Calendar No. 288

100TH CONGRESS *1st Session*	SENATE	REPORT 100–142

FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION ACT OF 1987

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1048

AUGUST 4, 1987.—Ordered to be printed

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AUGUST 4, 1987.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1048]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1048) to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The legislation authorizes appropriations for the Federal Communications Commission (FCC) of $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989. The bill also extends the FCC's travel reimbursement authority through fiscal year 1989, eliminates the annual management report, and postpones the date of indexing the fee schedule for inflation from April 7, 1988 to April 1, 1989.

BACKGROUND AND NEEDS

The FCC is an independent regulatory agency that oversees interstate and foreign communications by wire and radio spectrum. With advances in new technologies and the opening of markets to competition, the FCC is constantly making key policy decisions that fundamentally affect the marketplace. The importance of the FCC and its actions cannot be underestimated. That is why, since 1981, the Congress has enacted legislation to establish authoriza-

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tion levels for the FCC. The Congress views such legislation as a way to increase its oversight of the FCC in the current dynamic environment.

The following sections discuss the provisions in the legislation as well as issues of concern to the Committee.

AUTHORIZATION AMOUNTS

This legislation funds the FCC at $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989. The amount for fiscal year 1988 is the same as that submitted by the President. It is $5 million more than the fiscal year 1987 level. This additional amount is to fund increases in compensation and benefits, to fund new positions to process and collect fees, and to provide for the relocation of a monitoring station. The Committee notes that the introduction of competition in communications markets has brought with it a tremendous increase in the number of applications filed with the FCC. Since the processing of these applications is of great import to the people filing and to the public at large, the Committee believes strongly that sufficient resources should be provided.

TRAVEL REIMBURSEMENT

In 1982, the Congress first authorized the FCC to accept payment from outside parties to reimburse the business-related travel of Commission employees. The Congress believed that it was important for Commission employees to discuss the FCC's program with people outside of Washington, DC, but that the FCC's budget was insufficient to cover such valid travel. The Congress, therefore, believed that outside parties should be able to reimburse the FCC for such travel under certain conditions. Since such a program has the potential for abuse, a key condition was that Congress would reauthorize it periodically. The most recent reauthorization was in early 1986.

The legislation reauthorizes the travel reimbursement program until the end of fiscal year 1989. The Committee has reviewed all travel reimbursed and finds no reason to question the FCC's implementation of the program. The Committee cautions the FCC to continue its close oversight to ensure no abuses occur.

ANNUAL MANAGEMENT REPORT

Congress mandated the Annual Management Report in 1981. It was designed to provide an overview of the FCC's program for the next three years. The Committee now finds that much of the same information in this report is contained in the Commission's annual budget submission and in the Annual Report (mandated in section 4(k) of the Communications Act of 1934). It is for that reason that the legislation eliminates the requirement of the Annual Management Report.

FEE SCHEDULE

The fee schedule in the Communications Act was enacted in 1986. It establishes fees to be paid for certain services of the FCC, such as considering the award of a license or the approval of a tariff. It raises about $30 million annually, and this amount is expected to increase.

As part of the fee schedule provision, Congress mandated that the fees be indexed for inflation every two years, beginning two years from the date of enactment (April 7, 1986). The FCC first implemented the fees on April 1, 1987. The FCC has found that the initiation of the fees has been accompanied by significant confusion, and there have been problems with compliance. Because of these problems, the FCC has approached the Committee and asked for a one-year delay in changing the fees because of inflation. The FCC argues that the public is just beginning to understand the new law and that a change in fees so soon after the date of implementation would exacerbate compliance problems.

The Committee agrees with the FCC's concern. The legislation postpones the date of indexing from two years after the date of enactment (April 7, 1988) until April 1, 1989. The Committee believes this will lessen problems of compliance while causing the minimal loss of revenues. The indexing that will occur on April 1, 1988 will account for changes in the Consumer Price Index that have occurred since the date of enactment of the fee schedule provision.

