

COMMUNICATIONS AMENDMENT—CLARIFYING REGULATORY AUTHORITY

AUGUST 24, 1960.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany S. 1740]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1740) to amend section 202(b) of the Communications Act of 1934 in order to expand the Federal Communications Commission's regulatory authority under such section, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, strike out lines 6 to 10, inclusive, and insert in lieu thereof the following:

(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

PURPOSE

The purpose of S. 1740 is to amend section 202(b) of the Communications Act of 1934, as amended (47 U.S.C. 202(b)) in order to give the Federal Communications Commission statutory authority to regulate charges for, or services in connection with, the use of common carrier lines of communication whether derived from wire or radio facilities in chain broadcasting or incidental to radio communications of any kind. The Commission's present authority to regulate such charges and services is limited to the use of wire facilities and does not extend to the use of radio facilities.

GENERAL STATEMENT

This bill was introduced at the request of the Federal Communications Commission. Hearings were held by the Subcommittee on Communications of the Senate Committee on Interstate and Foreign Commerce.

The amendment would take into account technical developments in the communications field which have occurred since the enactment of the Communications Act of 1934, and would serve to remove any questions concerning the Commission's regulatory authority over charges and services furnished by common carriers insofar as radio facilities are concerned.

Since the enactment of the Communications Act of 1934, increasing use has been made of point-to-point radio communications as a substitute for, and supplement to, the use of wires in chain broadcasting. Presently, such point-to-point radio is widely used by common carriers in providing circuits for network broadcasting of radio and television programs, studio to transmitter links, and remote pickup and control circuits for various types of radio stations.

Some common carriers providing this service have filed tariffs with the Commission governing such service whether by wire or radio, in spite of the fact that the Commission's authority at present appears to extend only to the regulation of charges and services for the use of wires.

Enactment of S. 1740 will make it entirely clear that the Commission's regulatory authority extends to charges for the use of lines of communication derived from radio facilities.

COMMITTEE SUBSTITUTE

The committee amendment is a substitute for the language contained in the amendment as passed by the Senate. The committee amendment, it is believed, clarifies the bill so as to more clearly carry out the legislative intent.

The substitute language of the committee amendment has the approval of the Federal Communications Commission and the Department of Justice, as shown by the following exchange of correspondence.

HEDRICK & LANE,
Washington, D.C., February 25, 1960.

Re S. 1740, a bill to amend section 202(b) of the Communications Act of 1934, as amended.

HON. OREN HARRIS,
*Chairman, House Interstate and Foreign Commerce Committee,
New House Office Building, Washington, D.C.*

DEAR MR. HARRIS: S. 1740, passed by the Senate and now pending before the House Interstate and Foreign Commerce Committee, would amend section 202(b) of the Communications Act by deleting the word "wires" and substituting the new words italicized below:

"(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of *wires communication facilities of common carriers in chain broadcasting or incidental to radio communication of any kind.*"

The purpose of the above amendment as explained in Senate Report No. 691 accompanying S. 1740 was to remove any latent question concerning the Federal Communications Commission's regulatory jurisdiction over charges where point-to-point radio communications are used as a substitute for, and supplement to the use of, wires in chain broadcasting or incidental to radio communication of any kind.

While there can be no objection to the objectives of S. 1740, I believe that the use of the phrase "communication facilities of common carriers" may have a broader meaning than is necessary to carry out the stated objectives of the legislation and may create problems not contemplated by the legislation.

The words "communication facilities" are ambiguous, not defined in the act, and might be interpreted to include almost anything. The words "common carriers," although defined in the act, are not in original section 202(b) and the reason for their insertion in this amendment is unexplained. Combining the two new terms "communication facilities" and "common carriers" could inspire a construction of this legislation to the effect that any sort of facilities offered by a common carrier used in radio communication is thereby a proper public utility type of service and one subject to FCC common carrier regulation. Such construction could give rise to a host of difficulties.

