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MEMORANDUM OF THE FCC'S POSITION  
ON THE McFARLAND BILL, S. 658

The McFarland Bill, S. 658, is presently in conference and it is impossible to tell exactly what form the bill as reported by the conferees will take. However, it appears clear that any version of the bill which will be agreed upon by the conferees will present many of the serious questions which lead the majority of the Commission to believe that its enactment would seriously jeopardize Commission regulation of the radio industry and cause inordinate delays in the Commission's processing of radio and television license applications. The most significant features of the bill are as follows:

1. The provisions, which are similar to, and in some respects go beyond, those in the Taft-Hartley Act, which would completely divorce the Commission from its staff in the consideration of all hearing cases. These provisions, which would limit each Commissioner to consulting only with a single professional assistant in reaching his conclusions with respect to the voluminous and highly technical determinations which must be made in any hearing case will inevitably result in extremely serious delays in the decisions of all such cases. The provisions are completely unnecessary to achieve complete fairness in hearings since the Administrative Procedure Act and the Commission rules, which go beyond the separation requirements of that Act, already prohibit ex parte consultation between Commissioners and members of the staff who have investigated or prosecuted hearing cases.
2. The provisions of the bill which entail unnecessary hearing burdens upon both the Commission and applicants for new or increased radio facilities upon the request of existing stations concerned, for competitive reasons, with blocking or delaying new service to the public, even though there may be no merit to the objections urged by such stations, and no need for holding any hearing.
3. The provisions of the bill which would change the existing provisions of the Communications Act with respect to renewal of licenses in a manner which will cast serious doubt on the basic principle of radio licensing that such licensees are not to receive a perpetual franchise and are only to receive renewal of their licenses if they can demonstrate that their continued operation will be in the public interest.
4. The provisions of the bill which would amend the existing law with respect to transfers and assignments of licenses in a manner which would cast serious doubt upon the authority of the Commission to prevent financial trafficking in licenses or to prevent licensees, who have engaged in acts warranting revocation of a license or denial of its renewal, from disposing of their licenses at a substantial profit after the institution of Commission proceedings looking towards termination of the license.

5. The provisions of the Senate version of the bill which would seriously undermine the provisions of existing law making the antitrust laws applicable to radio broadcasting.

6. The provisions of the Senate version of the bill which would make the recruitment of adequate personnel to serve as Commissioners and as the top members of the Commission's staff exceedingly difficult by unduly limiting the type of employment they could engage in if their period of service with the Commission were to be terminated.

7. The unclear provisions in the House version of the bill which cast doubt upon whether the Commission could consider the recognized public interest in promoting diversification of ownership of competitive media of mass communications in passing upon the qualifications of applicants for television or radio licenses who have interests in newspapers or other communications media.

In addition to the matters listed above, there are a number of other provisions of the bill, the enactment of which would at least cast doubt as to the manner in which the Commission's functions are to be carried out and may result in substantially curtailing the Commission's ability to operate with any reasonable degree of efficiency and expedition. While there are some provisions of the bill whose enactment might be useful, the majority of the Commission believes that, taken as a whole, the bill is not only completely unnecessary to achieve any salutary objective, but can only result in rendering inefficient and ineffective the Commission's entire processes and its ability to carry out its important regulatory and licensing functions.

Upon the eve of the commencement of the most tremendous expansion activity in the history of radio, attendant upon the Commission's recent lifting of the television freeze, the majority of the Commission strongly believes that the nation can ill afford to risk the crippling effects upon the Commission's processes which are, in our opinion, threatened by this drastic legislation.