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AMENDMENTS TO COMMON CARRIER SECTIONS OF COMMUNICATIONS ACT

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

R E P O R T

[To accompany S. 1456]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1456) to amend sections 212, 219 (a), 221 (a), and 410 (a) of the Communications Act of 1934, as amended, having considered the same, report favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 4, lines 18 and 19, after the word "cases," strike out "unless the Commission determines that a hearing is not necessary in the public interest" and insert "where a request therefore is made by a telephone company, an association of telephone companies, a State commission, or local governmental authority."

GENERAL STATEMENT

The legislation is designed to eliminate certain procedural burdens involving the regulation of communication common carriers which the FCC experience has shown to be unnecessary and unduly restrictive.

The bill, S. 1456, proposes 4 amendments to the Communications Act of 1934. Specifically, the bill amends section 212, which involves interlocking directorates; section 219 (a) which refers to filing of annual reports; section 221 (a) dealing with hearings in cases involving telephone company acquisition and mergers; and section 410 (a) which authorizes the creation of joint boards composed of members from the Federal Communications Commission and the various

State public commissions. The committee feels that the proposed amendments will relieve the FCC and the common carriers subject to its jurisdiction of unnecessary administrative burden, expense, and waste of manpower and would serve no useful purpose.

Section 212 of the Communications Act at present requires that authority must be obtained from the Commission before any person may hold the position of officer or director of more than one common carrier subject to the act. Such person must show that neither public nor private interests will be adversely affected by his holding such positions. The section was designed to prevent the abuses which might be expected to flow from so-called interlocking directorates. However, nearly all the applications for authority to hold dual positions received by the Commission involve companies under common ownership. In recent years the FCC has been called upon to consider many requests by officers or directors of one company of a commonly owned or controlled system such as the Bell System of the American Telephone & Telegraph Co. to serve as well in a similar capacity with respect to another company within the system. Such applications have been consistently approved by the Commission since it feels that this type of dual holding does not adversely affect either public or private interests. The proposed amendment would change section 212 so as to permit the Commission to exempt from the requirements of the section those persons holding dual positions in carriers one of which owns more than 50 percent of the stock of the other or both of which are more than 50 percent owned by the same person. It is expected that this will relieve the Commission and the carriers of considerable unnecessary administrative burden and expense.

The need of an amendment to section 219 (a) arises primarily out of the development and growth of certain new types of limited or specialized common carriers in the communications field particularly in the mobile and maritime fields. Section 219 (a) of the act authorizes the Commission to require annual reports of common carriers. The first sentence of section 219 (a) gives the Commission discretionary authority to require common carriers to submit annual reports of financial, statistical, and other information. Once the Commission requires the report to be submitted, the second sentence of section 219 (a) which is couched in mandatory terms prescribes a long list of data which shall be included in such annual reports.

The data prescribed to be furnished is desirable in the comprehensive reports required from large carriers and undoubtedly will be continued in future reports from the large carriers. On the other hand, such detailed information ordinarily is not necessary in reports from specialized carriers and furnishing it imposes a substantial unnecessary burden on them.

Various new types of limited or specialized carriers have developed in the communications field in recent years and the Commission's experience has proved that it is not necessary to require the small specialized carriers to submit information in as much detail as the larger carriers who furnish a more general type of communications service. In order to give the Commission flexibility and to permit it more readily to tailor its requirements to particular needs for information the bill would amend section 219 (a) so as to authorize the FCC to determine the type of information each carrier should submit.

Section 221 (a) of the act requires the Commission to hold public hearings upon all applications requesting authority to consolidate telephone properties or authority of one telephone company to acquire the property or control of another.

This section is designed to permit the FCC to confer immunity from the antitrust laws in cases of telephone company acquisitions and mergers where the Commission finds that such acquisition or merger would be of an advantage to the persons to be served and in the public interest. The record reveals that almost all of the applications filed under this section are generally supported by all parties in interest including the telephone users themselves and involved no points of large significance which justified the time and expense of a public hearing.

The bill as originally introduced at the request of the FCC proposed to amend section 221 (a) so as to leave entirely to the Commission's discretion as to whether or not hearings should be held in all such cases. The United States Independent Telephone Association which represents most of the independent telephone companies in the United States urged an amendment limiting the Commission's discretion. The Independent Telephone Association's representative strongly urged that a hearing must be held in every case where such a request is made by a telephone company, or an association of telephone companies. Both prior to and subsequent to the hearing, conferences were held with the FCC and representatives of the Independent Telephone Co. in order to give full consideration to the proposed amendment to section 221 (a). The Commission indicated it had no objection to affording the hearing where a request therefore is made by a telephone company or an association of telephone companies. The committee felt that if a right to a hearing is to be afforded the independent telephone companies, a similar right should be given to State and local governmental bodies who are charged with protecting the interests of the public in connection with telephone services.

