

## TERMS OF OFFICE OF MEMBERS OF CERTAIN REGULATORY AGENCIES

---

JUNE 17, 1960.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

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

### REPORT

[To accompany S. 1965]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1965) to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

#### AMENDMENT

The amendment proposed by the committee strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in the reported bill in italic type. The effect of the committee amendment is discussed hereafter in this report.

#### PURPOSE OF THE BILL

This bill, as reported by the committee, amends the Federal Power Act, the Communications Act of 1934, and the Securities Exchange Act of 1934 to provide that a member of the Federal Power Commission, the Federal Communications Commission, and the Securities and Exchange Commission shall continue to serve in office until his successor is appointed and has qualified.

#### HEARINGS

Hearings on the bill were had by the committee's Subcommittee on Communications and Power. The bill was supported by the Federal Power Commission and the Federal Communications Commission. In addition, a representative of the Securities and Exchange Commission appeared to request that such Commissions be treated in the same

manner as the others. The Bureau of the Budget indicated no objection to the bill if amended along the lines of a suggestion it made. No one appeared in opposition to the bill.

#### NEED FOR THE LEGISLATION

By amendments to the Interstate Commerce Act in 1935, and the Federal Trade Commission Act in 1938, and by the passage of the Federal Aviation Act of 1958, provision was made that members of the Interstate Commerce Commission, the Federal Trade Commission, and the Civil Aeronautics Board, upon the termination of their term of office shall continue to serve until their successors have been appointed and qualified. On the other hand, terms of members of the Federal Power Commission, the Federal Communications Commission, and the Securities and Exchange Commission expire at the end of their term of office.

Legislation having to do with matters subject to the jurisdiction of the above six regulatory agencies comes to this committee. One of the things that has been of some concern to your committee has been the situation which results when a Board or Commission is at less than full strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. This can, and has on occasion, made it impossible to reach a decision. It has worked delays in important pending actions. This has proven not only to be a handicap to the agency but may deprive the public of the benefits of the services which the agency by law is required to give.

The statutory terms of office and the number of members of the regulatory agencies involved are as follows:

	Number of members	Term of office (years)
Civil Aeronautics Board.....	5	6
Federal Communications Commission.....	7	7
Federal Power Commission.....	5	5
Federal Trade Commission.....	5	7
Interstate Commerce Commission.....	11	7
Securities and Exchange Commission.....	5	5

All of the acts provide that in the case of an unexpired term of office, the nomination shall be for the balance of the term of office involved. This bill makes no change in the actual statutory term of office.

Information supplied by the Federal Power Commission shows that the Commission in past years has experienced the following periods of vacancy:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934.....	Aug. 13, 1934	52
June 22, 1942.....	July 10, 1942	18
June 22, 1944.....	Sept. 9, 1944	79
June 22, 1952.....	July 9, 1952	17
June 22, 1953.....	Aug. 17, 1953	56
June 22, 1954.....	July 9, 1954	17
June 22, 1957.....	Aug. 16, 1957	55

The Federal Communications Commission has experienced the following periods of vacancy: <sup>1</sup>

Date term expired	Date successor took oath	Days of vacancy
June 30, 1937.....	Aug. 25, 1937	55
June 30, 1940.....	Mar. 22, 1941	264
June 30, 1941.....	Nov. 1, 1941	123
June 30, 1943.....	Feb. 15, 1944	229
June 30, 1944.....	Mar. 30, 1945	274
June 30, 1945.....	July 23, 1945	22
June 30, 1947.....	Sept. 5, 1947	66
June 30, 1948.....	July 6, 1948	5
June 30, 1948.....	Oct. 6, 1953	97
June 30, 1953.....	July 7, 1955	6
June 30, 1955.....	July 2, 1956	20
June 30, 1956.....	Aug. 29, 1957	59

<sup>1</sup> Excludes resignations of Commissioners before their terms expired and commencement of service of their successors for the balance of each unexpired term.

<sup>2</sup> July 1, 1956 was a Sunday.

The committee is of the opinion that these "arms of the Congress" should be kept at full strength and that it is desirable accordingly to place the members of the three agencies covered by the bill in the same stead as those of the other three regulatory commissions.

COMMITTEE AMENDMENTS

The committee amendment to the Senate bill restates the applicable provisions covering terms of office in the various acts involved but in effect changes the Senate bill only in three particulars:

(1) The Senate language "upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified" has been amended to read that a member should be appointed for a designated number of years "and until his successor is appointed and has qualified."

The committee amendment to the Senate bill is intended simply to restate and clarify the language of the Federal Power Act, the Communications Act of 1934, and the Securities Exchange Act of 1934 with respect to terms of office of the members of the regulatory commissions created by such acts in order to facilitate the appointment and confirmation procedures with respect to such commissions.

