

DISAPPROVING REORGANIZATION PLAN NO. 2 OF 1961
(FEDERAL COMMUNICATIONS COMMISSION)

JUNE 1, 1961.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations,
submitted the following

R E P O R T

[To accompany H. Res. 303]

The Committee on Government Operations, to whom was referred the resolution (H. Res. 303), to disapprove Reorganization Plan No. 2 of 1961, having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

REORGANIZATION PLAN NO. 2 OF 1961 ¹

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 27, 1961, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.

FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. *Authority to delegate.* (a) In addition to its existing authority, the Federal Communications Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however,* That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), as amended: *And provided further,* That in accordance with the provisions of subsection (b) of this section the functions of the Commission with respect to

¹ The accompanying message of the President is set forth in the appendix, item 1, p. 7.

the filing of exceptions to decisions of hearing examiners and the function of hearing oral arguments on such exceptions before the entry of any final decision, order or requirement as set forth in subsection (b) of section 409 of the Communications Act of 1934, as amended (66 Stat. 721), are hereby abolished.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission, less one member thereof, shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

SEC. 2. *Transfer of functions to the Chairman.* There are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

SEC. 3. *Review staff.* The review staff, created by section 5(c) of the Communications Act of 1934 (66 Stat. 712), as amended, together with its functions, is hereby abolished. The employees of such staff may be assigned as the Commission may designate.

(H. Res. 303 follows:)

[H. Res. 303, 87th Cong., 1st sess.]

RESOLUTION

Resolved, That the House does not favor the Reorganization Plan Numbered 2, transmitted to Congress by the President on April 27, 1961.

PURPOSE

House Resolution 303 would disapprove Reorganization Plan No. 2 of 1961, which was transmitted to Congress by the President on April 27, 1961. Unless the resolution is adopted by the House (or a similar one by the Senate) within 60 calendar days after the plan was transmitted, the reorganization plan will go into effect automatically

pursuant to the Reorganization Act of 1949, as amended. For reasons discussed below, the committee believes that Reorganization Plan No. 2 of 1961 should not be allowed to go into effect and, therefore, recommends that House Resolution 303 be approved.

HEARINGS

The committee, through the Subcommittee on Executive and Legislative Reorganization, held public hearings on House Resolution 303 on May 18 and 19, 1961. Testimony and statements were received from Members of Congress, members of the Federal Communications Commission, and representatives of interested organizations. Printed copies of the transcript of these hearings are available.

ANALYSIS OF REORGANIZATION PLAN NO. 2

Section 1(a) of the plan would provide that the Commission may, in addition to its existing authority, delegate any of its functions to a division (panel) of the Commission, to an individual commissioner, or to employees or groups of employees of the Commission. This would include functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Such delegations must be by a published order or rule.

The second proviso of section 1(a) would immediately abolish the Commission's mandatory review functions in cases of adjudication. These functions are imposed by section 409(b) of the Communications Act of 1934, as amended (47 U.S.C. 409(b)), which provides:

The officer or officers conducting a hearing to which subsection (a) applies [i.e., adjudication cases] shall prepare and file an initial decision, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision. *In all such cases [of adjudication] the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, hear oral argument on such exceptions before the entry of any final decision, order, or requirement.* All decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the record; and (2) the appropriate decision, order, or requirement. [Emphasis supplied.]

Under sections 1(b) and 1(c) of the plan the Commission would retain a discretionary right to review all actions taken pursuant to delegations made under section 1(a). With respect to adjudication cases, this procedure would become a substitute for the Commission's mandatory duty to review under section 409(b) of the Communications Act of 1934, as amended.

Commission review of any action taken pursuant to delegation would be obtainable either on petition of a party or intervenor or on the Commission's own motion, within time limits and in a manner

prescribed by the Commission. Actual exercise of the discretion to review would be determined by a vote of a majority of the Commission less one. At maximum Commission strength, this would mean that full review would ensue after a vote of three of the seven Commissioners.

If the Commission does not grant such review, then the decision of the lower official will, under the plan, become final for purposes of court appeal.

Section 2 of the plan would transfer to the Chairman of the Commission the Commission's functions with respect to assignment of particular Commission personnel, including Commissioners, to perform functions delegated to Commission personnel under section 1 of the plan.

Section 3 of the plan would immediately abolish the Commission's statutory review staff as well as its functions. Under section 5(c) of the Communications Act of 1934, as amended, the Commission is required to establish a "review staff" which consists of legal, engineering, accounting, and other personnel. The law makes the review staff entirely separate, distinct, and independent of any other division of the Commission and directly responsible to the Commission itself. The law states that the review staff—

shall perform no duties or functions other than to assist the Commission, in cases of adjudication (as defined in the Administrative Procedure Act) which have been designated for hearing, by preparing a summary of the evidence presented at any such hearing, by preparing, after an initial decision but prior to oral argument, a compilation of the facts which are material to the exceptions and replies thereto filed by the parties, and by preparing for the Commission or any member or members thereof, without recommendations and in accordance with specific directions from the Commission or such member or members, memoranda, opinions, decisions, and orders.

The statute prohibits the Commission from permitting any employee who is not a member of the independent review staff to perform any of the functions of that staff.

Appendix item 2 is a chart comparing Reorganization Plan No. 2 (Federal Communications Commission) with existing law. Item 3 in the appendix is a somewhat more detailed analysis of the plan.

DISCUSSION

The basic objectives of Reorganization Plan No. 2 of 1961 are clear. As explained in the President's transmittal message, they are (1) to "relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning" while maintaining bipartisanship in the matter of determining which actions by subordinates should be given full review by the entire Commission; and (2) to provide flexibility and continuity to the assignment of specific individuals or groups within the Commission to perform delegated functions.

The committee agrees with the desirability of these basic objectives. The record demonstrates the need for action to attain them.² Yet,

² See, for example, the appendix, item 4, p. 13.

the committee is not convinced that Reorganization Plan No. 2 of 1961 could satisfactorily accomplish these objectives. Plan No. 2 would have to be implemented within the format not only of the Administrative Procedure Act but also of a number of special procedural requirements of the Communications Act of 1934, as amended. The sections of the Communications Act referred to in plan No. 2 are but two of these special statutory requirements.

Under section 9(a) of the Reorganization Act of 1949, as amended, provisions of law in effect prior to a reorganization plan shall continue to have the same effect as if the reorganization had not been made, "except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function." While the committee does not believe that the provisions of plan No. 2 could not be reconciled with pertinent provisions of existing law, it does perceive, in the particular circumstances of plan No. 2, a danger of uncertainty and confusion in the interpretation of the plan. Such uncertainty and confusion, paving the way, as they might, to a series of administrative and judicial interpretations of the plan, not only would tend to offset the effectiveness of the plan but also might make legislative clarification essential.

