

memorandum

DATE: November 23, 1983
REPLY TO: Robert J. Ungar *RU*
ATTN OF:
SUBJECT: H.R. 2755
TO: Jack Lee

This is in reply to your memo of November 22, 1983 requesting OST's views on the provisions of the "Federal Communications Commission Authorizations Act of 1983." Our remarks will be confined to Sections 59 and 12.

Section 9 orders the FCC to take into account the needs of public safety authorities during the spectrum allocation process. It is doubtful that such a provision would accomplish much. It is intended obviously to sensitize the Commission to the needs of the public safety community. The Commission is already aware of the views of public safety officials and is addressing itself to the issue. Having a specific provision on the subject will do little to advance the deliberative process. Moreover, it should be noted that the Act already requires the Commission to promote the safety of life and property. Furthermore, specific direction is unnecessary and tends to clutter the Act with debris left by special interests.

Section 12 requires the Commission to encourage the provision of new technologies and services. It places on the public opposing any proposal for new technologies the burden of demonstrating that the proposal is inconsistent with the public interest. Further, it places on the Commission the burden of making necessary public interest determination, within one year after the filing of a petition. First, it must be said that this provision too is, at best, unnecessary. In the past several years the Commission has either initiated or completed actions in a substantial number of proceedings involving the use of new technologies or services without a statutory provision requiring it to do so.

Of greater concern, however, is the requirement of action within one year. Any specific time limit is inherently arbitrary. Merely the fact that a suggested technology or service is new does not mean it is worthwhile, spectrum efficient, without impact on existing services, unlikely to cause interference, or ultimately in the public interest. Clearly, whatever analysis is necessary must be done. Deadlines are more likely to produce artificial bureaucratic maneuvering than concrete results. At some point, with some items one can expect the quality of the Commission's analysis to be affected adversely. This would be unfortunate.