(2) The committee amendment is designed also to meet the suggestion of the Bureau of the Budget that this additional period "until his successor is appointed and qualified" during which a Commissioner might serve should be limited to 60 days. In the consideration of the actual days of vacancy which have existed in the commissions involved, it appeared that a 60-day period would be too limited and consideration was given to a longer period. However, specification of any given number of days might raise a number of additional problems owing to the fact that it is possible that a stated number of days might carry over beyond the adjournment of a subsequent session of the Congress. The committee accordingly proposes a change in the Senate bill to add language to the effect that the Commissioners concerned "shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office."

(3) The committee amendment to the Senate bill also adds language to the Securities Exchange Act of 1934 to authorize the members of the

Securities and Exchange Commission to continue to serve until their successors have been appointed and qualified. It is simply a matter of assignment of functions in the separate bodies that the House committee has jurisdiction over the subject matter administered by the Securities and Exchange Commission whereas the Senate Committee on Interstate and Foreign Commerce does not. This committee believes it desirable to include the terms of the members of the Securities and Exchange Commission in the bill so that at this time the various provisions pertaining to the expiration of the terms of the members of all the regulatory agencies will have been brought into line.

## AGENCY REPORTS

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
*Washington, D.C., September 25, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of August 1, 1959, inviting the Bureau of the Budget to comment on S. 1965, a bill to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies.

This bill would amend the Federal Power Act and the Communications Act to provide that upon expiration of their terms Commissioners would continue to serve until their successors are appointed and qualified.

While the desirability of maintaining the Federal Power Commission and the Federal Communications Commission at full statutory strength is clear, the language of S. 1965 could result in situations whereby a President might be unable for an extended period of time to replace a Commission member whose term had expired. Since past experience indicates that Commission vacancies seldom exceed several months, it would, therefore, seem appropriate to amend S. 1965 to provide that no Federal Power Commission or Federal Communications Commission member whose term had expired could carry over for more than 60 days.

If so amended, the Bureau of the Budget would have no objection to enactment of this measure.

Sincerely yours,

WILFRED H. ROMMEL,  
*Acting Assistant Director for Legislative Reference.*

FEDERAL POWER COMMISSION,  
*Washington, August 13, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request of August 1, 1959, there are enclosed three copies of the report of the Federal Power Commission on the subject bill.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

FEDERAL POWER COMMISSION REPORT ON S. 1965, 86TH CONGRESS

Section 1 of this bill would amend the Federal Power Act to provide that a Federal Power Commission Commissioner, upon the expiration of his term of office, shall continue to serve until his successor is appointed and has qualified. This section would also authorize the President to remove any Commissioner for inefficiency, neglect of duty, or malfeasance in office.

Enactment of the bill would avoid situations where the Commission is at less than full statutory strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. Our records indicate that the Commission in years past has experienced the following periods of vacancy:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934.....	Aug. 13, 1934	52
June 22, 1942.....	July 10, 1942	18
June 22, 1944.....	Sept. 9, 1944	79
June 22, 1952.....	July 9, 1952	17
June 22, 1953.....	Aug. 17, 1953	56
June 22, 1954.....	July 9, 1954	17
June 22, 1957.....	Aug. 16, 1957	55

This situation has on occasion made it impossible to reach a decision in a particular case, and may cause delays in important pending actions, thus depriving the public of the benefits of the services which the Commission was established to perform.

With respect to the removal power of the President (p. 1, line 9 through p. 2, line 2), the amendment, together with the one to the Communications Act of 1934 also proposed in the bill, will make the provisions of the various regulatory commission acts uniform in this regard.

Under date of July 28, 1959, the Budget Bureau advised the Commission as follows:

While the desirability of maintaining the Federal Power Commission at full statutory strength is clear, the language of S. 1965 (p. 1, line 7 through line 9) could result in situations whereby Presidential efforts to replace a Commission member whose term had expired could be thwarted by inaction for an unlimited period of time. Documentation furnished in your report to the committee indicates that no Commission vacancy has exceeded 2 months in the last 25 years. It would, therefore, seem appropriate to amend S. 1965 to provide that no Federal Power Commission member whose term had expired could carry over for more than 60 days.

The Bureau of the Budget is in accord with the language of S. 1965 (p. 1, line 9 through p. 2, line 7) which would make the provisions of the various regulatory commission acts more uniform with respect to the removal power of the President.

