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UNITED STATES GOVERNMENT

memorandum

DATE: December 9, 1983

REPLY TO
ATTN OF: Jackson Lee, Director of Legislation

SUBJECT: FCC Authorization Act of 1983: Pub. L. No. 98-214

TO: Chairman
Commissioners
Bureau and Office Chiefs

On December 8, 1983 the President signed H.R. 2755, the "Federal Communications Commission Authorization Act of 1983," Public Law 98-214. A copy is attached. The statute authorizes appropriations for the FCC and the Corporation for Public Broadcasting and contains several other provisions. There follows a brief summary of the new law. Some of the sections require implementation by the Commission.

The statute contains 13 sections, four of which apply to matters other than the FCC: Section 1 is the short title. Section 3 authorizes appropriations for CPB in FY 1984, 1985, and 1986. Section 5 requires CPB to undertake oversight of NPR's financial activities until such time as NPR is out of debt. Section 6 enables the CPB Board to select a Chairman from the Board, rather than having the CPB President also serve as Board Chairman. The other sections pertain to the FCC.

Authorization of appropriations (Sec. 2)

The statute authorizes to be appropriated for the FCC \$91,156,000 in FY 1984 and 1985. [In Public Law 98-166 (H.R. 3222), a statute signed by the President on November 28, 1983, the Congress appropriated \$86,383,000 for the FCC in FY 1984.]

Modifications to station licenses (Sec. 4(a))

Section 4(a) of the Act will permit the FCC to make minor modifications to a radio station license or permit without the necessity of holding a hearing. The new statute amends Section 316 of the Communications Act.

Section 316 requires that, before the FCC can modify a station license, the licensee is entitled to a public hearing. The D.C. Circuit has held that this right to a hearing is available not only to the licensee that is requesting the modification but also to any other station whose license might be indirectly modified due to alleged interference which might result if the requested modification were granted. Consequently, applications to modify licenses (e.g., to increase transmitter height) were to be designated for a hearing or oral argument whenever another radio licensee alleged interference.

The new law clarifies that in such a proceeding a hearing is unnecessary if the pleadings do not raise any material questions of fact. This amendment had been requested by the FCC.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

Forfeitures in the de-licensed radio services (Sec. 4(b))

Section 503(b)(5) of the Communications Act is amended to clarify that the FCC has authority to levy forfeitures in the first instance against violators in radio services for which an individual license is not required.

When violators of the Communications Act are not FCC licensees, Section 503 permits a forfeiture only if the same violation is repeated after the FCC has notified the violator of the offense.

This amendment clarifies that forfeitures can be levied on operators in the citizens band and radio control services without the additional procedures applicable to non-licensees. This amendment had been requested by the FCC.

Broadcast regional concentration of ownership (Sec. 7)

Subsection 310(e) is added to the Communications Act to clarify the FCC's regional concentration rules for broadcast stations. Specifically, the provision clarifies that a station which is exempt from the regional concentration rules because it is grandfathered shall not lose its grandfathered status if technical changes (transmitter location, height, power) are made in station facilities. The House committee said this would not apply to changes in frequency or class of station and does not express any intent with respect to the ability of the Commission to revise or modify these rules.

Obscene telephone messages (Sec. 8)

Section 223 of the Communications Act is supplemented to prohibit obscene telephone messages regardless of who initiated the call, if conveyed for commercial purposes and without the person's consent or to a minor. The fine is increased from \$500 to \$50,000. In addition to criminal penalties, the FCC may pursue civil actions which may result in fines.

Also, the FCC has 180 days to issue procedures to be followed as a means of restricting access to such messages to persons 18 or older. Any complaints now pending at the FCC concerning section 223 must be acted upon within 90 days.

Rep. Thomas Bliley, the sponsor of the provision, stated on the House floor that common carriers not liable unless they originate the obscene transmission. But other matters remain unanswered. For example, what procedures to limit access to adults would be sufficient to meet the requirements of the statute? To what extent should the Commission enforce the prohibitions and what are the practical problems associated with such enforcement?