In light of this, the committee is inclined to give added weight to the views of Congressman Oren Harris which he, as chairman, presented on behalf of the Special Subcommittee on Regulatory Agencies of the Committee on Interstate and Foreign Commerce, House of Representatives. In his testimony before this committee, Chairman Harris discussed at length the procedural issues arising out of plan No. 2. He stated that while his subcommittee believes the basic objectives of the plan to be desirable and meritorious, nevertheless, it felt that plan No. 2 should be rejected in order that there might be an opportunity to amend the Communications Act in the necessary particulars by the regular legislative process.³

Throughout his testimony before this committee, Congressman Harris made repeated expressions of interest in such a legislative approach to the objectives of Reorganization Plan No. 2. He declared he was going to vote for an appropriate bill along the lines of plan No. 2.⁴ On May 25, 1961, he introduced such a bill in the form of H.R. 7333. With few, and relatively minor, modifications this bill would in effect enact all the provisions of Reorganization Plan No. 2.⁵

On the basis of the foregoing considerations, the committee believes that Reorganization Plan No. 2 of 1961 should not be permitted to go into effect. Accordingly, the committee recommends that House Resolution 303 be approved.

³ Hearings before a subcommittee of the Committee on Government Operations, House of Representatives, 87th Cong., 1st sess., on Reorganization Plans Nos. 1, 2, 3, and 4 of 1961, at pp. 75-76.

⁴ *Ibid.*, p. 82.

⁵ For the text of H.R. 7333, see the appendix, item 5, p. 16.

APPENDIX

ITEM 1

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING REORGANIZATION PLAN NO. 2 OF 1961, PREPARED IN ACCORDANCE WITH THE REORGANIZATION ACT OF 1949, AS AMENDED, AND PROVIDING FOR REORGANIZATION IN THE FEDERAL COMMUNICATIONS COMMISSION

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Federal Communications Commission.

This Reorganization Plan No. 2 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Federal Communications Commission.

The plan provides for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Commission, individual Commissioners, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), by other employees. This will relieve the Commissioners from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Commission as a whole the right to review any such decision, report, or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Commission the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Commission, for mandatory review of any such decision, report, or certification upon the vote of a majority of the Commissioners less one member. In order to substitute this principle of discretionary review for the principle of mandatory review pursuant to exceptions that may be taken by a party, functions of the Commission calling for the hearing of oral arguments on such exceptions under subsection (b) of section 409 of the Communications Act of 1934 (66 Stat. 721), as amended, are abolished.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

Section 3 of the plan also abolishes the "review staff" together with the functions established by section 5(c) of the Communications Act of 1934 (66 Stat. 712), as amended. They can be better performed by the Commissioners themselves, with such assistance as they may desire from persons they deem appropriately qualified.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

THE WHITE HOUSE, *April 27, 1961.*

ITEM 2

COMPARISON OF REORGANIZATION PLAN NO. 2 OF 1961 (FEDERAL COMMUNICATIONS COMMISSION) WITH EXISTING LAW

REORGANIZATION PLAN NO. 2 OF 1961	EXISTING LAW (COMMUNICATIONS ACT OF 1934, AS AMENDED)
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I. Delegation of authority

Any function may be delegated by Commission vote to division (panel) of Commission, individual Commissioner, or other employee, except where Administrative Procedure Act requires hearing examiners in adjudication and certain rulemaking proceedings.

II. Hearings

Adjudication hearings must be held by one or more hearing examiners, by one or more Commissioners, or by Commission.

No change in rule and rate-making hearings; Administrative Procedure Act applies.

III. Commission review

Discretionary as to all actions under delegations pursuant to plan. Vote of one less than Commission majority necessary to compel review.

IV. Designation of Commissioners or employees to perform delegated functions

By Chairman.

V. Review staff

Abolished; employees to be reassigned by Commission.

VI. Separation of functions

No change. Administrative Procedure Act and Communications Act will continue to provide strict separation of prosecuting and investigating functions from adjudication functions.

I. Delegation of authority

Any function may be delegated by Commission vote to panel of Commissioners, individual Commissioner, or other employee, except hearing evidence in adjudication and certain rulemaking proceedings.

II. Hearings

Adjudication hearings must be held by one or more hearing examiners or by Commission.

No change in rule and rate-making hearings; Administrative Procedure Act applies.

III. Commission review

In adjudication cases (primarily licensing) full-scale review required at request of party.

In other cases, discretionary on vote of majority of Commission quorum. Reason must be given for denial.

IV. Designation of Commissioners or employees to perform delegated functions

By Commission.

V. Review staff

Independent of other divisions of Commission, assists Commission and members in review of adjudication cases. May not make recommendations.

VI. Separation of functions

Administrative Procedure Act and Communications Act provide strict separation of prosecuting and investigating functions from adjudication functions.

ITEM 3

ANALYSIS OF REORGANIZATION PLAN NO. 2 OF 1961 (FEDERAL COMMUNICATIONS COMMISSION)

I. DELEGATION OF AUTHORITY

At first glance Reorganization Plan No. 2 does not seem to make much change in the Commission's authority to delegate its functions. The plan provides that the Commission may, in addition to its existing authority, delegate—

any of its functions to a division of the Commission, an individual commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter.

Such delegations must be by a published order or rule.

A proviso prevents the plan from superseding section 7(a) of the Administrative Procedure Act. That section requires that either the Commission or a member of the Commission or one or more hearing examiners preside at the taking of evidence except where a statute specially provides for the taking of evidence by other persons. Thus, even under the reorganization plan, hearings at which evidence is taken would be held by the Commission, a member of the Commission, or a hearing examiner.

Section 5(d)(1) of the Communications Act of 1934, as amended, now provides that except for the taking of evidence in cases of adjudication (which must be taken by the Commission, a Commissioner, or a hearing examiner) the Commission may—

when necessary to the proper functioning of the Commission in the prompt and orderly conduct of its business, by order assign or refer any portion of its work, business, or functions to an individual commissioner or commissioners or to a board composed of one or more employees of the Commission, to be designated by such order for action thereon;

This applies to rulemaking (including ratemaking) whether or not a hearing is required.

The essential difference between existing law and the plan is that under existing law in adjudication cases the Commission must permit the parties to file exceptions to the initial decision by a hearing examiner or individual commissioner and must, upon request, hear oral arguments on the exceptions before entry of any final decision, order, or requirement. "Adjudication," it should be noted, includes licensing but does not include rulemaking or ratemaking.

Under existing law, in matters other than adjudications, the Commission must allow aggrieved individuals to file applications for review, and is required to pass upon such applications. However, the granting of an application for a full-scale review is discretionary, upon a vote of the Commission.

Under the reorganization plan, on the other hand, the Commission, on its own initiative or on petition, would have a discretionary right

to review the actions of the individual or group to whom authority had been delegated. The aggrieved parties or intervenors, however, would receive a full-scale Commission review only upon a vote of a majority of the Commission, less one member thereof. At full strength this would require a vote of three of the seven members of the Federal Communications Commission.