The Commission, however, is not in agreement with the 60-day limitation recommended by the Budget Bureau for an incumbent who holds over upon the expiration of his term. The Budget Bureau mentions the Commission's report to it as showing no vacancy for more than 60 days. This is correct as far as the report goes, but we had inadvertently failed to mention a period of 79 days which elapsed

between the expiration of the term of Mr. Leland Olds on June 22, 1944, and his reappointment on September 9, 1944, although that fact might not have had any influence upon the Budget Bureau recommendation. Nevertheless, in our opinion if a time limitation of 60 days is added to the holdover provision, it should be so phrased that the President would have the right to give an incumbent holdover a recess appointment if otherwise compatible with the provisions of title 5, United States Code, section 56. This section has to do with situations when a nomination has been rejected by the Senate or there are prohibitions against certain recess appointments.

We recommend enactment of section 1 of the bill and would have no objection to section 2.

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., August 21, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HARRIS: This is in reply to your request seeking this Commission's comments on S. 1965, as passed by the Senate July 29, 1959: A bill to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies, including those of the Commissioners of the Federal Communications Commission.

The Commission has recessed for the balance of the month of August and is scheduled to hold no further meetings before September. Accordingly, we are enclosing six copies of a letter dated July 2, 1959, which was sent to the Senate Committee on Interstate and Foreign Commerce, setting forth our views concerning this bill.

We hope this will be of assistance to you.

Sincerely yours,

ROBERT E. LEE,  
*Acting Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., July 2, 1959.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Interstate and Foreign Commerce,  
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: By telephone on July 1, 1959, the Commission was requested by Mr. Harold Baynton, counsel for the committee, to give an immediate report of the Commission's position with respect to S. 1965. This bill would establish certain provisions as to the terms of office of the members of certain regulatory agencies. We were also advised that the committee in executive session on July 1, 1959, ordered the bill to be reported with amendments.

Mr. Baynton stated that the Commission's comments were desired only on the bill as ordered to be reported and not as introduced. He further stated that section 2 of the bill (which affects only the Federal Communications Commission) was amended in committee so as to delete subsection (a) thereof. As ordered to be reported, section 2 of said bill will consist of one paragraph containing language to amend subsection (c) of section 4 of the Communications Act by adding at the end of such subsection a new sentence to read:

"Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified."

The Commission recognizes that whether a proposal of this kind should be enacted is a matter of fundamental substantive policy for the judgment of Congress, but in this instance supports the legislation because of the obvious advantages that would flow from its enactment. By providing by statute for the holding over of a member of a multi-headed agency until his successor is appointed and qualified, a full agency membership is assured, a continuity of Commission responsibility is preserved, and delay is avoided in proceedings involving decisional matters. The Commission also understands that another purpose of S. 1965 is to bring the Communications Act of 1934 (and the Federal Power Act as well) in line with the governing statutes of some of the other regulatory agencies. (See, for example, the statutes dealing with members of the Interstate Commerce Commission and the Federal Trade Commission.)

In view of the urgency for an immediate report on the bill, time did not permit the submission of these comments to the Bureau of the Budget for clearance of the proposal in the light of the program of the President. We are, therefore, unable to state the position of that Bureau on the measure.

By direction of the Commission :

JOHN C. DOERFER, *Chairman.*

---

SECURITIES AND EXCHANGE COMMISSION,  
Washington, D.C., June 8, 1960.

Re S. 1965.

HON. OREN HARRIS,  
*Chairman,*  
*Interstate and Foreign Commerce Committee,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR CHAIRMAN HARRIS: The Commission has been advised that the Subcommittee on Communications and Power is today considering S. 1965, a bill dealing with the terms of office of Commissioners of the Federal Power Commission and the Federal Communications Commission. The Commission has authorized me to state that it believes that there should be a uniform policy applicable to all independent regulatory commissions with respect to the continuation of a sitting Commissioner in office until his successor is qualified and requests that the Committee give favorable consideration to including the Securities and Exchange Commission in any legislation of this type which your committee may report out favorably.

Yours sincerely,

THOMAS G. MEEKER, *General Counsel.*

#### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed by the Senate, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

## FEDERAL POWER ACT

\* \* \* \* \*

FEDERAL POWER COMMISSION; CREATION; NUMBER; APPOINTMENT;  
 TERM; QUALIFICATIONS; VACANCIES; QUORUM; CHAIRMAN; SALARY;  
 PLACE OF HOLDING SESSIONS (16 U.S.C. 792)

A commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, \* \* \*.

The commissioners \* \* \* shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.* Not more than three of the Commissioners shall be appointed from the same political party. \* \* \*

## THE COMMUNICATIONS ACT OF 1934, AS AMENDED

\* \* \* \* \*

SEC. 4. Federal Communications Commission; composition and provisions relating thereto generally (47 U.S.C. 154).

(a) The Federal Communications Commission (in this chapter referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. \* \* \* Not more than four members of the Commission shall be members of the same political party.