Accordingly, the committee has amended section 221 (a) to require the Commission to hold hearings when requested by a telephone company, or an association of telephone companies, or by State commissions or local governmental authority. In all other cases, the Commission will have discretion to determine whether or not a hearing is justified.

The Congress on August 2, 1949, made an amendment similar to what the FCC recommended to section 5 (2) (b) of the Interstate Commerce Act which added a clause making public hearings mandatory in cases involving consolidations, mergers, and acquisitions of control of railroads, a proviso that such hearings need not be held where the Commission "determines that a public hearing is not necessary in the public interest."

Section 410 (a) of the act provides for the referral of matters arising under the Communications Act to joint boards composed of members from the FCC and the various States affected by a particular communications problem at issue. Originally, the section provided that such boards should have the same power and authority as a single Commissioner designated to hold a hearing. However, the Communications Act Amendment of 1952 (act of July 16, 1952, 66 Stat. 711) abolished the former procedure under which single Commissioners could hear cases, and section 410 (a) was amended at the same time

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so as to confer on joint boards the same authority as is conferred on the Commission itself.

The Commission testified that such a delegation of power is too broad. It also felt that, in view of such a broad delegation, it is unlikely that it would ever find it desirable to refer matters to such boards. The proposed amendment to section 410 (a) would authorize the Commission to confer on joint boards the same power and authority as is now conferred on the Commission's hearing examiners in adjudicatory cases and thereby gives the full Commission an opportunity to act before a final determination is made.

The committee feels that the proposed amendments will promote the interest of efficiency and avoid unnecessary effort by both the FCC and the common carriers involved and also tend to reduce the workload of the Commission.

The Subcommittee on Communications heard detailed testimony from the Federal Communications Commission and a representative of the United States Independent Telephone Association.

The comments of the Federal Communications Commission and the Department of Justice are set forth below.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., February 23, 1955.

The VICE PRESIDENT,
United States Senate, Washington, D. C.

DEAR MR. VICE PRESIDENT: The Federal Communications Commission wishes to recommend for the consideration of the Senate four amendments to the Communications Act of 1934, as amended, relating to its regulatory authority over communications common carriers, enactment of which, it is believed, will substantially relieve the administrative burdens of such regulation on both the Commission and the carriers subject to its jurisdiction without in any way detracting from the essential regulatory authority of the Commission. These amendments are to sections 212, 219 (a), 221 (a), and 410 (a) of the act respectively. A draft bill incorporating each of the amendments is attached.

Section 212 of the Communications Act presently makes it unlawful for any person to hold the position of officer or director of more than one carrier subject to the act, unless the dual holding is first authorized by Commission order upon a showing, in a manner to be prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. An objective of Congress in enacting this requirement—the prevention of the exercise of indirect control over ostensibly competing carriers through such interlocking directorates—is, we believe, clearly salutary. But the all-embracing language of the section makes it applicable to dual holdings within an integrated communications system under common ownership and control as well as to interlocking relations between the competitive systems to which the section must have been primarily intended to apply. The result has been that in recent years the Commission has been called upon to consider a substantial number of requests by officers or directors of one company of a commonly owned and controlled system, such as the Bell System of the American Telephone & Telegraph Co., to serve as well in a similar capacity with respect to another company within the system. The Commission has felt that in such situations, where the dual holding cannot have any effect upon the ultimate control or management policy of either of the companies, the determination as to whether a particular individual can best serve the interests of the system by concentrating his efforts in one of the constituent companies or by making his talents available to more than one is a detail of carrier management which can and should be left to the discretion of the carrier itself. It has, accordingly, regularly issued orders approving such requests. It is believed, however, that in the interests of efficiency and avoidance of unnecessary effort by both the Commission and the carrier personnel involved, it would be advisable to amend section 212 to make possible elimination of unnecessary applications and Commission orders in such situations. This would be accomplished by amending section 212

to add the following proviso at the end of the first sentence: "*Provided*, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person."

In addition, certain language changes will be required in the second sentence of the section, as revised, in view of the insertion of the new proviso. These are set out in full in the draft bill attached hereto.