If the Commission does not in its discretion grant a review, the decision of the lower officials will, under the plan, become final for purposes of court appeal.

A second significant difference between the Commission's delegation authority under existing law and that under the reorganization plan is that at present the Commission, acting as a whole, decides which individuals or groups of individuals authority is to be delegated to. Under the plan, however, the Chairman of the Commission would designate the personnel, even including Commissioners, who are to perform the delegated functions. Thus, while the Commission could delegate authority to a Commissioner, for example, the Chairman would decide which Commissioner would handle the matter.

II. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

Under existing law, the President designates the Chairman of the Commission who thereby becomes the chief executive officer of the Commission. As such, he presides at all meetings of the Commission, he represents the Commission in all matters relating to legislation (reserving to the individual Commissioners the right to present their own individual views), he represents the Commission in conferences or in communications with other agencies, and generally he coordinates and organizes the work of the Commission.

The reorganization plan increases the authority of the Chairman so that he would decide which individuals of the general class to which a delegation has been made should perform the delegated functions. Therefore, once the Commission had made an appropriate delegation, the Chairman would be able to decide which Commissioner or hearing examiner should hear a particular case or type of cases. This view is confirmed by the President's message on the plan which states:

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

III. ABOLITION OF THE REVIEW STAFF

Section 3 of the plan abolishes the Commission's statutory review staff and its functions. Existing law, section 5(c) of the Communications Act, requires the Commission to establish a "review staff" which consists of legal, engineering, accounting, and other personnel. The law makes the review staff entirely separate, distinct, and independent of any other division of the Commission and directly

responsible to the Commission itself. The law states that the review staff—

shall perform no duties or functions other than to assist the Commission, in cases of adjudication (as defined in the Administrative Procedure Act) which have been designated for hearing, by preparing a summary of the evidence presented at any such hearing, by preparing, after an initial decision but prior to oral argument, a compilation of the facts material to the exceptions and replies thereto filed by the parties, and by preparing for the Commission or any member or members thereof, without recommendations and in accordance with specific directions from the Commission or such member or members, memoranda, opinions, decisions, and orders.

The statute prohibits the Commission from permitting any employee who is not a member of the independent review staff to perform any of the functions of that staff.

While the plan abolishes the review staff, it leaves unchanged both the general safeguards on separation of functions found in section 5(c) of the Administrative Procedure Act and in two other sections of the Communications Act. The two Communications Act sections read:

SEC. 409. (c)(2) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case before an examiner or examiners or the Commission, and no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate.

SEC. 409. (c)(3) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.

ITEM 4

Tables showing nonhearing and hearing application workload in the TV, AM, FM, and translator services for the last 5 years, 1956-60 (new and major changes)

TV NONHEARING

	1956	1957	1958	1959	1960
Start of year.....	65	91	134	117	99
New received.....	+255	311	239	183	160
Returned to processing.....	+10	12	10	14	14
Disposed of.....	-207	243	187	175	146
Designated for hearing.....	-32	37	79	40	40
Pending end of year.....	91	134	117	99	87

TV HEARING

	1956	1957	1958	1959	1960
Start of year.....	119	92	57	90	82
Designated for hearing.....	+32	37	183	247	40
Disposed of.....	-59	72	50	55	38
Pending.....	92	57	90	82	84

AM NONHEARING

	1956	1957	1958	1959	1960
Start of year.....	374	428	507	673	1,165
New received.....	+600	664	610	1,077	800
Returned to processing.....	+62	47	33	83	21
Disposed of.....	-475	498	327	420	303
Designated for hearing.....	-142	184	150	228	399
Pending end of year.....	428	507	673	1,165	1,284

¹ Includes 4 applications remanded to hearing.

² Includes 7 applications remanded to hearing.

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Tables showing nonhearing and hearing application workload in the TV, AM, FM, and translator services for the last 5 years, 1956-60 (new and major changes)—Continued

AM HEARING

	1956	1957	1958	1959	1960
Start of year.....	104	145	139	170	220
Designated for hearing.....	+142	134	150	229	³ 400
Disposed of.....	-101	140	119	179	207
Pending.....	145	139	170	220	413

FM NONHEARING

Start of year.....	12	21	34	70	94
New received.....	+133	166	309	416	546
Returned to processing.....			2	9	6
Disposed of.....	-124	153	250	377	469
Designated for hearing.....			25	24	51
Pending.....	21	34	70	94	126

FM HEARING

Start of year.....		1	1	18	24
Designated for hearing.....	⁴ 1		25	24	⁵ 52
Disposed of.....			8	18	25
Pending.....	1	1	18	24	51

TV TRANSLATORS (INCLUDES BOOSTERS AND REPEATERS)

Start of year.....	(⁶)	(⁶)	52	41	36
Received.....			+132	193	128
Returned to processing.....			+5	2	
Disposed of.....			-141	198	137
Designated for hearing.....			-7	2	
Pending.....			41	36	27

³ Includes 1 application remanded to hearing.

⁴ Combination AM-FM docket case included in AM nonhearing designation for hearing.

⁵ Combination AM-FM docket case included in AM nonhearing designation for hearing, reason for discrepancy between nonhearing and hearing "designated for hearing" figure.

⁶ Activity in this service has developed only recently; therefore, no statistics are available for 1956 and 1957.

NOTE.—Statistics on the hearing workload in this category are not kept separately because of the small workload involved; however, there are 7 applications pending in hearing status.

Common carrier cases

FISCAL YEARS

	1956	1957	1958	1959	1960
Start of year.....	39	45	34	30	47
Received (designated for hearing).....	42	30	25	41	45
Disposed of.....	36	41	29	24	28
Pending end of year.....	45	34	30	47	64

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Tables showing nonhearing and hearing application workload in the TV, AM, FM, and translator services for the last 5 years, 1956-60 (new and major changes)—Continued

FISCAL 1957

[July 1, 1956-June 30, 1957]

	Affirmed	Reversed	Modified
Broadcast.....	49	18	3
Safety and special.....	4	0	0
Common carrier.....	6	0	0
Other (FEMB).....	1	0	2

FISCAL 1958

[July 1, 1957-June 30, 1958]

Broadcast.....	72	4	0
Safety and special.....	2	0	1
Common carrier.....	4	0	0
Other (FEMB).....	4	1	0

FISCAL 1959

[July 1, 1958-June 30, 1959]

Broadcast.....	62	7	13
Safety and special.....	15	2	4
Common carrier.....	0	1	1
Other (FEMB).....	1	0	2

FISCAL 1960

[July 1, 1959-June 30, 1960]

Broadcast.....	67	11	16
Safety and special.....	20	1	7
Common carrier.....	1	0	1
Other.....	0	0	0

FISCAL 1961

[1st 6 months]

Broadcast.....	54	4	9
Safety and special.....	20	2	2
Common carrier.....	3	0	1
Other.....	0	0	0

ITEM 5

[H.R. 7333, 87th Cong., 1st sess.]