(c) The commissioners first appointed under this chapter shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this chapter, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.*

SEPARATE VIEWS OF MR. PETER F. MACK, JR., AND  
MR. ROBERT W. HEMPHILL

On the surface, this is a simple bill supposedly designed to improve procedures with regard to the appointment and confirmation of commissioners in three of the independent regulatory agencies. However, the real effect of the enactment of this bill would be to destroy completely the very constructive work done by the Special Subcommittee on Legislative Oversight which spotlighted in its investigations the subservience of the regulatory agencies to the influence of both political parties and to the dictates of the industries which they are supposed to regulate.

Enactment of this legislation would continue the reprehensible practice of making a political football out of the supposedly independent regulatory agencies.

Enactment of this legislation would reaffirm the existing political spoils system and put up for grabs by the successful political party every 4 years the appointment of the members of these agencies.

This legislative proposal is not new. It has been proposed in earlier Congresses.

Both political parties are anxious to have an opportunity to appoint as many Commissioners as possible every 4 years when a new administration takes office.

Fortunately, past Congresses have had the wisdom of refusing enactment of these proposals into law.

I am opposed to this bill because, if enacted, it would provide additional opportunities for making the regular independent agencies the dumping ground for defeated political candidates and others who are interested primarily in serving their political party. As a member of the Committee on Interstate and Foreign Commerce who has spent many hours serving on the Special Subcommittee on Legislative Oversight, I am interested in restoring the independence of the regulatory agencies and I have faith that this can be done. I do not believe that it is unavoidable for the regulatory agencies to be dominated either by the administration in power or by the industries which they regulate.

I am also opposed to this legislation because in the course of its consideration by the Committee on Interstate and Foreign Commerce it was suggested that an effort will be made of adding in conference still another provision to this bill which would permit a newly elected president to designate a new Chairman of the Federal Power Commission.

I realize that if we dealt in personalities such replacement would be very popular with many Members of Congress. However, such change in the law would perpetuate in the case of the Federal Power Commission the dominion of the President over that agency.

Our Subcommittee on Legislative Oversight has recommended legislation aimed at cutting off the influence of the Office of the President over the regulatory commissions and making these commissions truly independent.

This legislative recommendation should be carried out and no legislation should be enacted which contravenes directly the philosophy unanimously expressed in the reports of the Legislative Oversight Subcommittee.

I realize that my position might be unpopular with my own party which is the heavy favorite to win the next election and therefore stands to gain politically from the enactment of the bill reported by our committee. However, I wish to point out that our hearings have indicated a great need for reestablishing public confidence in the independence of the regulatory agencies, and as a ranking member of the Legislative Oversight Subcommittee, and of its parent committee, I feel that it is my responsibility to speak out on this subject.

The reports of the Legislative Oversight Subcommittee supported by thousands of pages of testimony clearly point out many irregularities which have occurred in these agencies. Our subcommittee has worked long and hard and much money has been spent in this investigation. It has been one of the most revealing and fruitful investigations ever carried on by a congressional committee. The Committee on Interstate and Foreign Commerce already has reported one bill and undoubtedly will report still another bill within the next few days aimed at correcting some of the shortcomings in the agencies. These bills are a step in the right direction. However, because of the limited time major legislation aimed at the strengthening of the agencies, will have to be dealt with in the next Congress.

I feel very strongly that in order to restore the independence of the regulatory agencies it will be necessary to attract high caliber men similar to those appointed as judges to our Federal courts. To accomplish this objective I propose that we extend the terms of Commissioners and Board members of regulatory agencies to a minimum of 10 years and that we increase their salaries to the level of salaries paid our Federal judges.

The instant bill on the other hand would reaffirm present law with regard to the terms of appointment and the salaries of Commissioners. I am opposed to this bill on this basis alone.

In conclusion I am opposed to this legislation because it completely ignores and undercuts the recommendations of the Legislative Oversight Subcommittee and because it flashes a green light for the politicians of both parties who desire to use the regulatory agencies for their own political purposes.

This bill makes possible a recurrence of the Bernard Goldfine-Sherman Adams affair.

In my opinion no Commissioner should be appointed and confirmed who is not eminently qualified to serve and those who are qualified to serve should be appointed now and should be confirmed now. The President and the Congress have the joint responsibility of seeing to it that the men serving on these commissions are well qualified and able to resist outside pressures whether they come from the Office

of the President or from the industries which these men are supposed to regulate. The instant bill on the other hand provides an opportunity of shirking this important responsibility.

PETER F. MACK, Jr.

I join in the views expressed by my colleague from Illinois, Mr. Mack.

ROBERT W. HEMPHILL.



