

PUBLIC BROADCASTING FINANCING ACT OF 1975

JULY 22, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FLOOD, from the Committee on Appropriations,
submitted the following

ADVERSE REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6461]

The Committee on Appropriations, to whom was referred the bill (H.R. 6461) to amend certain provisions of the Communications Act of 1934 to provide long-term financing for the Corporation for Public Broadcasting and for other purposes, having considered the same, reports unfavorably thereon, and recommends that the bill do not pass as referred to the Committee.

EXPLANATION OF COMMITTEE ACTION

H.R. 6461 was originally reported from the Committee on Interstate and Foreign Commerce on May 22, 1975 and was sequentially referred to the Committee on Appropriations for consideration of such provisions of it as fall within the jurisdiction of the Committee under rule X, clause 1(b). That clause provides that the Committee on Appropriations shall have jurisdiction with respect to "appropriation of the revenue for the support of the Government".

The provision in H.R. 6461 which falls within the jurisdiction of the Committee on Appropriations is the paragraph beginning on line 3 of page 3 and ending on line 25 of page 3 of the bill, and particularly that portion of the paragraph which states "(4) There are hereby appropriated to the Public Broadcasting Fund, out of any moneys in the Treasury not otherwise appropriated, for each of the fiscal years

during the period beginning July 1, 1975, and ending September 30, 1980, and for the period July 1, 1976, through September 30, 1976, such amounts as are authorized to be appropriated by paragraph (3) of this subsection, which shall remain available until expended.”

This provision makes appropriations for 5 fiscal years, ending in 1980. The Committee is opposed to its inclusion in H.R. 6461, and will propose to delete it if H.R. 6461 is brought up for consideration in the House in its present form. Elimination of this language would leave the authorizations, the matching requirements, and the other essential features of the bill intact, and would permit appropriations to carry out the intent of H.R. 6461 to be made following its enactment. This will not result in any significant delay in availability of funds for public broadcasting since the Committee is prepared to act on appropriations for the Corporation for Public Broadcasting as soon as the enactment of the authorizing legislation appears imminent. While the Committee has rejected the provision in H.R. 6461 for automatic appropriations for a five year period ending September 30, 1980, it does not in principle oppose advance appropriations for public broadcasting, and *will* include appropriations for the 3 fiscal years ending September 30, 1978 in an appropriation bill if and when H.R. 6461, or similar legislation, is enacted. Under this timetable, appropriations for fiscal year 1979 would be considered in the next session of Congress, in connection with the appropriations bill for fiscal year 1977, and appropriations for fiscal year 1980 would be considered by the first session of the 95th Congress, and so on.

ANNUAL REVIEW BY CONGRESS

The Committee believes that the practice of annual review of appropriations of public funds is one of the most important responsibilities of the Congress, and should not be abandoned, except under most unusual circumstances. H.R. 6461 would exempt the Corporation for Public Broadcasting from that annual review and provide it with appropriations for a five-year period, contingent upon certain non-Federal matching requirements and limited by appropriation ceilings in the bill. The Secretary of the Treasury would automatically pay to the Corporation for each of the fiscal years 1976 through 1980 \$1.00 in Federal funds for every \$2.50 in non-Federal funds received by the public broadcasting system during each second-preceding fiscal year, except that in fiscal years 1979 and 1980 \$3.00 in non-Federal funds would be required to obtain \$1.00 in Federal funds. The maximum amounts, as established by the appropriation ceilings in the bill, that could be paid to the Corporation under this procedure for each of the five fiscal years are as follows: \$88 million for 1976, \$103 million for 1977, \$121 million for 1978, \$140 million for 1979, and \$160 million for 1980. For the three-month transition period between fiscal years 1976 and 1977, the maximum amount is \$22 million. In other words, H.R. 6461, as reported from the Commerce Committee, would appropriate as much as \$634,000,000 over a five-year period for the Corporation for Public Broadcasting, which would become available automatically each year without further action by the Congress. The Committee is not persuaded that the budgetary problems of the Corporation for Public Broadcasting are sufficiently different from those of other publicly supported agencies and institutions to justify such a radical departure from the normal appropriation process.