A BILL To amend the Communications Act of 1934, for the purpose of facilitating the prompt and orderly conduct of the business of the Federal Communications Commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 5 of the Communications Act of 1934 (47 U.S.C. 155 (c)), relating to a "review staff", is hereby repealed.

SEC. 2, Subsection (d) of such section 5 is amended to read as follows:

"(d) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may by published rule or order delegate any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, and may at any time amend, modify, or rescind any such rule or order. Any such rule or order may be adopted only by vote of a majority of the members of the Commission then holding office, but may be rescinded by vote of a majority, less one, of the members of the Commission then holding office. The requirements of paragraphs (a), (b), (c), and (d) of section 4 of the Administrative Procedure Act shall apply in the case of any such rule. Nothing in this paragraph shall authorize the Commission to delegate to any person or persons, other than the persons referred to in clauses (2) and (3) of section 7(a) of the Administrative Procedure Act, the function of conducting any hearing to which such section 7(a) applies.

"(2) Any order, decision, or report made, or other action taken, pursuant to any such delegation, unless reviewed as provided in paragraph (3), shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner as an order, decision, report, or other action of the Commission.

"(3) Any person aggrieved by any such order, decision, report, or other action may, within such time and in such manner as the Commission shall by rule prescribe, make application for review by the Commission, and every such application shall be passed upon by the Commission; and the Commission on its own initiative, within such time and in such manner as it shall by rule prescribe, may review any such order, decision, report, or other action. A vote of a majority, less one, of the members of the Commission then holding office shall be sufficient to bring any such order, decision, report, or other action before the Commission for review. Whenever the Commission grants an application for review, or on its own initiative takes action to review, it may affirm, modify, or set aside the order, decision, report, or action being reviewed or may order a rehearing upon such order, decision, report, or action under section 405.

"(4) There is hereby transferred from the Commission to the Chairman of the Commission the authority to assign Commission personnel, exclusive of members of the Commission, to perform such functions as may be delegated by the Commission pursuant to paragraph (1) of this subsection.

“(5) The Secretary and seal of the Commission shall be the Secretary and seal of each division of the Commission, each individual Commissioner, each examiner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.”

SEC. 3. Section 409 of such Act (47 U.S.C., sec. 409) is amended by striking out subsections (a), (b), and (c) thereof and inserting in lieu of such subsections the following:

“(a) The officer or officers conducting the hearing in any case of adjudication (as defined in the Administrative Procedure Act) arising under this Act shall prepare and file an initial decision, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision. All decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the record; and (2) the appropriate decision, order, or requirement.

“(b) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no officer conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another officer participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such officer shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No officer conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Commission (except another officer participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, rulings, or recommendations made in such case.

“(c) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.”

SEC. 4. Notwithstanding the foregoing provisions of this Act, the second sentence of subsection (b) of section 409 of the Communications Act of 1934 (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act, shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) set for hearing by the Federal Communications Commission by a notice of hearing issued prior to the date of the enactment of this Act.

ADDITIONAL VIEWS OF HON. JOHN E. MOSS AND HON.
HENRY S. REUSS

For the reasons stated below, we do not agree that Reorganization Plan No. 2 of 1961 should be disapproved.

There is no doubt that the burden of work on members of the Federal Communications Commission has increased tremendously in recent years. For example, the number of AM nonhearing cases received by the Commission increased from 609 in 1956 to 800 in 1960, having reached a peak of over a thousand in 1959. The number of AM cases designated for hearing increased from 142 in 1956 to 400 in 1960. The number of FM cases received grew from 133 in 1956 to 546 in 1960 and while there was only 1 FM case designated for hearing in 1956 and none in 1957 there were 52 designated for hearing in 1960. The backlog of common carrier cases increased from 45 in 1956 to 64 in 1960. Much of the difficulty the Commission has been having is caused by the ironclad requirement of section 409(b) of the Communications Act that the Commission must allow the filing of exceptions and hold a hearing in every adjudicatory case appealed from a hearing examiner. None of the other agencies involved in the first four plans has such statutory rigidity imposed upon it. The Commission's difficulties are further compounded by the novel requirements of section 5(c) of the Communications Act which prohibit the review staff from giving the Commission members the benefit of their knowledge and experience in the form of recommendations. Again, so far as we are aware, such a limitation on the use of the review staff is imposed upon no other agency.

It is obvious that the Federal Communications Commission must be given authority to streamline its operations and to relieve the Commission members of some of the tremendous amount of work that now falls upon their shoulders individually. If this is not done, the activities of this Commission will bog down from the sheer volume of material which it must handle. Reorganization Plan No. 2 would give the Commission the authority it needs to meet the problem. It would authorize, but not require, the Commission to delegate to subordinates whom it trusts those phases of the Commission's work which it believes can be best handled through delegated authority. The plan would give the Commission needed flexibility to revise the delegation orders and to rescind them if events prove that such action is desirable at a later time. It would also give the Commission an opportunity to be somewhat selective in determining those matters to which it would give a full-scale Commission review on appeal from decisions of the subordinate officials.

Despite all the specious reasons advanced publicly by those who oppose the plan, the basic intransigence of the opposition was revealed by the testimony of the president of the Federal Communications

Bar Association, Mr. Robert M. Booth, Jr., before the Government Operations Committee. Mr. Booth stated that the Federal Communications Bar Association "urges as strongly as possible" the retention of a mandatory right of review and full-scale oral argument before the Commission in every case involving adjudication.

Thus the Communications Bar Association is on record as demanding the right to occupy the time of the full seven Commissioners in every matter in which one of their clients wants to spend the time and money involved in a presentation of an oral argument, no matter how unimportant the case, how well settled the points involved, or how farfetched the arguments. It is clear that the opponents of the reorganization plan are, for reasons which should be obvious, demanding an absolute right to tie up the Commission with unnecessary redtape.

This attitude is not lost upon the Commission. In fact, one Commissioner, Mr. John S. Cross, told the committee:

As I told the Federal Communications Bar Association some time ago, asking them to assist the Commission in cutting out some of the redtape that goes under the name of due process is like asking the butcher to cut out the red meat department and sell only poultry and fish.

Mr. Cross went on to say:

When concrete suggestions are made to cut down on the very things that contribute to our considerable backlog, such as are made in the reorganization plan before us, we get a hue and cry from various sources which, in substance, says, "For mercy sake, don't do it this way. Do it some other way."

It may well be time for Congress to allow the President to take the action necessary to break the logjam at the Commission. Reorganization Plan No. 2 would do this neatly and decisively. If H.R. 7333 becomes bogged down, we would see no point in providing the opponents of any improvements at the Commission with other forums to delay and equivocate. The necessity for the changes is conceded. They should be brought about immediately.