TERMS OF OFFICE OF MEMBERS OF CERTAIN  
REGULATORY AGENCIES

---

JUNE 17, 1960.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

---

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

R E P O R T

[To accompany S. 1965]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1965) to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

AMENDMENT

The amendment proposed by the committee strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in the reported bill in italic type. The effect of the committee amendment is discussed hereafter in this report.

PURPOSE OF THE BILL

This bill, as reported by the committee, amends the Federal Power Act, the Communications Act of 1934, and the Securities Exchange Act of 1934 to provide that a member of the Federal Power Commission, the Federal Communications Commission, and the Securities and Exchange Commission shall continue to serve in office until his successor is appointed and has qualified.

HEARINGS

Hearings on the bill were had by the committee's Subcommittee on Communications and Power. The bill was supported by the Federal Power Commission and the Federal Communications Commission. In addition, a representative of the Securities and Exchange Commission appeared to request that such Commissions be treated in the same

manner as the others. The Bureau of the Budget indicated no objection to the bill if amended along the lines of a suggestion it made. No one appeared in opposition to the bill.

NEED FOR THE LEGISLATION

By amendments to the Interstate Commerce Act in 1935, and the Federal Trade Commission Act in 1938, and by the passage of the Federal Aviation Act of 1958, provision was made that members of the Interstate Commerce Commission, the Federal Trade Commission, and the Civil Aeronautics Board, upon the termination of their term of office shall continue to serve until their successors have been appointed and qualified. On the other hand, terms of members of the Federal Power Commission, the Federal Communications Commission, and the Securities and Exchange Commission expire at the end of their term of office.

Legislation having to do with matters subject to the jurisdiction of the above six regulatory agencies comes to this committee. One of the things that has been of some concern to your committee has been the situation which results when a Board or Commission is at less than full strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. This can, and has on occasion, made it impossible to reach a decision. It has worked delays in important pending actions. This has proven not only to be a handicap to the agency but may deprive the public of the benefits of the services which the agency by law is required to give.

The statutory terms of office and the number of members of the regulatory agencies involved are as follows:

	Number of members	Term of office (years)
Civil Aeronautics Board.....	5	6
Federal Communications Commission.....	7	7
Federal Power Commission.....	5	5
Federal Trade Commission.....	5	7
Interstate Commerce Commission.....	11	7
Securities and Exchange Commission.....	5	5

All of the acts provide that in the case of an unexpired term of office, the nomination shall be for the balance of the term of office involved. This bill makes no change in the actual statutory term of office.

Information supplied by the Federal Power Commission shows that the Commission in past years has experienced the following periods of vacancy:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934.....	Aug. 13, 1934	52
June 22, 1942.....	July 10, 1942	18
June 22, 1944.....	Sept. 9, 1944	79
June 22, 1952.....	July 9, 1952	17
June 22, 1953.....	Aug. 17, 1953	56
June 22, 1954.....	July 9, 1954	17
June 22, 1957.....	Aug. 16, 1957	55

The Federal Communications Commission has experienced the following periods of vacancy: <sup>1</sup>

Date term expired	Date successor took oath	Days of vacancy
June 30, 1937.....	Aug. 25, 1937	55
June 30, 1940.....	Mar. 22, 1941	264
June 30, 1941.....	Nov. 1, 1941	123
June 30, 1943.....	Feb. 15, 1944	229
June 30, 1944.....	Mar. 30, 1945	274
June 30, 1945.....	July 23, 1945	22
June 30, 1947.....	Sept. 5, 1947	66
June 30, 1948.....	July 6, 1948	5
June 30, 1953.....	Oct. 6, 1953	97
June 30, 1955.....	July 7, 1955	6
June 30, 1956.....	July 2, 1956	20
June 30, 1957.....	Aug. 29, 1957	59

<sup>1</sup> Excludes resignations of Commissioners before their terms expired and commencement of service of their successors for the balance of each unexpired term.

<sup>2</sup> July 1, 1956 was a Sunday.

The committee is of the opinion that these "arms of the Congress" should be kept at full strength and that it is desirable accordingly to place the members of the three agencies covered by the bill in the same stead as those of the other three regulatory commissions.

COMMITTEE AMENDMENTS

The committee amendment to the Senate bill restates the applicable provisions covering terms of office in the various acts involved but in effect changes the Senate bill only in three particulars:

(1) The Senate language "upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified" has been amended to read that a member should be appointed for a designated number of years "and until his successor is appointed and has qualified."

The committee amendment to the Senate bill is intended simply to restate and clarify the language of the Federal Power Act, the Communications Act of 1934, and the Securities Exchange Act of 1934 with respect to terms of office of the members of the regulatory commissions created by such acts in order to facilitate the appointment and confirmation procedures with respect to such commissions.

