

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 1942

Ordered to lie on the table and to be printed

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AMENDMENT

Intended to be proposed by Mr. TAPP to the bill (H. R. 6263) to amend section 603 of the Communications Act of 1934 for the purpose of granting to the President, in time of war or threatened war, certain powers with respect to communications by wire, viz:

- 1 On page 2, line 14, insert the following: "*Provided,*
- 2 *however,* That except in case of invasion or in connection
- 3 with the movement of military or naval forces no such au-
- 4 thorization shall be given for the use and control of property
- 5 costing more than \$10,000,000 without prior appropriation
- 6 by the Congress."

## GENERAL STATEMENT

The proposed committee substitute grants to the President in substance the same power over wire communications and facilities, in time of war or threatened war that he now has with regard to radio and radio facilities under section 606 (c) of the Communications Act of 1934.

During the first World War the President was granted authority to take possession and assume control of wire and radio systems, but that authority is no longer in force. (See Public Res. No. 38, 65th Cong., set forth in the appendix to this report.)

Specifically, this legislation would authorize the President during time of war or threat of war to exercise any or all of the following powers, but only to the extent that he deems such action necessary in the interest of the national security and defense: (1) To suspend the rules and regulations of the Federal Communications Commission, (2) to cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) to authorize the use or control of any such facility or station by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

It is expressly provided that these powers over wire communications may not be exercised, in any case where they become operative, for a period longer than 6 months after the termination of the war or threat of war, and Congress may by concurrent resolution terminate such powers at an earlier date. In thus reserving to Congress the power to shorten the period during which these special powers could otherwise be exercised, the legislation here proposed follows the precedent of the Lease-Lend Act of March 11, 1941, and the first War Powers Act, 1941, as well as other statutes enacted in recent years. This action by Congress may be taken by a concurrent resolution of the two Houses, which need not be sent to the President for his approval.

The committee has received compelling evidence that there is a necessity for special wartime powers to control use, or close wire communication facilities. Wire, as here used, includes cables. In present-day warfare, both wire and radio communication facilities are vital military necessities. Certain of those facilities may have to be closed, used, or controlled by the Army or Navy or other Government agency in emergencies without any delay whatsoever. Under such conditions, normal contractual arrangements, which necessarily involve some delay, cannot be resorted to. Congress has already granted to the President these special powers over radio, in section 606 (c) of the Communications Act of 1934. It is equally important that such powers exist in the case of wire communications. Wire lines and radio facilities are inextricably linked in the over-all picture of national and international communications; in specific cases radio circuits connect with wire circuits to complete a given route. Moreover, wire is frequently an alternative means of communication to radio and vice versa. To have effective control, the President cannot exercise powers over one branch of communications and not the other. Further, it is significant that there are several thousand independent telephone companies in the United States in complete control of their facilities. There are a number of telegraph and cable facilities. Thousands of miles of wire facilities are owned by non-common-carrier companies which are engaged in other businesses. The large number

of such companies and the great scope of such facilities make it essential that the President be in a position to act immediately without requiring recourse to negotiation and the execution of contracts.

This legislation is favored by the Defense Communications Board, a special emergency organization set up to handle wartime communication problems. This Board is made up of the Chairman of the Federal Communications Commission, the Chief Signal Officer of the Army, the Director of Naval Communications, the Assistant Secretary of State in Charge of International Communications, and the Assistant Secretary of the Treasury in Charge of Enforcement Activities. Since its inception, this Board has engaged in studies and preparation of plans for national-defense measures in the field of communications. After the outbreak of hostilities, it was designated by the President as the agency through which he will exercise the powers over radio now granted in section 606 (c) of the Communications Act of 1934. The committee is of the opinion that the Board's recommendation of this legislation should be given great weight. Furthermore, the committee is informed that the proposed extension of emergency powers over wire facilities has been approved in principle by the Secretary of War, the Secretary of the Navy, the Secretary of State, and the Secretary of the Treasury.

The committee wishes to emphasize that its approval of the proposed legislation in no way indicates approval of the general policy of Government control or ownership of communication facilities. Moreover, it is clear that no Government agency plans to take over and operate communication systems in general. This legislation is necessary, however, to enable the President, in particular instances, immediately to control and use wire facilities when wartime needs demand such immediate action. There is no law which now gives the President such power.

The committee wishes to state further that the proposed legislation does not indicate doubt as to the willingness of the large communication companies to cooperate with the Government under wartime conditions. However, the difficulty of predicting wartime needs, the great number of companies in the field, and the necessity of swift action in emergency situations makes it essential that authority be granted to the Executive for the taking of immediate and appropriate measures without having to negotiate the transaction and procure the assent of the companies.

As in the case of radio, the owners of wire facilities used or controlled will be entitled to just compensation in accordance with the provision of the present section 606 (d) of the Communications Act dealing with compensation. Under the proposed bill, this provision will become subsection (e) of section 606.

The new proposed subsection (f) provides that nothing in section 606 (c) or (d) of the Communications Act of 1934 shall be construed to have any effect upon the existing laws or powers of the States with respect to taxation or to the lawful police regulations of the States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or be construed to affect the issue of stocks and bonds by corporations owning such facility or station. This provision was taken from Public Resolution No. 38, Sixty-fifth Congress, which authorized the President to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system during the first World War:

## CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in the Communications Act of 1934, as amended, made by the bill as introduced are shown, as follows (new matter proposed to be inserted in such act is printed in italics, existing law in which no change is proposed is shown in roman):

## WAR EMERGENCY—POWERS OF PRESIDENT

SEC. 606. (a) During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this Act. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is hereby authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(d) The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by paragraph 20 of section 24, or by section 145, of the Judicial Code, as amended.

(e) *Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may suspend or amend, during a period ending not later than six months after the termination of such state or threat of war or not later than such earlier date as the Congress by concurrent resolution may designate, the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.*