A number of arguments have been advanced in support of the resolution to disapprove the plan. It has been argued that Reorganization Plan No. 2 creates a one-man Federal Communications Commission; that it substitutes executive control for congressional control; that it abolishes statutory rights granted to private parties by the Communications Act; that it creates areas of uncertainty as to how far the plan supersedes provisions of the Communications Act; and that the needed changes in the law should be made by statute rather than by reorganization plan.

It would be relatively easy to meet these arguments because most of them can also be advanced with respect to the other plans submitted by the President. What, then, is so different about Reorganization Plan No. 2? Why are these arguments advanced by the majority against plan No. 2 and not against plans 1, 3, and 4?

The answers to these questions may be found not in any purported differences between plan No. 2 and the other plans. These differences are not substantial. The answer must be looked for elsewhere, and

it can be found in the historical relationship between the broadcasting industry and the Government.

From the very beginning, Federal radio legislation has required broadcasters to operate in the public interest. When a would-be radio or television broadcaster applies for a license, he has to demonstrate to the Commission that his programing will be in the public interest.

This circumstance is of particular importance in cases of competing applications because the Commission in determining which of several competing applicants should be granted the valuable franchise will take a close look at the program structure which the licensees promise to offer to the viewers or listeners.

Again, on renewal the Commission has occasion to take a look at the performance of the broadcaster and measure it against the promises made by the broadcaster in his application.

Now, it has happened once before in the history of broadcasting that the Commission under the leadership of a courageous Chairman dared the broadcasters either to meet the responsibility imposed upon them by law of offering programs which meet the standard of the "public interest" or to forfeit the privilege of occupying a portion of the radio spectrum which belongs to the American people.

When the threat of license forfeiture became too menacing the broadcasters instead of improving their programing sought the aid of their attorneys to meet this threat. They succeeded in pressuring the Congress to adopt legislation which removed this threat, first, by limiting the Commission's power to protect the public interest in case of license transfers, and, secondly by making the organization and procedures of the Commission in all hearing cases so clumsy and ineffective that these proceedings would no longer constitute a real threat to the license holders.

The 1952 amendments to the Communications Act were adopted at the behest of the broadcasting industry over the vigorous opposition of the members of the Federal Communications Commission. These amendments have been largely responsible for the sad performance of the Commission in protecting the public interest vis-a-vis the organized broadcasting industry.

Plan No. 2 would remove some of the shackles which were placed on the FCC in 1952. Plan No. 2, if adopted, would put the FCC organizationally and procedurally on a par with the other regulatory agencies and would enable the Commission to become vigorous in protecting the public interest vis-a-vis the broadcasters.

That is the real reason why individual broadcasters, the National Association of Broadcasters, and the Federal Communications Bar Association have waged a vigorous battle against this plan.

Of course, we do not want to challenge for a moment the good faith of those Members of Congress and those members of the Federal Communications Commission who are opposing the plan. However, we contend that the real issues are not the legal questions which have been discussed at considerable length and with great learning before several committees of the Congress.

The real issue, in our opinion, is that once again the broadcasters have been challenged by a vigorous Chairman to program in the public interest or to make way for those who are willing to do so, and the broadcasters, the NAB, and their attorneys are giving battle to defeat this threat.

This is the real reason why plan No. 2 is being challenged.

It has been suggested that the case of the FCC is different from the other agencies for which reorganization plans have been submitted, and that any changes which should be made in the organization and the procedures of the FCC should be made by statute rather than by reorganization plan.

The bill, H.R. 7333, introduced on May 25 by the chairman of the Interstate and Foreign Commerce Committee conforms largely to plan No. 2. However, the delays and impediments that may be in store for it in both Houses of Congress are typical of the very things the Reorganization Act of 1949 are intended to overcome. Who can tell how the bill will be amended before it is enacted or even if it ever will be enacted? Those who have a vested interest in creating legal redtape and those who have had their feelings hurt by the long-needed frankness of the Commission's new Chairman certainly will not be satisfied with H.R. 7333.

We would not be surprised if there is a long and hard fight on the bill and a concentrated effort to destroy its effectiveness. If this succeeds, the President and Congress should make effective use of the Reorganization Act, which we extended barely 6 weeks ago, and allow a new plan to bring about the needed changes.

We append an editorial from the May 19, 1961, issue of the Madison (Wis.) Capital Times, which suggests an additional reason for the opposition which has been raised to the plan.

[The Capital Times, Madison, Wis., May 19, 1961]

TV DOESN'T FEAR CENSORSHIP; IT FEARS COMPETITION

Loud is the cry of censorship coming up from the Nation's broadcasters since Newton Minow, Chairman of the Federal Communications Commission, told them what every sensible person knows about the "vast wasteland" of TV programs.

The agonized screams coming from the broadcasters do not result from the fact that Chairman Minow warned them that if a cleanup didn't come it would be taken into consideration when licenses came up for renewal.

The broadcasters are not really concerned about having their licenses discontinued. They know that they are all virtually in the same boat and that there can't be mass suspension of licenses. Furthermore they know that they can challenge such action in the courts for a prolonged period while they continue to pile up profits from violence, sex, and sadism.

What is really distressing the broadcasters is not the threat of license suspension. It is something Minow said near the end of his address and which has had little attention in all the words that have been written about his sensational words to the broadcasters' convention.

The threat that worries the established TV interests was the one about increasing competition in the industry.

Here are his words:

"We have approved an experiment with pay TV, and in New York we are testing the potential of UHF broadcasting. Either or both of these may revolutionize television. Only a foolish prophet would

venture to guess the direction they will take, and their effect. But we intend that they shall be explored fully—for they are part of broadcasting's new frontier.

"The questions surrounding pay TV are largely economic. The questions surrounding UHF are largely technological. We are going to give the infant pay TV a chance to prove whether it can offer a useful service; we are going to protect it from those who would strangle it in its crib.

"As for UHF, I'm sure you know about our test in the canyons of New York City. We will take every possible positive step to break through the allocations barrier into UHF. We will put this sleeping giant to use and in the years ahead we may have twice as many channels operating in cities where now there are only two or three. We may have a half dozen networks instead of three."

This is the most significant section of Minow's address. It strikes fear into the hearts of those who dominate the TV industry today.

If pay TV is given a chance to work it will mean that the public will have a choice between the trash now dished up and quality programs. Giving the public a choice would be revolutionary indeed.

Freeing the "sleeping giant" UHF would restore competition to a field which has rapidly become monopolized. The big networks have strangled UHF by favoring VHF outlets, which provide broader coverage.

Because of this TV has not lived up to its promise of service. When it was in its initial stages of development a survey by the FCC showed that to give adequate service to the public there should be about 2,000 licenses issued. Only about 500 have been issued and they are controlled by about 175 corporations.

If the FCC should put UHF to work it would inject a competitive impulse into the system which would require the license holders to do something besides produce trash and clip coupons.

This is the horrible prospect that Minow's address holds out. This is why the broadcasters are so hysterical over what he said.