(2) The committee amendment is designed also to meet the suggestion of the Bureau of the Budget that this additional period "until his successor is appointed and qualified" during which a Commissioner might serve should be limited to 60 days. In the consideration of the actual days of vacancy which have existed in the commissions involved, it appeared that a 60-day period would be too limited and consideration was given to a longer period. However, specification of any given number of days might raise a number of additional problems owing to the fact that it is possible that a stated number of days might carry over beyond the adjournment of a subsequent session of the Congress. The committee accordingly proposes a change in the Senate bill to add language to the effect that the Commissioners concerned "shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office."

(3) The committee amendment to the Senate bill also adds language to the Securities Exchange Act of 1934 to authorize the members of the

Securities and Exchange Commission to continue to serve until their successors have been appointed and qualified. It is simply a matter of assignment of functions in the separate bodies that the House committee has jurisdiction over the subject matter administered by the Securities and Exchange Commission whereas the Senate Committee on Interstate and Foreign Commerce does not. This committee believes it desirable to include the terms of the members of the Securities and Exchange Commission in the bill so that at this time the various provisions pertaining to the expiration of the terms of the members of all the regulatory agencies will have been brought into line.

## AGENCY REPORTS

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
*Washington, D.C., September 25, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This will acknowledge your letter of August 1, 1959, inviting the Bureau of the Budget to comment on S. 1965, a bill to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies.

This bill would amend the Federal Power Act and the Communications Act to provide that upon expiration of their terms Commissioners would continue to serve until their successors are appointed and qualified.

While the desirability of maintaining the Federal Power Commission and the Federal Communications Commission at full statutory strength is clear, the language of S. 1965 could result in situations whereby a President might be unable for an extended period of time to replace a Commission member whose term had expired. Since past experience indicates that Commission vacancies seldom exceed several months, it would, therefore, seem appropriate to amend S. 1965 to provide that no Federal Power Commission or Federal Communications Commission member whose term had expired could carry over for more than 60 days.

If so amended, the Bureau of the Budget would have no objection to enactment of this measure.

Sincerely yours,

WILFRED H. ROMMEL,  
*Acting Assistant Director for Legislative Reference.*

FEDERAL POWER COMMISSION,  
*Washington, August 13, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request of August 1, 1959, there are enclosed three copies of the report of the Federal Power Commission on the subject bill.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

FEDERAL POWER COMMISSION REPORT ON S. 1965, 86TH CONGRESS

Section 1 of this bill would amend the Federal Power Act to provide that a Federal Power Commission Commissioner, upon the expiration of his term of office, shall continue to serve until his successor is appointed and has qualified. This section would also authorize the President to remove any Commissioner for inefficiency, neglect of duty, or malfeasance in office.

Enactment of the bill would avoid situations where the Commission is at less than full statutory strength during the period between the time a member's term expires and the time his successor is confirmed and takes his oath of office. Our records indicate that the Commission in years past has experienced the following periods of vacancy:

Date term expired	Date successor took oath	Days of vacancy
June 22, 1934.....	Aug. 13, 1934	52
June 22, 1942.....	July 10, 1942	18
June 22, 1944.....	Sept. 9, 1944	79
June 22, 1952.....	July 9, 1952	17
June 22, 1953.....	Aug. 17, 1953	56
June 22, 1954.....	July 9, 1954	17
June 22, 1957.....	Aug. 16, 1957	55

This situation has on occasion made it impossible to reach a decision in a particular case, and may cause delays in important pending actions, thus depriving the public of the benefits of the services which the Commission was established to perform.

With respect to the removal power of the President (p. 1, line 9 through p. 2, line 2), the amendment, together with the one to the Communications Act of 1934 also proposed in the bill, will make the provisions of the various regulatory commission acts uniform in this regard.

Under date of July 28, 1959, the Budget Bureau advised the Commission as follows:

While the desirability of maintaining the Federal Power Commission at full statutory strength is clear, the language of S. 1965 (p. 1, line 7 through line 9) could result in situations whereby Presidential efforts to replace a Commission member whose term had expired could be thwarted by inaction for an unlimited period of time. Documentation furnished in your report to the committee indicates that no Commission vacancy has exceeded 2 months in the last 25 years. It would, therefore, seem appropriate to amend S. 1965 to provide that no Federal Power Commission member whose term had expired could carry over for more than 60 days.

The Bureau of the Budget is in accord with the language of S. 1965 (p. 1, line 9 through p. 2, line 7) which would make the provisions of the various regulatory commission acts more uniform with respect to the removal power of the President.