Public safety frequencies (Sec. 9)

The FCC shall establish a plan to ensure that the needs of public safety authorities are taken into account in spectrum allocations, including consideration of the need for a nationwide contiguous frequency allocation for public safety purposes. The House committee said public safety should be a top priority when frequency allocations are made.

Certification of technicians (Sec. 10)

This provision allows the FCC to permit recognized industry groups to implement a comparable substitute to the present technician licensing system -- for technicians servicing the private land mobile service and fixed service. It amends section 4 of the Communications Act.

Amateur radio operator exams (Sec. 11)

Volunteers who administer amateur radio operator exams (other than novice exams) may charge up to \$4 to recover their out-of-pocket expenses. The \$4 figure may be adjusted annually for changes in the consumer price index. In the Senate, Mr. Goldwater said that actual implementation details are left to the FCC or to the volunteers. Subparagraph 4(f)(4)(J) is added to the Communications Act.

New technologies (Sec. 12)

Section 7 is added to the Communications Act. It places the burden upon opponents of a new technology (other than the Commission) to demonstrate that the proposal to authorize the new technology is inconsistent with the public interest. The FCC must act within one year on petitions to authorize new technologies.

A similar provision was included in a bill (S. 66) which passed the Senate on June 14th. Accompanying this memo is language of the Senate committee report which had explained the similar provision in S. 66.

There are a variety of questions which the statute and the legislative history leave unanswered. For example:

- What is a "new technology"? Something invented or discovered within the last year or the last decade? Would it include new services that involve existing technologies? Would it include an existing technology newly adapted to a communications use? Would it include technologies new to this country but not new elsewhere? When pure research evolves into applied research, at what point does the product become a new technology, and when does it lose its status as being "new"?
- May a separate procedure or filing requirement be imposed to identify petitions or applications which purport to propose a new technology?
- How may an opponent of a new technology demonstrate that a proposal is inconsistent with the public interest? What standards or what criteria will be used to evaluate the showing?
- Does the new statute alter the standard for the Commission's own evaluation of new technologies? Does the Commission now face a presumption favoring new technologies? If an opponent of a new technology fails to make the required showing, can the Commission nevertheless decide against the new technology without facing the same burden which confronts opponents?
- What are the consequences if the Commission fails to meet its one year deadline? If a rulemaking petition leads to an NPRM, does the one-year deadline begin anew? Can a public interest determination be made without giving final authorization to a new service?

International conferences (Sec. 13)

U.S. delegations to ITU radio conferences shall include at least three vice chairpersons -- from the State Department, Commerce Department, and the FCC.

NEW AND ADDITIONAL SERVICES

"Sec. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

"(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

"(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 12 months after it is initiated.

Senate Report No. 98-67 (at 31-32):

SECTION 3—NEW AND ADDITIONAL SERVICES

Section 3 adds a new section to the 1984 act which provides that, consistent with sound spectrum management, the FCC shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or others. It is further provided that such services shall be presumed to be in the public interest whenever the FCC finds that they are technically feasible without causing significant technical degradation to, or interference with, radio transmissions by other licensees.

If a competitive telecommunications marketplace is to flourish, ease of entry is essential. In the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), Congress helped ease entry for those who wish to offer services by allowing the FCC to institute a random selection procedure for new licenses. This legislation is a complement to the current law. Its purpose is to foster new and additional services. In general, all potential providers of service should be allowed to propose and then offer new and additional services, subject to the Commission's current and continued authority to determine that the offering of such services by those potential providers would serve the public interest. The regulatory process should not act as a barrier to those who wish to provide new and additional services.

The committee believes that the forces of competition and technology will bring many new services to consumers, and cable is one of these services. In the past, the FCC has often hampered the development of new services. For example, the FCC imposed stringent regulations on cable, pay cable, and subscription television which delayed the introduction of these services in many areas for years. The committee believes that the development of new technologies and the efforts of competitors seeking to respond to consumer demands will bring more services to the public than will administrative regulations. Hence, this section directs the FCC to encourage the development of such services.