CONGRESSIONAL CONTROL OF THE BUDGET

Congress has recently reaffirmed its support of the concept of annual review and control of Federal expenditures with the enactment of the Congressional Budget and Impoundment Control Act of 1974. One of the principal reasons for the passage of that act was to make Congressional consideration of the budget more orderly and comprehensive. It was obvious that Congressional consideration of the President's budget had become too fragmented, and that the Congress needed to get better control over the procedures it uses to make decisions on the budget. The Report of the House Committee on Rules in the Ninety-third Congress (House Report 93-658), accompanying the bill which was to become the Budget and Impoundment Control Act, was quite straightforward in its assessment of the Congressional budget process. The following excerpts from pages 22 and 23 of that Report describe the problems with the legislative budget process which gave rise to the budget control legislation:

The excessive fragmentation of the budget process in Congress makes it difficult for Congress to effectively assess program priorities or to establish overall budget policy. At the very least, priority-setting means that competing claims on the budget are decided in some comprehensive manner rather than in isolation from one another. This is not now the case, for Congress not only acts on the various appropriation measures over a period of many months, but it also separately deals with the many spending measures that are escorted through the backdoor. Nor does it explicitly decide how big the budget should be or whether there should be a surplus or deficit. Rather the total is the sum of many individual actions, most of which are taken without any real cognizance of their impact on the economy.

The signs are everywhere that the legislative budget machinery is in disrepair. One indication is the portion of the budget which is beyond effective control by Congress. The official estimate is that 75 percent of the budget "is relatively uncontrollable under existing law," a percentage that has climbed steeply in recent years. In fact, uncontrollables are the fastest rising part of the budget and each year they claim a large share of any new funds that may be available.

* * * Budget uncontrollability is closely tied to another recent development, the increased use of backdoor spending outside the regular appropriations process. . . . More than \$100 billion in spending derives from permanent appropriations which become available without any current action by Congress * * *

Often there is sound reason for the use of backdoors, but the problem is that they contribute greatly to the fragmentation of the appropriations process . . . the aggregate effect of all backdoors has been to sharply reduce the portion of the budget that goes through the regular appropriations process. In fiscal 1974, for example, an estimated 56 percent of all spending is outside the appropriations process.

The Report of the House Committee on the Budget to accompany the first concurrent resolution on the budget for fiscal year 1976 (House Report 94-145) discusses the problem of uncontrollability of the budget. The Report states on page 56 that:

* * * \$133 billion or 36% of the \$368 billion in outlays will result from permanent authority already made available by existing laws. Lesser amounts of \$51 billion and \$72 billion will result from prior authority and entitlement legislation. A total of \$256 billion or 69% of the \$368 billion budget total included in the estimate of the Budget Committee is mandatory under existing law. The portion of the outlays designated as relatively controllable is approximately \$113 billion, or 31% of the total.

On page 42, the Budget Committee, in discussing general revenue sharing which also results from a permanent authorization and appropriation (through December of 1976), states that:

Of major concern to the Committee is the serious problem posed by the existence of large "back-door" financed programs, such as revenue sharing, which restrict the ability of Congress to achieve the goal of budget control.

It is clear that the proposed long-range financing for public broadcasting as contained in H.R. 6461 would establish another backdoor spending or "uncontrollable" program, which would be exempt from competition with other programs for Federal dollars. Once the five-year appropriations were enacted, the Congress and the Executive Branch, for all practical purposes, would lose control over them. The Corporation for Public Broadcasting would be removed from the annual appropriations process and the fiscal discipline which results from that process. Since such a large percentage of the Federal budget is already "uncontrollable", it does not seem prudent to place yet another large Federal program in that category. Quite the contrary, it would seem wise for the Congress to *regain* control of some programs which are now considered "uncontrollable".

INSULATION

H.R. 6461 is designed to "insulate" public broadcasting from the legislative process. It provides that "officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress". However, as a practical matter, in order to influence the purposes for which public money is spent, Congress would be required to amend or repeal the law, or to rescind the appropriations. The oversight and accountability associated with the annual appropriations process would disappear.

The Labor-HEW Subcommittee on Appropriations heard detailed testimony on this bill after it was reported out by the Commerce Committee and referred by the Speaker to the Appropriations Committee. The Subcommittee received testimony from the chairman and ranking minority member of the Subcommittee on Communications of the Commerce Committee, the Office of Telecommunications Policy in the Executive Office of the President, the Corporation for Public Broadcasting, and representatives of the public broadcasting industry.

The primary argument in favor of the proposed long-range financing plan, according to its proponents, is that it would remove the budget of the Corporation for Public Broadcasting from the annual appropriations process, thereby eliminating the "political hazards" associated with that process. The case for "insulated funding" is made in the statement of the Corporation for Public Broadcasting prepared for the hearings conducted on this bill by the Labor-HEW Appropriations Subcommittee on July 9, as follows:

* * * it is related to considerations fundamental to our nation: the First Amendment freedoms of speech and of the press.