The Commission, however, is not in agreement with the 60-day limitation recommended by the Budget Bureau for an incumbent who holds over upon the expiration of his term. The Budget Bureau mentions the Commission's report to it as showing no vacancy for more than 60 days. This is correct as far as the report goes, but we had inadvertently failed to mention a period of 79 days which elapsed

between the expiration of the term of Mr. Leland Olds on June 22, 1944, and his reappointment on September 9, 1944, although that fact might not have had any influence upon the Budget Bureau recommendation. Nevertheless, in our opinion if a time limitation of 60 days is added to the holdover provision, it should be so phrased that the President would have the right to give an incumbent holdover a recess appointment if otherwise compatible with the provisions of title 5, United States Code, section 56. This section has to do with situations when a nomination has been rejected by the Senate or there are prohibitions against certain recess appointments.

We recommend enactment of section 1 of the bill and would have no objection to section 2.

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., August 21, 1959.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HARRIS: This is in reply to your request seeking this Commission's comments on S. 1965, as passed by the Senate July 29, 1959: A bill to make uniform provisions of law with respect to the terms of office of the members of certain regulatory agencies, including those of the Commissioners of the Federal Communications Commission.

The Commission has recessed for the balance of the month of August and is scheduled to hold no further meetings before September. Accordingly, we are enclosing six copies of a letter dated July 2, 1959, which was sent to the Senate Committee on Interstate and Foreign Commerce, setting forth our views concerning this bill.

We hope this will be of assistance to you.

Sincerely yours,

ROBERT E. LEE,  
*Acting Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., July 2, 1959.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Interstate and Foreign Commerce,  
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: By telephone on July 1, 1959, the Commission was requested by Mr. Harold Baynton, counsel for the committee, to give an immediate report of the Commission's position with respect to S. 1965. This bill would establish certain provisions as to the terms of office of the members of certain regulatory agencies. We were also advised that the committee in executive session on July 1, 1959, ordered the bill to be reported with amendments.

Mr. Baynton stated that the Commission's comments were desired only on the bill as ordered to be reported and not as introduced. He further stated that section 2 of the bill (which affects only the Federal Communications Commission) was amended in committee so as to delete subsection (a) thereof. As ordered to be reported, section 2 of said bill will consist of one paragraph containing language to amend subsection (c) of section 4 of the Communications Act by adding at the end of such subsection a new sentence to read:

"Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified."

The Commission recognizes that whether a proposal of this kind should be enacted is a matter of fundamental substantive policy for the judgment of Congress, but in this instance supports the legislation because of the obvious advantages that would flow from its enactment. By providing by statute for the holding over of a member of a multi-headed agency until his successor is appointed and qualified, a full agency membership is assured, a continuity of Commission responsibility is preserved, and delay is avoided in proceedings involving decisional matters. The Commission also understands that another purpose of S. 1965 is to bring the Communications Act of 1934 (and the Federal Power Act as well) in line with the governing statutes of some of the other regulatory agencies. (See, for example, the statutes dealing with members of the Interstate Commerce Commission and the Federal Trade Commission.)

In view of the urgency for an immediate report on the bill, time did not permit the submission of these comments to the Bureau of the Budget for clearance of the proposal in the light of the program of the President. We are, therefore, unable to state the position of that Bureau on the measure.

By direction of the Commission :

JOHN C. DOERFER, *Chairman.*

---

SECURITIES AND EXCHANGE COMMISSION,  
*Washington, D.C., June 8, 1960.*

Re S. 1965.

HON. OREN HARRIS,  
*Chairman,*  
*Interstate and Foreign Commerce Committee,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR CHAIRMAN HARRIS: The Commission has been advised that the Subcommittee on Communications and Power is today considering S. 1965, a bill dealing with the terms of office of Commissioners of the Federal Power Commission and the Federal Communications Commission. The Commission has authorized me to state that it believes that there should be a uniform policy applicable to all independent regulatory commissions with respect to the continuation of a sitting Commissioner in office until his successor is qualified and requests that the Committee give favorable consideration to including the Securities and Exchange Commission in any legislation of this type which your committee may report out favorably.

Yours sincerely,

THOMAS G. MEEKER, *General Counsel.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed by the Senate, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

## FEDERAL POWER ACT

\* \* \* \* \*

FEDERAL POWER COMMISSION; CREATION; NUMBER; APPOINTMENT; TERM; QUALIFICATIONS; VACANCIES; QUORUM; CHAIRMAN; SALARY; PLACE OF HOLDING SESSIONS (16 U.S.C. 792)

A commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, \* \* \*.

The commissioners \* \* \* shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.* Not more than three of the Commissioners shall be appointed from the same political party. \* \* \*

## THE COMMUNICATIONS ACT OF 1934, AS AMENDED

\* \* \* \* \*

SEC. 4. Federal Communications Commission; composition and provisions relating thereto generally (47 U.S.C. 154).

(a) The Federal Communications Commission (in this chapter referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. \* \* \* Not more than four members of the Commission shall be members of the same political party.