These principles are explained in section 3 of the bill. The first sentence is a policy statement that, consistent with sound spectrum management, the FCC shall encourage the introduction of new and additional services by all potential providers, including new applicants, existing licensees, or other persons.

The second sentence states that in any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest if the FCC finds that they are technically feasible without causing significant technical degradation to or inter-

ference with radio transmissions by other licensees. Even if the FCC finds that such technical degradation or interference does occur, it is possible that the FCC may still find that authorizing such new or additional service is consistent with sound spectrum management, and is otherwise in the public interest. Conversely, new or additional services may be technically feasible but not be in the public interest because they are inconsistent with sound spectrum management.

The presumption is rebuttable. If the presumption is rebutted by an outside party, the FCC has the authority to make a finding as to whether these services are in the public interest. If the presumption is not rebutted, the services are deemed to be in the public interest. A finding by the FCC that this new or additional service does not soundly and efficiently use the spectrum will conclusively rebut the presumption, and such service will then not be in the public interest.

An example of an argument that could be used to rebut the presumption is that there is another service that would make better use of this particular spectrum space. On the other hand, a claim that the new or additional service will provide competition that will take revenues from another service, either existing or proposed, will not be a valid rebuttal.

As a point of clarification, this provision is not directed to who should offer a service or to any restrictions against the provision of a particular service by anyone. The Commission's authority continues in these areas. This section is directed at the provision of services as a whole, not to individuals.

Furthermore, the mandate to encourage new services in section 3 is in no way intended to affect the Commission's responsibility to foster and maintain local services. Local services assure dissemination of information of local community interest and concern, and they provide a medium for local advertising. The committee intends that maintenance and development of local service remain an important factor in the allocation of spectrum.

Subsections (b) and (c) implement this policy by requiring that any petition or application to offer a new or additional service be acted upon by the FCC within 1 year of the filing thereof, or within 1 year of initiation of a proceeding by the FCC. It is not intended that these subsections create any new petition or application procedure, but only that such petitions or applications as may be filed for new classes of service pursuant to other sections of the act be ruled upon expeditiously, in order that the public not be deprived of new services through administrative delay.

Ninety-eighth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Monday, the third day of January,
one thousand nine hundred and eighty-three*

An Act

To authorize appropriations for the Federal Communications Commission for fiscal years 1984 and 1985, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Communications Commission Authorization Act of 1983".

FEDERAL COMMUNICATIONS COMMISSION APPROPRIATIONS AUTHORIZATION

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission \$91,156,000, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1984 and 1985."

(b) The amendment made by subsection (a) shall apply with respect to fiscal years beginning after September 30, 1983.

INCREASE IN PUBLIC BROADCASTING APPROPRIATIONS AUTHORIZATION

SEC. 3. (a) Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended by striking out ", and \$130,000,000 for each of the fiscal years 1984, 1985, and 1986," and inserting in lieu thereof ", \$145,000,000 for fiscal year 1984, \$153,000,000 for fiscal year 1985, and \$162,000,000 for fiscal year 1986."

(b) Paragraph (10) of such section 396(k) is amended by inserting before the period at the end thereof the following: ", and unless further assurances are provided to the Corporation that no officer or employee of such an entity will be loaned money by that entity on an interest-free basis".

FEDERAL COMMUNICATIONS COMMISSION ADMINISTRATIVE MATTERS

SEC. 4. (a) Section 316 of the Communications Act of 1934 (47 U.S.C. 316) is amended—

(1) in subsection (a), by inserting "(1)" after "(a)" and by striking out "and shall have been given reasonable opportunity" and all that follows and inserting in lieu thereof "and

shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.”;

(2) by adding at the end of subsection (a) the following new paragraphs:

“(2) Any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

“(3) A protest filed pursuant to this subsection shall be subject to the requirements of section 309 for petitions to deny.”; and

(3) in subsection (b), by inserting before the period at the end thereof the following: “; except that, with respect to any issue that addresses the question of whether the proposed action would modify the license or permit of a person described in subsection (a)(2), such burdens shall be as determined by the Commission”.

