

AMENDING THE COMMUNICATIONS ACT OF 1934, AS AMENDED

MARCH 24 (legislative day, MARCH 1), 1954.—Ordered to be printed

Mr. POTTER, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 6436]

The Committee on Interstate and Foreign Commerce to whom was referred the bill (H. R. 6436) to amend the Communications Act of 1934, as amended, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

Page 2, a new section 2 is inserted which amends so much of section 3 (e) of the Communications Act of 1934, as amended, to read as follows:

SEC. 2. So much of section 3 (e) of the Communications Act of 1934, as amended, as follows the semicolon is amended to read as follows: "but shall not, with respect to the provisions of title II of this Act, include wire or radio communications between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State Commission."

The adoption of this amendment is merely a perfecting amendment and would obviate any possible technical argument that the Commission may attempt to assert common-carrier jurisdiction over point-to-point communication by radio between two points within a single State when the only possible claim that such an operation constitutes an interstate communication rests on the fact that the signal may traverse the territory of another State. The Commission has not attempted to assert itself under such circumstances in the past. This amendment would crystallize the present regulatory practice and is consistent with the objective of this bill.

PURPOSE

The purpose of the legislation is to clarify the provisions of the Federal Communications Act with regard to the jurisdiction of the

Federal Communications Commission over telephone and telegraph companies which are engaged primarily in intrastate activities and which therefore, should be subject to State and local regulation rather than Federal regulation. Questions have been raised, however, with regard to the possibility that such companies might become subject to Federal regulation on account of the use by such companies of radio as a medium instead of wire lines. Under certain circumstances the use of radio is the best engineering solution as, for example, in the case of telephone service to moving vehicles or to isolated locations, such as farmhouses in rural communities or isolated business developments, such as mines, oil-drilling operations, seasonal resort areas, etc. The legislation is designed to make certain that the use of radio will not subject to Federal regulation companies engaged primarily in intrastate operations.

The legislation is sought by the United States Independent Telephone Association, the national trade organization of more than 5,000 so-called independent telephone companies. These companies, in the main, operate in the smaller communities and in rural areas. The legislation has the endorsement of the National Association of Railroad and Utilities Commissioners and the American Telephone & Telegraph Co. There is no known opposition to this legislation.

A subcommittee of the Committee on Interstate and Foreign Commerce held hearings on H. R. 3189 and H. R. 3311, and as a result of the hearings, a clean bill (H. R. 6436) was introduced which incorporated certain technical changes which were agreed to by the Federal Communications Commission and the United States Independent Telephone Association. The comments received from the Federal Communications Commission with regard to H. R. 6436 and with regard to the amendment to section 3 (e), are set out below. Also, set out below are the comments of the Department of Justice.

The legislation will remove the present uncertainties with respect to the jurisdictional status of the so-called independent companies. These uncertainties have had a definite hampering effect upon the utilization of radio by these small enterprises. The enactment of this legislation will enable these companies to make the necessary investment in radiotelephone equipment in order to provide the best possible telephone service in the public interest.

DEPARTMENT OF JUSTICE,
October 2, 1953.

HON. JOHN W. BRICKER,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6436) to amend the Communications Act of 1934, as amended.

The bill would amend the Communications Act of 1934 so as to provide that the Federal Communications Commission shall not have jurisdiction with respect to charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or with respect to any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not under direct or indirect common control with such carrier, or with respect to any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing

business), of another carrier not under direct or indirect common control with such carrier. The bill would also provide that the Commission shall not have jurisdiction with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio-telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

The purpose of the measure is to make certain that the use of radio in the communication service by telephone and telegraph companies which are engaged primarily in intrastate activities will not subject them to the jurisdiction of the Federal Communications Commission.

Whether the bill should be enacted involves a question of policy concerning which this Department prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., January 22, 1954.

HON. JOHN BRICKER,
*Chairman, Senate Committee on Interstate and Foreign Commerce,
Washington, D. C.*

DEAR SENATOR BRICKER: This is in reply to the request of your committee for the Commission's comments concerning H. R. 6436, a bill to amend sections 2 (b) and 221 (b) of the Communications Act of 1934, as amended.

Enclosed are copies of the Commission's comments concerning this proposed legislation. The Commission will be pleased to furnish any additional comments or information which your committee may desire.

The Bureau of the Budget has informed us that it has no objection to the submission of these comments to your committee.

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

Enclosures.

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON H. R. 6436

This bill would amend sections 2 (b), 3 (u) and 221 (b) of the Communications Act to further clarify the jurisdiction of the Commission with respect to the common carrier regulation of certain communications activities. Specifically, it would amend section 2 (b) (1) of the act to make explicit that intrastate communication service, whether "by wire or radio," will not be subject to the Commission's jurisdiction over charges, classifications, practices, services, or facilities. And new subsections 2 (b) (3) and (4) would be added, exempting from the Commission's common carrier regulatory authority, other than that contained in sections 201-205 of the act, "(3) Any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico." Section 221 (b) of the Communications Act, which presently excludes from regulation by the Commission, under the provisions of title II of the Communications Act, charges, classifications, practices, services, facilities or regulations in connection with interstate wire telephone exchange service where such matters are subject to regulation by a State commission or by local governmental authority, would be amended to include mobile or point-to-point radio telephone exchange service. Section 221 (b) would also be amended to make clear that the Commission retains its licensing authority over the radio stations that might be involved in such telephone exchange service, and a minor amendment would be made in the definition of "connecting carrier" contained in section 3 (u) of the Communications Act, to extend the coverage of this definition to carriers described in the two proposed new clauses of section 2 (b) of the act.