(c) The commissioners first appointed under this chapter shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this chapter, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. *Upon the expiration of his term of office, a Commissioner shall continue to serve until his successor is appointed and has qualified.*

SEPARATE VIEWS OF MR. PETER F. MACK, JR., AND  
MR. ROBERT W. HEMPHILL

On the surface, this is a simple bill supposedly designed to improve procedures with regard to the appointment and confirmation of commissioners in three of the independent regulatory agencies. However, the real effect of the enactment of this bill would be to destroy completely the very constructive work done by the Special Subcommittee on Legislative Oversight which spotlighted in its investigations the subservience of the regulatory agencies to the influence of both political parties and to the dictates of the industries which they are supposed to regulate.

Enactment of this legislation would continue the reprehensible practice of making a political football out of the supposedly independent regulatory agencies.

Enactment of this legislation would reaffirm the existing political spoils system and put up for grabs by the successful political party every 4 years the appointment of the members of these agencies.

This legislative proposal is not new. It has been proposed in earlier Congresses.

Both political parties are anxious to have an opportunity to appoint as many Commissioners as possible every 4 years when a new administration takes office.

Fortunately, past Congresses have had the wisdom of refusing enactment of these proposals into law.

I am opposed to this bill because, if enacted, it would provide additional opportunities for making the regular independent agencies the dumping ground for defeated political candidates and others who are interested primarily in serving their political party. As a member of the Committee on Interstate and Foreign Commerce who has spent many hours serving on the Special Subcommittee on Legislative Oversight, I am interested in restoring the independence of the regulatory agencies and I have faith that this can be done. I do not believe that it is unavoidable for the regulatory agencies to be dominated either by the administration in power or by the industries which they regulate.

I am also opposed to this legislation because in the course of its consideration by the Committee on Interstate and Foreign Commerce it was suggested that an effort will be made of adding in conference still another provision to this bill which would permit a newly elected president to designate a new Chairman of the Federal Power Commission.

I realize that if we dealt in personalities such replacement would be very popular with many Members of Congress. However, such change in the law would perpetuate in the case of the Federal Power Commission the dominion of the President over that agency.

Our Subcommittee on Legislative Oversight has recommended legislation aimed at cutting off the influence of the Office of the President over the regulatory commissions and making these commissions truly independent.

This legislative recommendation should be carried out and no legislation should be enacted which contravenes directly the philosophy unanimously expressed in the reports of the Legislative Oversight Subcommittee.

I realize that my position might be unpopular with my own party which is the heavy favorite to win the next election and therefore stands to gain politically from the enactment of the bill reported by our committee. However, I wish to point out that our hearings have indicated a great need for reestablishing public confidence in the independence of the regulatory agencies, and as a ranking member of the Legislative Oversight Subcommittee, and of its parent committee, I feel that it is my responsibility to speak out on this subject.

The reports of the Legislative Oversight Subcommittee supported by thousands of pages of testimony clearly point out many irregularities which have occurred in these agencies. Our subcommittee has worked long and hard and much money has been spent in this investigation. It has been one of the most revealing and fruitful investigations ever carried on by a congressional committee. The Committee on Interstate and Foreign Commerce already has reported one bill and undoubtedly will report still another bill within the next few days aimed at correcting some of the shortcomings in the agencies. These bills are a step in the right direction. However, because of the limited time major legislation aimed at the strengthening of the agencies, will have to be dealt with in the next Congress.

I feel very strongly that in order to restore the independence of the regulatory agencies it will be necessary to attract high caliber men similar to those appointed as judges to our Federal courts. To accomplish this objective I propose that we extend the terms of Commissioners and Board members of regulatory agencies to a minimum of 10 years and that we increase their salaries to the level of salaries paid our Federal judges.

The instant bill on the other hand would reaffirm present law with regard to the terms of appointment and the salaries of Commissioners. I am opposed to this bill on this basis alone.

In conclusion I am opposed to this legislation because it completely ignores and undercuts the recommendations of the Legislative Oversight Subcommittee and because it flashes a green light for the politicians of both parties who desire to use the regulatory agencies for their own political purposes.

This bill makes possible a recurrence of the Bernard Goldfine-Sherman Adams affair.

In my opinion no Commissioner should be appointed and confirmed who is not eminently qualified to serve and those who are qualified to serve should be appointed now and should be confirmed now. The President and the Congress have the joint responsibility of seeing to it that the men serving on these commissions are well qualified and able to resist outside pressures whether they come from the Office

of the President or from the industries which these men are supposed to regulate. The instant bill on the other hand provides an opportunity of shirking this important responsibility.

PETER F. MACK, Jr.

I join in the views expressed by my colleague from Illinois, Mr. Mack.

ROBERT W. HEMPHILL.