They aren't afraid of censorship. They're afraid of competition.

ADDITIONAL VIEWS OF HON. NEAL SMITH

While I agree with a great deal that is set forth in the additional views of Mr. Moss and Mr. Reuss, I do not feel that I have personal knowledge or have personally studied all the implications enough to make all of the conclusions stated therein. I do, however, certainly share with them a serious doubt that H.R. 7333, which was introduced following the hearings by the committee on Reorganization Plan No. 2, will actually be passed in such form as to fully accomplish the purpose of the Plan. I do not agree with those who use the mere possibility that H.R. 7333 might pass in its present form as an excuse for rejecting Reorganization Plan No. 2. We should be more concerned with trying to accomplish the desired purpose than with which procedure is followed.

On the date Reorganization Plan No. 2 was being considered by the subcommittee there had not been any legislation introduced in this session of the Congress to accomplish the purpose of this plan. It was obvious from the testimony that the need for this legislation had been known for many years; that it had been bitterly contested as far back as 1950 when Reorganization Plan No. 11 of 1950 for this Commission was opposed; and that any new bill to be introduced will meet the same rugged opposition. The Hoover Commission on the Organization of the Executive Branch of the Government recognized that reorganization in some instances may not be accomplished through the normal legislative procedures and that more opportunity should be given to the executive branch to reorganize in the interest of efficiency and economy. This is one of the best examples which one could find to support that conclusion. It seems strange to me that some of those who supported the Hoover report most vigorously now eagerly join in circumventing proposed reorganization in accordance with the objectives of and under circumstances contemplated by that report.

Since almost everyone in Congress claims to support the provisions of the plan and it has been promised that legislation will be forthcoming in the near future to fulfill the objectives of the plan, it is argued that a great deal will not be lost by waiting a few months to see if this in fact comes to pass. This delay of a few months would totally disarm the principal opponents of the excuse they are using for opposing the plan; however, it would also postpone corrective action for several additional months of the present time-consuming and cumbersome procedure which results in delayed process rather than securing due process more quickly for those concerned. I seriously doubt if such legislation will be passed in this session of the Congress either. If this plan is disapproved and such legislation is not passed in this session, I hope the President resubmits another reorganization plan for this agency early in 1962.

ADDITIONAL VIEWS OF HON. CLARE E. HOFFMAN ON
HOUSE RESOLUTION 303 (REORGANIZATION PLAN NO.
2 OF 1961) AND ON REORGANIZATION PLANS NOS. 1, 3,
AND 4 OF 1961

Experience has shown that, adhered to, our form of government gives the citizen equality of opportunity and, if he has determination, will practice thrift, prosperity, as well as individual freedom.

In years gone by following Washington's advice to avoid foreign entanglements, we maintained our independence as a nation and there is every reason to believe that a return to that policy will give us future independence and security.

Those who drafted the Constitution, having personal knowledge and experience under dictators, some of whom wielded absolute, others limited power, wisely reserved to the States and the people governmental powers not expressly granted, saw to it that the power to enact legislation was given to the Congress—the people's representatives—to be, when uncertain as to purpose or meaning, interpreted by the courts—the authority to implement those laws was given to an executive department headed by a President, whose term of office was limited.

The world makes progress by "going forward" but worthwhile progress comes only when we keep in mind the lessons of experience.

We hear much criticism of some who are branded as conservatives or reactionaries from those who call themselves liberals or progressives, who complain somewhat bitterly that we cannot stand still but who apparently forget that, while the earth revolves rather rapidly and in space travels around the sun, we still look east for the dawn. While the years and the centuries roll on, some events occur periodically, some principles are the same today as when Eve and Adam were evicted from the Garden of Eden because, we were told, they sought too much knowledge.

The assertion is that the Constitution is still the world's best guide for sound government. Some contend it has outlived its usefulness, demand that we forget it and go forward to and with the New Frontier. The New Frontier or even a man on the moon may not be the answer to our present or future problems.

My thought is that a government for the people can best be maintained if we resist the present trend of the Executive to assume the power given Congress, and write our own legislation, oppose the attempts of the Judicial Department or judges to not only exercise congressional functions, but by decree or order take over some of the authority of the executive department.

We have heard, since the segregation decision of 1954, much to the effect that a decision of the Supreme Court is "the law of the land"—this notwithstanding the words of the Constitution or the legislation enacted by the Congress.

The Court said a few years ago that "embezzled money does not constitute taxable income." Six years later the Court changed its mind and, speaking through Justice Warren, said that "extorted money does constitute taxable income."

When one James who had failed to pay the tax on embezzled funds, was convicted under the Supreme Court's later decision in the *Rutkin* case, on Monday last, the Court said his conviction should be reversed because apparently he had relied upon the Court's decision in the *Wilcox* case.

The Court thus pardoned his criminal offense even though the power to pardon is expressly vested in the executive department, exercised only at the discretion of a President.

Thus the Court, through interpretation, not only exercises the legislative function expressly granted to the Congress, but it assumes the pardoning power limited by the Constitution to the President.

The present reorganization plans are, as has been many times stated in previous "Additional Views," a reversal of the constitutional methods of enacting legislation.

Under the Constitution no proposal can become law until it receives favorable consideration and approval by both the House and the Senate.

Under the reorganization plans, a legislative proposal becomes the law of the land unless within a specified time it is rejected by either the House or the Senate.

In my humble judgment, regardless of the merits of any plan, I fail to see how I can conscientiously, in view of my oath to support the terms of the Constitution, vote to approve a transfer of the legislative power from the Congress to the Executive.

Without in the slightest being critical or questioning the views of any Member of the House, as one of the people's chosen representatives I find it impossible to approve of any lessening of the congressional authority and responsibility by agreeing to any encroachment of either the Court or the Executive upon the power granted the Congress.

The foregoing expresses my individual convictions.

My basic objections apply not only to the reorganization plan under consideration, but to the other three reorganization plans on which disapproving resolutions were introduced and to plan No. 5 submitted on May 24.

The four reorganization plans are substantially the same. The first objective of each is to empower the agency to adopt its own reorganization plans, the second to give the chairman of the agency more powers.

If efficiency and speed are the same, then at least there was efficiency in the drafting of the plans. The Chairman of the Securities and Exchange Commission, in undertaking on behalf of the administration to explain his agency's plan to this committee, stated:

A few words of caution are imperative right at the start. In the light of the time available to consider the implications and possible uses which should be made of Reorganization Plan No. 1—if you permit it to become effective—I would hope and ask that you regard my suggestions as tentative rather than final.

The Chairman of the Securities and Exchange Commission then went on to state that, because of lack of consideration, it was premature to state what the Commission would do with the powers delegated to it by the President.

The Chairman of the Civil Aeronautics Board, appearing on behalf of his agency's Reorganization Plan No. 3, stated that the scope of the plan was "sufficiently broad to cover all matters adjudicatory and quasi-legislative." The other plans carry the same implication.