The need for an amendment to section 219 (a) of the act arises partly out of an apparent ambiguity of the existing language and partly out of the development and growth of certain new types of limited or specialized common carriers in the communications field concerning the operation of which a somewhat lesser degree of annual information may be necessary in order to insure effective Commission regulation. The first sentence of this section presently authorizes the Commission to require the filing of annual reports by all carriers subject to the act, a provision taken over from the Interstate Commerce Act, as amended. However, the second sentence of the section, which was added at the time the Communications Act of 1934 was adopted, speaks in mandatory terms and provides that such annual reports "shall show in detail" a long list of specific types of information. The absolute nature of these requirements is apparently, stressed by the language of the third and last sentence of the subsection which authorizes the Commission, by regulation to require that additional information be contained in such annual reports. And while the legislative history relating to the section is by no means extensive, what there is tends to reinforce the interpretation of the section which would make mandatory the inclusion in any annual report required to be filed by the Commission of all of the detailed information specified in the second sentence of the section.

Experience in recent years, especially with respect to certain types of specialized common carriers which have been established in the mobile and maritime services, has indicated that some of the information required by the second sentence of the section is unnecessary and serves little or no regulatory function. Accordingly, this section should be amended to make clear that the Commission has authority to tailor the annual reports required from particular types of carriers to the peculiar needs of the Commission with respect to each service and type of carrier. This would be accomplished by amending the second sentence of the section by inserting the words "Except as otherwise required by the Commission" at the beginning of the sentence so that it will read: "Except as otherwise required by the Commission, such annual reports shall show in detail."

It is presently provided in section 221 (a) of the act that the Commission must hold public hearings upon all applications for authority to consolidate telephone properties or for authority for one telephone company to acquire the property of another or the control of another. It is believed that this mandatory hearing requirement should be eased, as many of the applications being received are of such minor significance that hearings are not justified. This is particularly true since in a large number of these cases all conceivable parties in interest are actively in favor of the merger. The Congress on August 2, 1949, made an amendment similar to what the Commission is recommending, to section 5 (2) (b) of the Interstate Commerce Act by adding to a clause making public hearings mandatory in cases involving consolidations, mergers, and acquisitions of control of railroads a proviso that such hearings need not be held where the Commission "determines that a public hearing is not necessary in the public interest." In its 66th annual report for the fiscal year ended October 31, 1952, the Interstate Commerce Commission, commenting upon the results of the amendment of August 2, 1949, stated that during the year under report it "found that public hearings were not necessary in 32 out of 35 proceedings under section 5 (2)." It is believed that similar savings in time-consuming procedures would be realized in the Federal Communications Commission if section 221 (a) were similarly amended, as set forth in detail in the appendix. This amendment would permit the Commission to dispense with the hearing in any case where, after notifying all parties in interest and considering their views, the Commission determines that such a hearing is not necessary in the public interest. The new language proposed is patterned after language now in sections 220 (i) and 309 (a) of the act and the amendment of August 2, 1949, to section 5 (2) (b) of the Interstate Commerce Act.

In the Communications Act Amendments, 1952, Congress rewrote section 409 (a) of the act so as to provide that adjudicatory hearings should be conducted

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only by the Commission or by one or more examiners. This had the effect of forbidding the hearing of adjudicatory matters by a single member of the Commission. With section 409 (a) so rewritten it was necessary to make certain amendments to section 410 (a) to bring it into conformity with the new language of section 409 (a). In amending section 410 (a) Congress provided that certain questions might continue to be referred to a joint board composed of a member, or members selected from each of the States affected. In stating the jurisdiction and powers conferred upon such a joint board it was stated in the amendment adopted that any such board should have all the jurisdiction and powers conferred by law upon the Commission, whereas the language replaced gave these joint boards only the same powers as possessed by a single member of the Commission when designated by the Commission to hold a hearing. It would seem that the new delegation of jurisdiction and powers is undesirably broad.

In any event, with the wording of section 410 (a) inserted by the Communications Act Amendments, 1952, it does not seem likely that the Commission would ever find it desirable to refer any matter to a joint board. It is believed that if the second sentence of section 410 (a) were changed to give joint boards the same jurisdiction that is now conferred on an examiner, it would be more nearly what Congress must have intended and would make the section more usable to the Commission in the administration of the act.

The consideration of these amendments by the Senate will be greatly appreciated. The Commission will be most happy to furnish any additional information that may be desired by the Senate or by any committee to which this material is referred. The Bureau of the Budget has advised the Commission that it has no objection to the submission of this letter.

GEORGE C. MCCONNAUGHEY,
Chairman
(By direction of the Commission).

DEPARTMENT OF JUSTICE,
May 24, 1955.

HON. WARREN G. MAGNUSON,
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 (S. 1456) to amend sections 212, 219 (a), 221 (a), and 410 (a) of the Communications Act of 1934, as amended.

