAST STATION OPERATIONS

The bill (S. 2847) to amend section 318 of the Communications Act of 1934, as amended, to enable the Federal Communications Commission to authorize translator broadcast stations to originate limited amounts of local programming, and to authorize frequency modulation—FM—radio translator stations to operate unattended in the same manner as is now permitted for television broadcast translator stations, was considered, ordered to be engrossed for a third reading, read the third time, and passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (3) of the first proviso of section 318 of the Communications Act of 1934 (47 U.S.C. 318) is amended—

(1) by striking out "solely" and inserting in lieu thereof "primarily", and

(2) by striking out "television".

MR. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have

printed in the RECORD an excerpt from the report (No. 94-919), explaining the purposes of the measure.

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

SUMMARY AND PURPOSE OF THE LEGISLATION

S. 2847 was introduced January 19, 1976 by Senators Magnuson and Pearson by request of the Federal Communications Commission (FCC).

Section 318 of the Communications Act of 1934 presently requires a licensed operator for all broadcast stations except those "engaged solely in the function of rebroadcasting the signals of television broadcast stations" (clause (3) of the first proviso). This provision excepts television broadcast translators—both VHF and UHF—from the licensed operator requirement provided no material is originated on the translator.

S. 2847 would amend section 318 by deleting the word "television" from the above-quoted clause, thereby allowing the FCC to authorize unattended FM broadcast translator operation in the same manner now permitted for television broadcast translators.

S. 2847 would also amend section 318 by deleting the word "solely" from the above-quoted clause and substituting the word "primarily" thereby enabling the FCC to authorize translator broadcast stations to originate limited amounts of local programming.

BACKGROUND AND NEED FOR LEGISLATION

Translator stations are low-power broadcasting stations which receive the incoming signals of a television or FM radio station, amplify the incoming signals, convert—or "translate"—them to a different output frequency, and retransmit the signals to the community or area to be served. Translators have been utilized in areas of the country where, because of terrain or extreme distances, it is not possible to receive the signals of originating television or FM radio stations directly off-the-air. They have developed as a simple and relatively inexpensive means of making broadcast service available to small, sparsely populated communities where demand for television and FM radio is great and financial resources are meager. In such areas, translators often provide local residents with their only source of television or FM radio reception. The following table indicates the distribution of translators operating in the United States:

	UHF television translators	VHF television translators	FM translators
Alabama.....	5	0	0
Alaska.....	4	125	1
Arizona.....	53	80	5
Arkansas.....	4	3	
California.....	103	155	14
Colorado.....	76	296	21
Connecticut.....	4	0	1
Delaware.....	0	0	
District of Columbia.....	0	0	
Florida.....	10	0	
Georgia.....	10	0	1
Hawaii.....	20	4	2
Idaho.....	25	92	8
Illinois.....	4	1	
Indiana.....	2	6	
Iowa.....	23	6	
Kansas.....	5	24	2
Kentucky.....	5	25	
Louisiana.....	0	2	
Maine.....	0	9	
Maryland.....	2	12	3
Massachusetts.....	0	1	
Michigan.....	14	8	3
Minnesota.....	62	11	4
Mississippi.....	1	2	
Missouri.....	9	8	1
Montana.....	32	263	13
Nebraska.....	27	46	1
Nevada.....	51	107	8
New Hampshire.....	2	4	
New Jersey.....	0	0	
New Mexico.....	59	125	1

	UHF television translators	VHF television translators	FM translators
New York.....	81	17	-----
North Carolina.....	6	47	-----
North Dakota.....	1	36	-----
Ohio.....	3	-----	-----
Oklahoma.....	14	11	-----
Oregon.....	88	146	4
Pennsylvania.....	39	7	1
Rhode Island.....	1	0	-----
South Carolina.....	1	5	-----
South Dakota.....	7	40	-----
Tennessee.....	2	12	-----
Texas.....	80	30	-----
Utah.....	63	246	52
Vermont.....	6	3	-----
Virginia.....	40	7	4
Washington.....	56	158	9
West Virginia.....	8	2	1
Wisconsin.....	7	0	6
Wyoming.....	15	138	15
Total.....	1,149	2,325	184
Puerto Rico.....	6	6	-----
Guam.....	4	-----	-----
Virgin Islands.....	1	-----	-----
Canal Zone.....	0	-----	-----

Translator operations have been financed in various ways. Primary broadcast stations have constructed translators to expand the coverage of their signals. In some instances, appliance dealers, hoping to create a market for television sets, sponsored or substantially contributed to the construction of translator stations. In most cases, however, the installations are cooperatively financed. Contributions are solicited throughout the community or memberships may be sold in a television or FM radio club in order to finance the facility. In this regard, several State legislatures have enacted laws to assist in financing television translator operation and maintenance.¹ Direct community support is usually needed because the vast majority of translators do not generate revenue from their operations.

Unattended FM translator operation

To assist in making translators economically viable, Congress in 1960 amended section 318 of the Communications Act of 1934 to enable the FCC to permit television translator stations to operate without a licensed operator.² So amended, section 318 precludes Commission waiver or modification of the operator requirement for "stations engaged in broadcasting (other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations) * * * (Language of the 1960 amendment in *italics*.)"

At the time this amendment was enacted, the only translator facilities in operation were those which rebroadcast the signals of television broadcasting stations. As a result of technological advancements over the past decade, FM radio translator stations have become feasible, and in 1970 the FCC modified its rules to authorize their construction and operation.³

In adopting the FM translator rules, the FCC stated:

"Section 318 of the Communications Act requires that the operation of every broadcast station, with the specific exception of television broadcast stations engaged solely in rebroadcasting, be placed in charge of a licensed operator. The Commission cannot, of course, waive this statutory requirement, although we are now preparing a proposal

¹ E.G., Idaho Code, secs. 31-4101 through 31-4121 (1969); Montana Revised Code, (secs. 70-401 through 70-425 (1947); and Utah Code Annotated, sec. 11-2-2 (1953).