(b) Section 503(b)(5) of such Act (47 U.S.C. 503(b)(5)) is amended by inserting, before the period in the second sentence, the following: “or if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e)”.

**FINANCIAL OVERSIGHT OF NATIONAL PUBLIC RADIO BY CORPORATION
FOR PUBLIC BROADCASTING**

SEC. 5. Section 396(1) of the Communications Act of 1934 (47 U.S.C. 396(1)) is amended by adding at the end thereof the following:

“(4)(A) Subject to subparagraph (C), the Corporation may not distribute to National Public Radio any funds authorized to be appropriated by this Act unless there is in effect a determination by the Corporation that—

“(i) National Public Radio has adopted and is implementing a system of financial controls and procedures devised in consultation with, and recommended by, an independent certified public accountant and determined by the Comptroller General as sufficient to assure that the financial transactions of National Public Radio reflect prudent management practices and are accounted for in a manner consistent with generally accepted accounting principles;

“(ii) National Public Radio has adopted a budget under which reasonably projected expenditures will not exceed reasonably projected revenues from all sources for any fiscal year in which such funds are distributed to National Public Radio; and

“(iii) financial reporting systems of National Public Radio provide the Corporation with continuous access to all financial books and records of National Public Radio.

“(B) Not later than fifteen days after the date of the enactment of this paragraph, the Corporation shall report to the appropriate committees of the Congress on actions taken by National Public Radio to meet the conditions described in subparagraph (A) and on actions taken by the Corporation with respect to the indebtedness of National Public Radio related to deficits accumulated before October 1, 1983. The Corporation shall certify to such committees when such conditions have been met.

“(C) The requirements of subparagraphs (A) and (B) shall cease to be effective on and after the date on which the Corporation certifies

to the appropriate committees of Congress that all indebtedness of National Public Radio related to deficits accumulated before October 1, 1983, has been liquidated in full.”.

CORPORATION FOR PUBLIC BROADCASTING

ADMINISTRATIVE MATTERS

SEC. 6. (a) Section 396(c)(1) of the Communications Act of 1934 (47 U.S.C. 396(c)(1)) is amended—

(1) in the first sentence, by striking out “, and the President of the Corporation”; and

(2) by striking out the third sentence.

(b)(1) Section 396(d)(1) of such Act is amended by inserting after “annually” the following: “elect one of their members to be Chairman and”.

(2) The subsection heading for section 396(d) of such Act is amended by striking out “VICE CHAIRMAN” and inserting in lieu thereof “CHAIRMAN AND VICE CHAIRMAN”.

(c) Section 396(e)(1) of such Act is amended by striking out “No officer of the Corporation, other than a Vice Chairman” and inserting in lieu thereof “No officer of the Corporation, other than the Chairman or a Vice Chairman”.

ADMINISTRATION OF REGIONAL CONCENTRATION RULES FOR BROADCAST STATIONS

SEC. 7. Section 310 of the Communications Act of 1934 (47 U.S.C. 310) is amended by adding at the end thereof the following new subsection:

“(e)(1) In the case of any broadcast station, and any ownership interest therein, which is excluded from the regional concentration rules by reason of the savings provision for existing facilities provided by the First Report and Order adopted March 9, 1977 (docket No. 20548; 42 Fed. Reg. 16145), the exclusion shall not terminate solely by reason of changes made in the technical facilities of the station to improve its service.

“(2) For purposes of this subsection, the term ‘regional concentration rules’ means the provisions of sections 73.35, 73.240, and 73.636 of title 47, Code of Federal Regulations (as in effect June 1, 1983), which prohibit any party from directly or indirectly owning, operating, or controlling three broadcast stations in one or several services where any two of such stations are within 100 miles of the third (measured city-to-city), and where there is a primary service contour overlap of any of the stations.”.