THE SUBSCRIBER LINE CHARGE

In April, the FCC adopted a new access charge plan which included a $1.50/month increase in the subscriber line charge (SLC) for residential and single-line business telephone users. This increase would occur in three increments of $.60, $.60, and $.30 over the next 22 months. The FCC has explicitly stated in this plan that the total charge of $3.50/month (the current $2 charge plus the $1.50 increase) would be capped and would not be increased further.

An SLC was first proposed by the FCC in 1982. At that time, the charge for residential users was to be phased in until it reached approximately $6/month. The Congress, however, strongly believed such a proposal was not justified. Legislation to prohibit this charge passed the House and likely would have succeeded in the Senate if the FCC had not reduced the charge to $2/month, with a promise to study the issue further before any increase would be adopted.

The FCC and the telephone industry argue that the SLC is needed to reduce the contribution long distance users make to maintain the local telephone plant that is jointly used for local and long distance service. If this charge were not imposed, they argue, telephone users would have an incentive to forgo using local telephone facilities, that is, bypass the local network. In addition, there would be less efficient use of the telephone network. Opponents of the SLC rebut these arguments by pointing out that the charge causes long distance rates to decrease but local rates to increase. Although the average telephone user would break even in such circumstances, those who do not make many long distance calls—often poor people—would have a rate increase. This may well cause such people to stop or reduce telephone service. These opponents also argue that the proponents have greatly overstated the extent of bypass.

It should be noted that the FCC's access charge plan contains much more than the $1.50/month increase in the residential and single-line business SLC. The plan continues the current lifeline program which permits States to join with the FCC in eliminating the SLC, reducing local rates for poor people. Moreover, it expands this program by assisting poor people in paying for the cost of installing a telephone line (the so-called Link-Up Program). The current High-Cost Fund (used mainly to support rural telephone companies) is continued but is targeted at small telephone companies. The plan also establishes a mechanism to continue the benefits of "pooling" (of low-cost with high cost areas to ensure averaged rates) while permitting telephone companies greater flexibility so that each company's costs can be reflected in its rates. Finally, the FCC adopted two other plans that would shift a large percentage of central office equipment costs and other shared costs from interstate to intrastate services.

At the April hearing, the Committee questioned the FCC extensively about the increase in the SLC and the other features of the new access charger proposal. The Committee was concerned and remains concerned about whether the new charge strikes the proper balance between the goals of increasing the efficient use of the network and deterring bypass and of preserving and furthering universal telephone service. The Committee does not now anticipate any action on the new plan. However, the Committee will continue to closely follow the FCC's actions. In addition, the Committee expects the FCC to monitor the effects of its plan, to review fully the state of the marketplace prior to permitting the next two parts of the SLC increase to take effect, and to alter its plan if circumstances warrant, particularly in the event of harm to universal telephone service.

THE THIRD COMPUTER INQUIRY

Over the past 15 years, the FCC has wrestled with the difficult and fundamental problem of defining basic telephone services and data processing services and then determining their regulatory status. The former services are considered monopoly services and have been regulated; the latter competitive services that have been unregulated. In 1980, in its *Second Computer Inquiry* decision, the FCC defined basic telephone service and data processing services and determined that the latter should remain unregulated. In addition, the FCC concluded that AT&T (and its local telephone operations) only could offer these data processing services through an arms-length, separate subsidiary so as to better ensure that these competitive ventures would not be improperly favored.

Last year, the FCC decided, in its *Third Computer Inquiry* decision, to abolish this separate subsidiary requirement and instead rely upon accounting rules and a requirement of comparably efficient interconnection/open network architecture (CEI/ONA) to prevent anti-competitive acts. At the time of this decision, neither of these new measures was in place and, in the instance of CEI/ONA, was not yet fully defined. The FCC has spent the past year seeking to correct this situation. New accounting rules for the allocation of joint costs have been adopted by the FCC. CEI plans are under consideration. The telephone and enhanced services industries also have been active in attempting to take ONA from mere ideas to concrete plans.