The Reorganization Act empowers the President to transfer functions. That act nowhere authorizes the President, by reorganization plan or otherwise, to delegate to any agency or official the power to reorganize. Nevertheless, the first objective of all four reorganization plans is to empower the respective agency to adopt its own reorganization plans.

That the Congress should surrender to the executive department its constitutional authority to legislate is unjustifiable. That it should authorize the President to redelegate that power, expressly granted and confined to the Congress, to individuals named by him is an abject ignoring of our constitutional duty.

It was wrong for the Congress to delegate to the President these functions entrusted to it by the Constitution. But the Congress has not, in the Reorganization Act or otherwise, empowered the President to redelegate these powers to agencies and commissions so that these agencies and commissions can change the enactments of Congress prescribing forms of organization for them.

This the administration spokesman for Reorganization Plan No. 1 conceded. He stated that, although the plan gives to his Commission the power to redelegate its basic legislative functions vested in it by Congress, this power should not be exercised. The Chairman of the Commission, still speaking for the administration, proceeded to list functions which Reorganization Plan No. 1 permits it to delegate, but which he said should not be delegated, and added:

the reorganization plan which is now proposed for us is not needed for the purpose of permitting us to do anything we regard as advantageous in the way of structural agency organizations.

In proposing the plan, then, the administration tells us that it gives powers that should not be given, and powers that are not needed.

The record made by the administration spokesmen for the plans shows that they were proposed too hastily to have more than tentative suggestions of "the implications and possible uses which should be made of" them, that the plans give powers to the agencies which should not be used by them, and that the plans delegate powers that are not needed.

This was summed up by a Federal Trade Commissioner who testified in 5½ years of service he had "not found any situations that demand any reorganization such as is requested here."

The plain fact is that the attempted redelegation by the President of the powers transferred by Congress to him by the Reorganization Act was never contemplated by Congress.

This same Commissioner commented with respect to the other, the second, part of the four plans, the transfer of authority from each agency to one man, the Chairman, that, if the plans were not disap-

proved, dissident Commissioners might find themselves exiled to "remote sections of the United States." A certain degree of efficiency and economy might be accomplished by sending overly independent Commissioners, perhaps minority members, out of reach by phone or plane. Such an approach to efficiency has been tried, at least in other lands.

Certainly, the plans should cause these legislative agencies to respond more quickly to commands from the administration. Since they are legislative agencies, it could be that some measure of response to the Congress should also be retained.

The gentleman from Arkansas, Mr. Harris, presented a memorandum which said "if plan No. 2 becomes effective, uncertainty and confusion may result" as to the extent to which regularly adopted provisions of statutes remain in force. This plan, he said—

should be rejected in order to give our (his) committee an opportunity to introduce legislation and take the problem up in the regular way, conduct hearings and endeavor to work out what should be done regarding the proposals in this provision.

It could be that the constitutional plan for the enactment of legislation has some merit. If not, we have little excuse for collecting our salaries.

If the President, or if the President and the Supreme Court of the United States are to write legislation, why a Congress?

CLARE E. HOFFMAN.

ADDITIONAL VIEWS OF HON. CLARE E. HOFFMAN, HON.
GEORGE MEADER, HON. ROBERT P. GRIFFIN, HON.
JOHN B. ANDERSON, AND HON. F. BRADFORD MORSE
ON HOUSE RESOLUTION 303 (REORGANIZATION PLAN
NO. 2 OF 1961) AND ON REORGANIZATION PLANS NOS.
1, 3, AND 4 OF 1961

House Resolution 303, 87th Congress, 1st session, would disapprove Reorganization Plan No. 2, providing for reorganization in the Federal Communications Commission. Reorganization Plan 2 is one of four considered by the Committee on Government Operations. Reorganization Plans 1, 3, and 4, would provide for reorganization in the Securities and Exchange Commission, the Civil Aeronautics Board, and the Federal Trade Commission respectively.

Fundamentally, the plans are identical. With minor technical exceptions, the reasons for disapproving one of them apply with equal validity to all. The fact that the committee voted to disapprove only plan 2 reflects a realistic appraisal of the opposition that has been mustered against it.

It should be added that the most potent objection to the plan came from the Special Subcommittee on Regulatory Agencies of the Committee on Interstate and Foreign Commerce. The subcommittee held hearings and came to the conclusion that the plan went beyond the authority and intent of the Reorganization Act and should be rejected. The sole reason that the subcommittee made no recommendations with respect to plans 1, 3, and 4 was, according to the chairman, the lack of opportunity to conduct hearings and to sufficiently analyze the provisions of the proposals. Plans 1, 3, and 4 will become the law of the land unless either House votes its disapproval within a 60-day period following the date of transmittal of the plans. It is not likely that the Committee on Government Operations will report the resolutions of disapproval before it with respect to these three plans. However, a motion to discharge the committee from further consideration of any of these resolutions is presently in order.

The undersigned are in full accord with House Resolution 303. That is, the undersigned do not favor the proposed reorganization in the Federal Communications Commission. However, it should be made clear that the objections here expressed are basic and apply to the other three reorganization plans as well. We, at least, have received no pressure to disapprove reorganization in the Federal Communications Commission alone. Our objections go to the substance of all four plans, to the philosophy underlying them, and to the manner in which they are drawn.

Not one of the four plans submitted complies with the spirit and intent of the Reorganization Act. They go beyond reorganization in the sense contemplated in the act in their effect on procedural rights.

The Reorganization Act of 1949 followed the Reorganization Act of 1945 which also had authorized the "transfer," "consolidation,"

“coordination,” or “abolition” of agencies and functions. However, the act of 1949 added “the authorization of any officer to delegate any of his functions.”

At hearings on the bill, the Committee on Expenditures in the Executive Departments was assured that—¹

The purpose of this addition is to make it possible to include in reorganization plans provisions which will enable the President and other top-level officials to relieve themselves of many of the petty routine matters now requiring their personal action.

Obviously, the time of top officials should not be consumed by petty actions that could as well be taken by other officers under their supervision.

The committee in turn reported the bill to the House² with the statement (Rept., p. 7):

This bill will permit a type of reorganization not authorized under the 1945 act—the granting to any officer of authority to delegate any of his functions. The main purpose is to make it possible for top officials to delegate routine functions which are vested in them by law in such manner as to prevent delegation.

In its report recommending the most recent extension of the Reorganization Act of 1949, as amended,³ the Committee on Government Operations expressed its concern over the (p. 2)—

tendency of the Executive to draft reorganization plans in general terms so that the full scope of the reorganization is not always readily apparent from the contents of the plans as presented. At times, the plans seemed to confer on department and agency heads such unrestricted redelegation authority that they are able to effect further substantial reorganizations without referring them to the Congress.

The committee then went on to pledge that—

In its review of any plans submitted under the bill the committee will insist that they be composed with such detail that their full import is readily ascertainable.