The present proposal represents the joint efforts of the Commission, the United States Independent Telephone Association and the National Association of Railroad and Utilities Commissioners to clarify the extent of Commission common carrier jurisdiction in circumstances where radio facilities are used by such carriers in lieu of wire lines and where, under the existing language of the Communications Act, it would be clear that the Commission would not have regulatory jurisdiction over the services in question had they in fact been conducted by wire. The Commission believes that the language of the bill, as presently drafted, will achieve these objectives and, at the same time, will not jeopardize the basic and essential jurisdiction of the Commission over interstate and foreign common carrier activities in the communications field. The Commission, accordingly, has no objection to the adoption of the proposed amendments.

The Commission wishes to point out, however, that, with respect to the amendment of section 221 (b) of the Communications Act which would include mobile and certain point-to-point radio operations in the telephone exchange services exempted from Commission regulation where such matters are subject to regulation by State commissions or local governmental authority, difficulties may arise in determining both the limits of a particular radiotelephone exchange and whether, in individual cases, interstate mobile or point-to-point radio service is in fact subject to State or local regulation even where it is part of an exchange service. The Commission believes, however, that in spite of these possible difficulties adoption of the proposed amendment to section 221 (b) would be appropriate since a company claiming exemption under the proposed new provisions would necessarily have the burden of demonstrating to the Commission both that the operations in question are in fact part of telephone exchange service and that such operations are in fact subject to regulation by station commissions or other local governmental authority.

Adopted: December 18, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., February 11, 1954.

HON. JOHN W. BRICKER,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Washington 25, D. C.

DEAR SENATOR BRICKER: The Commission has received from the American Telephone & Telegraph Co. a copy of a letter of January 6, 1954, sent to you with respect to H. R. 6436, a bill to amend the Communications Act of 1934 which is presently pending before your committee. In this letter the American Telephone & Telegraph Co., in addition to approving of H. R. 6436 as presently constituted, recommends for the consideration of the committee an amendment to section 3 (e) of the Communications Act. Because of the importance of the matter the Commission is taking the liberty of writing to you with respect to its views on this new proposal.

Section 3 (e) of the Communications Act now provides:

"(e) 'Interstate communication' or 'interstate transmission' means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not include wire communication between points within the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission."

The amendment proposed by the telephone company would add the words "or radio" following the word "wire" in the final phrase of the section so that communication by either wire or radio between points within the same State, Territory, or possession of the United States, or the District of Columbia would not be deemed to be "interstate communication" or "interstate transmission" if such communication is regulated by a State commission, even though it may pass through any place outside of the State, Territory, or possession. An additional proviso would be added to the end of the subsection providing nothing in the definition shall be deemed to affect the jurisdiction of the Commission under title III of the act.

The Commission does not believe that the proposed amendment is particularly necessary since it has never attempted to assert common carrier jurisdiction over point-to-point communication by radio between two points within a single State where the only possible claim that such an operation constitutes interstate communication rests on the fact that the signals may traverse the territory of another State. However, the Commission recognizes that a technical argument could be made in the absence of an amendment such as that here proposed giving it jurisdiction in these cases and we therefore do not object to an amendment to the act crystallizing the present regulatory practice.

The Commission believes, however, that the proposed proviso reserving the Commission's jurisdiction under title III of the act is not adequate. For it should be remembered that the proposed amendment to section 3 (e) is to the basic "definitions" section of the act and its effect consequently extends to titles I, IV, V, and VI, as well as to titles II and III. And that this is a matter of more than theoretical importance is made clear by the fact that section 605 of the act, relating to unauthorized publication of communication, and section 606 (b), relating to the obstruction of essential communication in times of war, are both written in terms of the "definition of interstate communication" by wire or radio. It is believed that the exception to the general definition of interstate communication and interstate transmission, presently contained in the act with respect to wire communication, and the proposed addition with respect to radio communication, are both intended to relate and do in fact relate solely to the Commission's common-carrier regulatory authority under title II of the act. Accordingly, it is suggested that if the Congress wishes to adopt the substance of the amendment to section 3 (e) proposed by the American Telephone & Telegraph Co. this objective could best be accomplished by eliminating the final proviso proposed in the draft amendment submitted by the telephone company and in lieu thereof inserting the words "with respect to the provisions of title II of this Act," after the words "but shall" at the beginning of the final phrase of the subsection. If this suggestion were to be adopted the final phrase of section 3 (e), as amended, would read: "but shall, with respect to the provisions of title II of this Act, not include wire or radio communication between points within the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission."

As indicated in our previous comments submitted with respect to H. R. 6436, the Commission is, in all other respects, in agreement with the provisions of the bill as drafted.

By direction of the Commission.

ROSEL H. HYDE, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, matter proposed to be omitted in brackets, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service *by wire or radio* of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such [carrier;] carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), or another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing

6 AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED

interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 [to] through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in [clause (2)] clauses (2), (3), and (4).

* * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

(a) * * *

* * * * *

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not with respect to the provisions of Title II of this Act, include wire or radio communication between points [within] in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

* * * * *

(u) "Connecting carrier" means a carrier described in [clause (2)] clauses (2), (3), or (4) of section 2 (b).

* * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) [Nothing] Subject to the provisions of section 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with [wire] wire, mobile, or point-to-point radio telephone exchange service, [even] or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