The Committee considers the issues raised in the *Third Computer Inquiry* and its predecessors to be of fundamental importance. With its new proposals, the FCC has embarked on a path that may ease past problems while bringing new services to the public more quickly. At the same time, there are significant and legitimate questions about the effectiveness of these new proposals in protecting the ratepayers and in furthering competition. For example, the reach of the new accounting rules is so far limited to interstate activities, and the effectiveness of the rules remains uncertain. The Committee will follow closely the FCC's actions in implementing the Third Computer Inquiry to ensure these goals are met.

COMMON CARRIER DEREGULATION

Over the past few years, the FCC has considered in various proceedings the deregulation of AT&T and other dominant carriers, which, because of their control of the key telephone facilities, have significant market power. The FCC first initiated an overall inquiry into AT&T's market dominance. This produced lengthy comments but has yet to be completed. More recently, the FCC instituted a proceeding to determine whether deregulation could occur on a service-by-service basis. Under such an approach, the FCC will shift the focus of deregulation from the control of key facilities to dominance in individual services provided over those facilities. The comments filed in this proceeding strongly question this approach on the ground that services can be and are created and eliminated at any time while facilities remain the bedrock of any network.

At the April hearing, the Chairman of the FCC discussed other approaches that might be taken to lessen regulation of dominant carriers. In light of these comments and further discussions, the Committee expects the FCC to propose soon an alternative to traditional rate of return regulation. While it is not difficult to find problems with this traditional method of regulation, the Committee cautions the FCC to ensure the protection of the ratepayer is a top priority of any new plan. For example, difficult questions are raised about the so-called "price cap" method when costs are falling. In addition, the ratepayer should reap a fair share of the benefits of increased productivity. The Committee plans to scrutinize carefully any new deregulation proposal to ensure it is in the ratepayer's best interests.

LEGISLATIVE HISTORY

S. 1048 was introduced on April 21, 1987 by Senator Inouye, with Senators Hollings, Danforth, and Packwood as co-sponsors. This legislation provided for the funding of the FCC for fiscal years 1988 and 1989 and for the extension of the travel reimbursement program until the end of fiscal year 1989. The Communications Subcommittee held a hearing on the reauthorization of the FCC. The Chairman of the FCC, Dennis Patrick, was the sole witness. On July 14, 1987, the Committee ordered the bill to be reported favorably, without objection, adopting an amendment in the nature of a substitute. This amendment included the original provisions of S. 1048 and added two new amendments: to eliminate the Annual Management Report; and to postpone the date of indexing the fee schedule until April 1, 1989.

Summary of Major Provisions

The first section provides the short title for the legislation.

Section 2 authorizes funding for the FCC for fiscal years 1988 and 1989.

Section 3 extends the travel reimbursement program until the end of fiscal year 1989.

Section 4 eliminates the Annual Management Report requirement.

Section 5 postpones the date of indexing the fee schedule for inflation from two years after the date of enactment of the schedule (April 7, 1988) until April 1, 1989.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 23, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1048, the Federal Communications Commission Authorization Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Edward M. Gramlich,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1048.
2. Bill title: Federal Communications Authorization Act of 1987.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 14, 1987.
4. Bill purpose: S. 1048 authorizes the appropriation of up to $107.25 million in fiscal year 1988 and $109.25 million in fiscal year 1989 to carry out the programs of the Federal Communications Commission (FCC), and such additional sums for fiscal years 1988 and 1989 as may be necessary for increases in salary, pay, and other employee benefits as authorized by law. In addition, the bill makes a number of changes in FCC policies and procedures.

Appropriations to date for fiscal year 1987 are $97.0 million for the FCC, and the President is requesting a 1988 appropriation of $107.3 million.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization level:					
Specified (function 370)	107.3	109.3	—	—	—
Estimated (function 920)	2.4	5.0	—	—	—
Total	109.7	114.3	—	—	—
Estimated outlays	102.5	114.0	7.4	—	—

Including outlays from previous years' appropriations, total 1988 outlays would be $108.7 million, assuming appropriation of the authorized amounts.