Yet, despite these expressions of legislative intent, the Executive in preparing these plans has gone far beyond delegation of “petty routine matters” and would delegate important adjudicatory powers without specifying the full import or ultimate extent of the delegations. As the Chairman of the Securities and Exchange Commission testified at the hearings (hearings, p. 12):

I believe that it would be premature, and unwarranted, to give at this time a full list of the specific matters which the Commission will and will not delegate under the reorganization plan.

¹ Statement of Frederick J. Lawton, Assistant Director, Bureau of the Budget, hearings before the Committee on Expenditures in the Executive Departments on H. R. 1569, 81st Cong., 1st sess., Jan. 24, 25, 28, and 31, 1949, p. 13.

² H. Rept. No. 23, 81st Cong., 1st sess., to accompany H. R. 2361.

³ H. Rept. No. 195, 87th Cong., 1st sess., to accompany H. R. 5742.

He then went on to state that—

* * * the Commission has tentatively concluded that there are certain areas in which it should not delegate its authority, even though permissible under Reorganization Plan No. 1 * * *

In other words, Reorganization Plan No. 1, in language identical to that of Reorganization Plans 2, 3, and 4, would delegate more power than the Securities and Exchange Commission felt was necessary.

While the Chairman of the Civil Aeronautics Board apparently did not share in the feeling that there were areas in which delegations would not be made, he did confirm that the plans delegated power in such a manner that it could be redelegated indefinitely without any further review by Congress when he said (hearings, p. 44):

I just do not want to say that there is any area that would be out of bounds so far as we are concerned in the distant future because I do not know.

Perhaps a more basic objection to the plans from the viewpoint of Congress is that final administrative decisions would tend to be made by employees far removed from the control of the electorate. Commissioners, at least, are appointed for a certain term and their appointments are subject to Senate confirmation. The necessity for considered legislative review of problems in this area were pointed up in testimony before the committee by Congressman William H. Avery when he said (hearings, p. 87):

The only protection in the plan against arbitrary action on the part of the hearing examiner is the review by the Commission itself. I do not consider that a sufficient safeguard to retain congressional control over the agencies.

Either the hearing examiner or other employee to whom authority is delegated should thus remain answerable to Congress or should be placed beyond the reach of the Executive, with a very long tenure of appointment as is a Federal judge. The chain of command in the plan, evident though mildly disguised, directly down from the President, is in conflict with every principle announced by Congress for the agencies.

Some of the possibilities with reference to section 2 of plan No. 2 which gives the Chairman power to assign delegated functions to a Commissioner, were visualized by Commissioner Ford of the Federal Communications Commission when he said (hearings, p. 142):

I have already pointed out that most of our work is delegated. Thus, the Chairman apparently could assign a Commissioner against his will to perform any work of whatever character to which a member of the staff could be assigned under the delegation of authority in section 1 of the plan. This could include assigning a Commissioner to preside at a protracted hearing in a distant section of the country to get him out of the way, writing many of the final decisions for the Commission or writing summaries of minor applications.

The Chairman would also appear to have the power to remove a Commissioner from work assigned to him by the Commission and substitute other Commissioners or Commission personnel more to his liking.

Similar fears of a "one-man agency" were expressed by Commissioner Anderson of the Federal Trade Commission. He stated (hearings, p. 66):

I am of the further opinion that Reorganization Plan No. 4 of 1961 vests too much power in the Chairman. I feel that the imposition of the plan would reduce the status of individual Commissioners. I am sure that it is not the intention of the Executive to create a one-man agency out of our multi-member agency. This will, however, be the inevitable result if the individual Commission members are further reduced in status and the powers of Chairman increased. I feel that the members of a regulatory body who serve in quasi-judicial, quasi-legislative, and administrative capacities should not be reduced to staff status.

Commissioner Anderson too raised the possibility of Commissioners in exile (hearings, p. 68):

I would also like to point out that according to the plan, it would appear that the Commission members could be sent to any place in the United States, provided, of course, a majority of the Commissioners so agreed, and I could see how three Commissioners, under the aegis of a very aggressive Chairman, would exile other Commissioners to remote sections of the United States.

While the legislative history of the Reorganization Act of 1949 does not indicate any intent on the part of Congress to exempt the regulatory agencies from the provisions of the act, it is clear from the legislative history of the acts creating most of the independent agencies that Congress intended to create them outside the executive branch and independent of it. For that reason, provision was also made for the appointment of Commissioners for a limited term and on a bipartisan basis. Debates on the floor of the House and Senate are replete with references to the regulatory agencies as arms or agents of the Congress.

It is abundantly clear, therefore, that Congress intended the regulatory agencies to be bipartisan, independent of and not subject to the political whims of the President. In this connection, it should be noted that the Reorganization Act specifically limits its application to agencies "in the executive branch of the Government."

Section 7 of the act reads as follows:

When used in this Act, the term "agency" means any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government, and means also any and all parts of the municipal government of the District of Columbia except the courts thereof. Such term does not include the Comptroller General of the United States or the General Accounting

Office, which are a part of the legislative branch of the Government.

Apart from the question thus raised of the legality of the proposed reorganizations in independent regulatory agencies, the undersigned believe that as a matter of policy the reorganization power should not be used with respect to these agencies. When Congress created the independent regulatory agencies, it wanted to put them beyond the reach of the Executive. To now subject them to reorganization by the Executive is to go contrary to evidence gained from the hearings before the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce. This subcommittee investigated the manner in which the independent regulatory commissions had functioned. It recommended the establishment of a legislative Subcommittee on Regulatory and Administrative Commissions and emphasized the desirability of legislative effort in matters within the jurisdiction of the Committee on Interstate and Foreign Commerce.

The indefinite delegation of power contemplated in the four reorganization plans considered by the Committee on Government Operations is completely inconsistent with this concept of continued liaison between Congress and the agencies. Respect for the jurisdiction of the legislative committee concerned should constrain the Committee on Government Operations to reject all the plans in order that the Committee on Interstate and Foreign Commerce may conduct hearings and work out the desirable objectives sought by these proposals.

To do otherwise is to acquiesce in what appears to be a broad plan to gradually reduce the responsibility of the regulatory agencies to the Congress and subvert their independence to the dominance of the Executive.

Finally, it is noted that the Committee on Government Operations, when recommending the latest extension of the Reorganization Act to the Congress, stated: ⁴

The committee has also noted a tendency in recent years for the Executive to submit plans without the full justification in reducing expenditures and promoting economy that the bill requires. The committee will insist that the plans submitted be in accord with the language and intent of the act and we will continue to scrutinize with care all plans accordingly.

As if in repudiation of this earnest injunction, the President in his message transmitting each of the four plans has stated:

It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

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GEORGE MEADER.
ROBERT P. GRIFFIN.
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⁴ H. Rept. 195, 87th Cong., 1st sess., to accompany H.R. 5742, p. 2.