Section 212 of the act provides, *inter alia* " * * * it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby." The bill would amend this section by adding at the end of the above-quoted provision the following proviso: "Provided, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person."

Section 219 (a) of the act presently authorizes the Commission to require the filing of annual reports by all carriers subject to the act. The section further requires that such reports "shall show in detail" a long list of specific types of information. The bill proposes to amend this section by inserting the words "except as otherwise required by the Commission" so that the section will read "Except as otherwise required by the Commission, such annual reports shall show in detail * * *." The purpose of this proposed amendment is to make clear that the Commission has authority to specify the form of the annual reports for particular types of carriers so that such annual reports will reflect on y information which the Commission needs in order to perform its regulatory function.

Section 221 (a) of the act, which the bill proposes to amend, presently provides that the Commission must hold public hearings upon all applications for authority to consolidate telephone properties or for authority for one telephone company to acquire the property or control of another. The bill would amend this section so as to dispense with the necessity of a public hearing in cases where "the Commission determines that a [public] hearing is not necessary in the public interest." The purpose of this proposed change, it is understood, is to ease the mandatory

public hearing requirement since many of the applications recieved by the Commission are of minor significance which may not warrant the holding of such public hearings.

The bill also proposes to amend section 410 (a) of the act, the effect of which would be to limit the jurisdiction and powers of certain joint boards to which the Commission, under this section, is authorized to refer certain matters. The authority of such joint boards would, under the amendment proposed by the bill, be equal to that possessed by an examiner rather than, as presently provided in the act, equa to that of the Commission. The effect of this proposed change would probably make the section more usable to the Commission in the administration of the act since the Commission presently does not find it desirable to refer matters to a joint board because of the broad powers of such boards.

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 had advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., June 22, 1955.

HON. JOHN O. PASTORE,
*Chairman, Communications Subcommittee,
Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.*

DEAR SENATOR PASTORE: This has reference to testimony on June 21, 1955, given before your subcommittee on behalf of the Federal Communications Commission regarding S. 1456, a bill to amend sections 212, 219 (a), 221 (a), and 410 (a) of the Communications Act of 1934. With regard to the proposed amendment of section 221 (a) you requested that you be advised whether or not the Commission would have any objection to the language of this section being made to read so that a public hearing would be mandatory in case a request for hearing was made by someone other than a telephone company or an association of telephone companies.

The Commission has considered your request and you are advised that it has no objection to some broadening of the provision. The Commission is not disposed to recommend that the right to a hearing should be opened to all who so request or even to all "parties in interest" with all that term may imply. It is believed that the rights of all parties having a legitimate interest in telephone matters would be fully protected by making the change indicated in the following quoted sentence wherein new language is italicised:

"A public hearing shall be held in all cases where a request therefor is made by a telephone company, an association of telephone companies, *a State commission, or a local governmental authority.*"

This Commission, State commissions, and local governmental authorities all have responsibilities to protect the rights of telephone users and the public interest generally. At the same time a statutory provision of the type set out above would protect the Commission from frivolous and nonmeritorious requests for hearing by parties with motives not in the public interest.

Mr. Bradford Ross, counsel, United States Independent Telephone Association, has informed us that he does not oppose the change in language described herein.

GEORGE C. McCONAUGHEY,
Chairman
(By direction of the Commission).

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 italics, matter proposed to be omitted in brackets, existing law in which no change is proposed is shown in roman):

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INTERLOCKING DIRECTORATES—OFFICIALS DEALING IN SECURITIES

SEC. 212. After sixty days from the enactment of this Act it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. *Provided, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person.* After this section takes effect it shall be unlawful for any officer or director of any such carrier *subject to this Act* to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carrier from any funds properly included in capital account.

ANNUAL AND OTHER REPORTS

SEC. 219. (a) The Commission is authorized to require annual reports under oath from all carriers subject to this Act, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. *Except as otherwise required by the Commission* such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any; the number of stockholders (and the names of the thirty largest holders of each class of stock and the amount held by each); the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements. [arrangements, or contracts affecting the same, as the Commission may require.]

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the Commission shall [fix a time and place for a public hearing upon such application and shall thereupon] give reasonable notice in writing to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable [.] and shall afford such parties a reasonable opportunity to submit comments on the proposal. *A public hearing shall be held in all cases where a request therefore is made by a telephone company, an association of telephone companies, a State Commission, or local governmental authority.* [After such public hearing,] If the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) Except as provided in section 409, the Commission may refer any matter arising in the administration of this Act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 11 of the *Administrative Procedure Act*, designated by the Commission, and shall be subject to the same duties and obligations. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