The costs of this bill fall within budget function 370.

Basis of estimate

For the purposes of this estimate, it was assumed that the amounts authorized in the bill would be appropriated prior to the beginning of each fiscal year. The increases for salary, pay, and other employee benefits required by law for fiscal years 1988 and 1989 are estimated consistent with the Concurrent Resolution on the Budget for Fiscal Year 1988 (H. Con. Res 93). Outlays reflect historical spending patterns for the ongoing activities of the FCC.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Douglas Criscitello.

10. Estimate approved by: James Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

S. 1048, as reported, authorizes funds for the FCC over the next two fiscal years, extends the travel reimbursement program, eliminates the Annual Management Report, and postpones the date of indexing of the fee schedule for approximately one year. Since the legislation postpones a change in the fee schedule regulation, this legislation will have a slight beneficial economic impact on those regulated. Otherwise, the legislation should have no impact upon the number and types of persons affected by regulation, no economic impact on consumers or businesses, and no impact on the personal privacy of individuals. In addition, it should not create additional paperwork.

Section-by-Section Analysis

SECTION 1.—SHORT TITLE

This section provides that the legislation may be cited as the "Federal Communications Commission Authorization Act of 1987".

SECTION 2.—AUTHORIZATION OF APPROPRIATIONS

This section provides funding of $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989.

SECTION 3.—TRAVEL REIMBURSEMENT PROGRAM

This section provides for a two-year extension of the travel reimbursement program contained in section 4(g)(2) of the Communications Act.

SECTION 4.—ANNUAL MANAGEMENT REPORT

This section eliminates the Annual Management Report required in section 5(g) of the Communications Act.

SECTION 5.—FEE SCHEDULE

This section postpones the date of indexing the fee schedule (section 8 of the Communications Act) from two years after the date of enactment of the fee schedule provision (April 7, 1988) to April 1, 1989.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Communications Act of 1934

Section 4 of that Act

FEDERAL COMMUNICATIONS COMMISSION

Sec. 4. (a) * * *

(b)–(f) * * *

(g)(1) * * *

(2)(A) * * *

(B)–(C) * * *

(D) The provisions of this paragraph shall cease to have any force or effect at the end of fiscal year [1987.] *1989.*

COMMISSION

Sec. 5. (a)–(f) * * *

[(g) The Commission shall submit an annual report to the Congress not later than March 31 of each year. Such report shall—

[(1) list the specific goals, objectives, and priorities of the Commission which shall be projected over 12-month, 24-month, and 36-month periods;

[(2) describe in detail the programs which are, or shall be, established to meet or carry out such goals, objectives, and priorities;

[(3) provide an evaluation of actions taken during the preceding year with regard to fulfilling the functions of the Commission; and

[(4) contain recommendations for legislative action required to enable the Commission to meet the objectives.]

AUTHORIZATION OF APPROPRIATIONS

[SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $98,100,000 for fiscal year 1986 and $97,600,000 for fiscal year 1987, 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 1986 and 1987.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989, 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 1988 and 1989.

CHARGES

SEC. 8. (a) The Commission shall assess and collect charges at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to the provisions of subsection (b) of this section. The Schedule of Charges established under this subsection shall be implemented not later than 360 days after the date of enactment of this section.

(b)(1) The Schedule of Charges established under this section shall be reviewed by the Commission every two years after *April 1, 1987* [the date of enactment of this section] and adjusted by the Commission to reflect changes in the Consumer Price Index. Increases or decreases in charges shall apply to all categories of charges, except that individual fees shall not be adjusted until the increase or decrease, as determined by the net change in the Consumer Price Index since the date of enactment of this section amounts to at least $5.00 in the case of fees under $100.00, or 5 percent in the case of fees of $100.00 or more. All fees which require adjustment will be rounded upward to the next $5.00 increment. The Commission shall transmit to the Congress notification of any such adjustment not later than 90 days before the effective date of such adjustment.

(2) Increases or decreases in charges made pursuant to this subsection shall not be subject to judicial review.