CLARIFICATION AND ADMINISTRATION OF SECTION 223

SEC. 8. (a) Section 223 of the Communications Act of 1934 (47 U.S.C. 223) is amended—

(1) by striking out “\$500” and inserting in lieu thereof “\$50,000”;

(2) by inserting “(a)” before “Whoever”; and

(3) by adding at the end thereof the following new subsection:

“(b)(1) Whoever knowingly—

“(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by

recording device) any obscene or indecent communication for commercial purposes to any person under eighteen years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than \$50,000 or imprisoned not more than six months, or both.

"(2) It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.

"(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(4)(A) In addition to the penalties under paragraphs (1) and (3), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(B) A fine under this paragraph may be assessed either—

"(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

"(ii) by the Commission after appropriate administrative proceedings.

"(5) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure."

(b) Section 223(a) of the Communications Act of 1934 (as redesignated by subsection (a) of this section) is amended in paragraph (2) by inserting "facility" after "telephone".

(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) not later than one hundred and eighty days after the date of the enactment of this Act.

(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 which are pending on the date of the enactment of this Act within ninety days of such date of enactment.

DIRECTION ON USE OF FUNDS REGARDING SPECTRUM ALLOCATION AND ASSIGNMENTS FOR PUBLIC SAFETY PURPOSES

SEC. 9. (a) Funds authorized to be appropriated under section 2 of this Act shall be used by the Federal Communications Commission to establish a plan which adequately ensures that the needs of State and local public safety authorities would be taken into account in making allocations of the electromagnetic spectrum. In establishing such a plan the Commission shall (1) review the current and future needs of such public safety authorities in light of suitable and commercially available equipment and (2) consider the need for a

nationwide contiguous frequency allocation for public safety purposes.

(b) Pending adoption of a plan, the Commission, while making assignments and allocations, shall duly recognize the needs of State and local public safety authorities.

CERTIFICATION OF TECHNICIANS

SEC. 10. Section 4(f)(4) of the Communications Act of 1934 (47 U.S.C. 154(f)(4)) is amended—

(1) by redesignating subparagraphs (E) through (H) as subparagraphs (F) through (I), respectively; and

(2) by inserting immediately after subparagraph (D) the following new subparagraph:

“(E) The Commission shall have the authority to endorse certification of individuals to perform transmitter installation, operation, maintenance, and repair duties in the private land mobile services and fixed services (as defined by the Commission by rule) if such certification programs are conducted by organizations or committees which are representative of the users in those services and which consist of individuals who are not officers or employees of the Federal Government.”.

VOLUNTEER ADMINISTERED AMATEUR RADIO EXAMINATIONS

SEC. 11. Section 4(f)(4) of the Communications Act of 1934 (47 U.S.C. 154(f)(4)), as amended by section 10 of this Act, is further amended by adding at the end thereof the following new subparagraph:

“(J) With respect to the acceptance of voluntary uncompensated services for the preparation, processing, or administration of examinations for amateur station operator licenses pursuant to subparagraph (A) or (B) of this paragraph, individuals, or organizations which provide or coordinate such authorized volunteer services may recover from examinees reimbursement for out-of-pocket costs. The total amount of allowable cost reimbursement per examinee shall not exceed \$4, adjusted annually every January 1 for changes in the Department of Labor Consumer Price Index. Such individuals and organizations shall maintain records of out-of-pocket expenditures and shall certify annually to the Commission that all costs for which reimbursement was obtained were necessarily and prudently incurred.”.

NEW TECHNOLOGIES AND SERVICES

SEC. 12. Title I of the Communications Act of 1934 is amended by inserting after section 6 the following new section:

“NEW TECHNOLOGIES AND SERVICES

“SEC. 7. (a) It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

“(b) The Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed or twelve months after the date of the enactment of this section, if later. If the Commission initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated or twelve months after the date of the enactment of this section, if later.”.

RADIO COMMUNICATION CONFERENCE PARTICIPANTS

SEC. 13. Not fewer than three vice chairpersons shall be appointed to any United States delegation to or for radio communications conferences held under the auspices of the International Telecommunications Union. Notwithstanding any other provision of law, and unless declined by the head of the entity involved, such chairpersons shall be officers or employees of the Department of State, the Department of Commerce, and the Federal Communications Commission.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*