To avoid these uncertainties and ambiguities, the following substitute amendment of section 202(b) is suggested:

"(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of ~~wires~~ *common carrier lines of communication whether derived from wire or radio facilities* in chain broadcasting or incidental to radio communication of any kind.

I do not believe that the Federal Communications Commission will object to the foregoing substitute amendment.

Sincerely,

F. CLEVELAND HEDRICK, Jr.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 4, 1960.

HON. OREN HARRIS,
*Chairman, House Interstate and Foreign Commerce Committee,
New House Office Building, Washington, D.C.*

DEAR CONGRESSMAN HARRIS: This is with reference to your letter dated March 1, 1960, requesting the Commission's views on an attached letter by Mr. F. Cleveland Hedrick, Jr., of the law firm of Hedrick & Lane, wherein he suggests an amendment to the bill, S. 1740, as passed by the Senate.

As pointed out in Mr. Hedrick's letter, the purpose of the amendment proposed by this Commission and expressed in S. 1740, is to remove any latent question concerning the Federal Communications Commission's regulatory jurisdiction over charges where point-to-point radio communications are used as a substitute for, and supplement to, the use of wires in chain broadcasting or incidental to radio communications of any kind.

Mr. Hedrick informed us that he is concerned with the possibility that section 202(b) if amended as proposed by the Commission may be subject to the construction that it authorizes the American Tele-

phone & Telegraph Co. to continue in the business of leasing and maintaining facilities for private communications systems. In 1956 a consent decree was entered in the U.S. District Court for the District of New Jersey (*United States v. Western Electric Co., Inc. and American Telephone & Telegraph Co.*, civil action No. 17-49, Jan. 24, 1956), which, among other things, enjoined A.T. & T. and its subsidiaries (except Western and its subsidiaries) from engaging "in any business other than the furnishing of common carrier communications services." The decree provided for an effective date 5 years from final judgment (Jan. 24, 1961), for discontinuance of such other business by the Bell companies.

Common carrier communication services is defined in that decree to mean, in pertinent part:

"* * * communications services and facilities * * * the charges for which are subject to public regulation under the Communications Act of 1934, or any amendment thereof * * *."

Mr. Hedrick orally informed us that he fears the language "communication facilities of common carriers" might be construed to give the Commission jurisdiction over the charges for any communication facilities furnished by common carriers in connection with radio, including the lease and maintenance of equipment for private radio systems, and thus permit American Telephone & Telegraph Co. to engage in this business under the consent decree. The Commission did not intend such a result.

The language proposed by Mr. Hedrick apparently would not include in section 202(b) private communications services. This Commission always welcomes constructive suggestions from interested persons, and in this case has no objections to the change in language as proposed by Mr. Hedrick.

By direction of the Commission:

FREDERICK W. FORD, *Chairman.*

JUNE 7, 1960.

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

DEAR CONGRESSMAN HARRIS: This is with reference to the letter of May 4, 1960, from Frederick W. Ford, Chairman of the Federal Communications Commission, commenting on a proposed amendment to S. 1740 as passed by the Senate.

This Department wishes also to express the view that its endorsement of S. 1740 was not intended to express approval of any construction of the statute which would permit A.T. & T. to continue in the business of leasing and maintaining facilities for private communications systems after January 24, 1961. The final judgment entered on January 24, 1956, was intended to insure that A.T. & T. would not continue in that business after January 24, 1961, without qualification.

Accordingly, I am pleased to concur in the views expressed by Chairman Ford to the effect that amendment of S. 1740 by substitution of the language referred to in Chairman Ford's letter more accurately reflects the purpose for which the amendment was proposed.

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

Sincerely,

JOHN D. CALHOUN,
Acting Deputy Attorney General.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

DISCRIMINATION AND PREFERENCES

SEC. 202. (a) * * *

(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of [wires] *communication facilities of common carriers* in chain broadcasting or incidental to radio communication of any kind.