² Public Law 86-609, approved July 7, 1960, 74 Stat. 363; see S. Rep. No. 980, 86th Cong., 1st sess., to accompany S. 1886, Sept. 4 (legislative day, Aug. 31), 1959 (Committee on Interstate and Foreign Commerce).

³ FCC Docket No. 17159, 35 Fed. Reg. 15388, 20 F.R. 2d 1538 (Oct. 1970).

for submission to Congress to amend the statute to allow a similar exception for FM translators. Until Congress changes the law, a licensed radio-telephone operator is required."⁴

S. 2847 would extend the exception for unattended television translator operation to FM translators. Technical developments now enable FM translators to operate free of interference to other radio services without a licensed operator on duty. The Committee believes that section 318 should reflect this advanced technology by excepting FM translators from the licensed operator requirement. In the Committee's judgment, this action is necessary to make FM translator service economically viable in underserved and sparsely populated areas of the country. Given the existing exception for unattended television translator operation, the Committee perceives no reason for refusing to extend this exception to FM translators.

Limited local origination

The FCC has construed section 318 as limiting translators to rebroadcasting the signals of primary television and FM stations without any significant alteration of the characteristics of the incoming signals. In a 1968 rulemaking proceeding, the Commission interpreted section 318 to allow UHF translators to originate 20 seconds of commercial advertising per hour, limited to slide announcements,⁵ and in 1975 this permissible commercial origination was expanded to 30 seconds per hour.⁶ No program origination whatsoever has been allowed.

The FCC has stated that as a result of the above construction of section 318, translator stations are not self-supporting and must depend on public generosity to sustain their operations. The Commission has also noted that the prohibition on program origination in many instances deprives those people dependent on translator service of their only potential source of local programming, such as emergency alerts and coverage of local political and other news events. The FCC has therefore requested this legislation to allow the Commission to authorize limited amounts of local origination by translator stations. S. 2847 would accomplish this result by substituting the word "primarily" for "solely" in clause (3) of the first proviso of section 318.

In requesting this legislation, the FCC has suggested that specific limitations on the amount of local origination to be permitted could be best determined in a Commission rulemaking proceeding to implement the proposed section 318 amendments. The Commission has further stated that in deciding upon such limitations it would be bound by the section 318 requirement that origination be limited to the extent necessary to insure that translators retain their primary characteristic as rebroadcast stations.

The Committee believes that the public interest in the larger and more effective use of radio and television would be well-served by enabling the FCC to authorize translator stations to originate limited amounts of local program and commercial material. As noted, in many areas of the country translators provide the only access to satisfactory television and FM service. At present, however, such service consists solely of the programming of the distant station retransmitted by the translator. Allowing limited origination by translators would give their audiences access to local news and information of vital community interest, as well as enable translators to meet the difficult problems of financial support for their operation and service.

The Committee is of the view that specific

⁴ FCC Docket No. 17159, par. 12.

⁵ FCC Docket No. 15971, 13 FCC 2d 305 (1968).

⁶ FCC Docket No. 19661, 54 FCC 2d 421 (1975).

limitations on the amount and nature of local origination to be allowed, as well as any attending technical or other requirements, should be determined by the Commission in a rulemaking proceeding to implement the legislation. Such a proceeding will afford all interested parties an opportunity to comment on the specific limitations to be imposed.

While the Committee would leave detailed implementation of this legislation to the expertise and discretion of the administrative agency, it is emphasized that the allowed origination must be so limited as to maintain the primary rebroadcasting function of translator stations. In this regard, the FCC has previously conditioned the use of translators so to permit them to perform their supplementary function without impairing or burdening the maintenance and development of the regular television and radio services which provide the public with benefits beyond the capacity of translators. The FCC is also under an existing mandate to insure that translators operate on their assigned frequencies so as not to cause objectionable interference with other telecommunications services using the broadcast spectrum. The Committee expects that the FCC will continue to adhere to these principles in implementing this legislation.

HEARINGS

Hearings on S. 2847 were held before the Subcommittee on Communications on January 21, 1976. Testifying in support of the legislation were the Chairman of the Federal Communications Commission and counsel for the National Translator Association.

Subsequent to the hearings, statements were received from the National Cable Television Association, the Association of Maximum Service Telecasters, Inc., the National Association of Broadcasters, and Mr. Bill Sims, President of Wycom Corp., Laramie, Wyoming.

The Committee has fully considered all testimony and submissions in recommending enactment of the legislation here reported.

CONCLUSION

Translator broadcast stations have provided an invaluable service to those areas of the nation which would otherwise be without adequate access to radio and television reception.

The amendment to the Communications Act proposed by S. 2847 will enable translators to enhance this essential service consistent with their primary rebroadcasting function.

SECTION ANALYSIS

Section 318 is amended by deleting the word "solely" in clause (3) of the first proviso and inserting in lieu thereof "primarily", thereby enabling the FCC to authorize translator broadcast stations to originate limited amounts of local programming.

Section 318 is also amended by striking out the word "television" in clause (3) of the first proviso, thereby allowing the FCC to authorize unattended FM broadcast translator operation in the same manner presently permitted for television broadcast translators.

ESTIMATED COSTS

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510, 91st Congress), the Committee estimates that no additional costs will accrue to the government as a consequence of this legislation. The Committee is not aware of any cost estimate to the contrary.

BILL PASSED OVER

The bill (S. 2343) to amend the Communication Act of 1934, as amended, with respect to penalties and forfeitures, was announced as next in order.