Under the Public Broadcasting Act, public broadcasting must be afforded "maximum protection . . . from extraneous interference and control." Although the private, non-government status of the Corporation was conceived by Congress as a means of providing protection to public broadcasters, CPB was given only part of the shield necessary to insulate itself and the stations from the potential of political interference in day to day operations. A critical part of the shield, insulated, long-range funding, was missing. . . .

The five-year authorizations and appropriations in H.R. 6461 would go a long way toward eliminating both the risk of and the appearance of undue interference with and control of public broadcasting.

The Committee has carefully considered the merits of this argument, but it is not convinced that a five-year appropriation outside of the normal appropriations process is warranted simply because the potential for governmental interference with public broadcasting exists. The Committee does not believe that "the risk of and the appearance of undue interference", however that may be defined, is sufficient reason for such a drastic departure from the normal appropriations process.

Each year, the Committee and the Congress consider, and act upon, billions of dollars in appropriations for grants and loans to both private and public educational institutions. Such respected institutions of higher education as Gallaudet College, Howard University, and the National Technical Institute for the Deaf receive most of their operating funds directly from the Federal government through annual appropriations. Local school districts throughout the Nation now receive substantial amounts of Federal aid each year. Persuasive arguments could be made for insulating these institutions from potential political interference resulting from their dependence upon annual appropriations. Nevertheless, such arguments do not outweigh Congress' responsibility to the electorate to assure that public funds are wisely and effectively spent.

LONG-RANGE PLANNING

It is also maintained that public broadcasting requires multi-year funding in order to have adequate lead time to develop quality programming. The Committee recognizes the merit of this argument but it is also aware that widely acclaimed programs such as *Sesame Street* and *The Electric Company* have been produced with the use

Federal funds derived from the regular appropriations process. There is no doubt that any Federal agency, or other entity receiving Federal funds, could argue that long-range planning would be improved if it were given appropriations for five years at a time. But the Committee submits that the purpose of the appropriations process is to give the people, through their elected representatives in the Congress, an opportunity to find out how their tax collars are being spent and to change the way they are being spent should the need arise. The Committee believes that a five-year appropriation, for all intents and purposes, would prohibit the Congress from performing those essential tasks.

ADVANCE APPROPRIATIONS

At the same time, however, the Committee does recognize that advance appropriations for the Corporation for Public Broadcasting, similar to those provided for many education and training programs administered by the Department of Health, Education, and Welfare could help to improve the planning and management of public broadcasting. Accordingly, as soon as H.R. 6461, or similar authorizing legislation, is enacted, the Committee will recommend appropriations for fiscal year 1976, and advance appropriations for fiscal years 1977 and 1978, and would expect that Congress would consider additional advance appropriations each year thereafter.

The Committee favors increased support for public broadcasting from *all* sources, including the Federal government. The record since fiscal year 1969, the year in which the Corporation was established, reflects ample evidence that the Committee has been generous in providing funds for public broadcasting. The appropriation for the Corporation rose from \$5,000,000 in fiscal year 1969 to \$62,000,000 in fiscal year 1975. There is no reason to believe that the appropriation will not continue to grow substantially in the years ahead. For these reasons, the Committee does not oppose the enactment of H.R. 6461, or similar legislation, if paragraph 4 of the bill is amended to remove the appropriation language appearing on lines 3 through 10 of page 3.

ADDITIONAL VIEWS OF THE HONORABLE DAVE OBEY

I do not believe that anyone can seriously question my support for public broadcasting. In my state legislative days, I was the author of the legislation which established an integrated educational television network in Wisconsin. But I most strongly support the position of the Appropriations Committee on this matter if for no other reason than to preserve an intelligent Congressional budget-making system.

More importantly, I want to challenge some of the assumptions which underlie this piece of legislation:

1. I do not believe we can justify removing public broadcasting from the same economic pressures, the same competition for federal dollars, faced by every other segment of society. That would be unfair; it would breed elitism in a field which cannot afford it; and it would be bad fiscal policy.

Under the Full Employment Act of 1946, we have an obligation to try to manage the economy and fine-tune it as best we can to assure economic stability. But this bill would add yet another item to the ever growing list of "uncontrollables" in the federal budget, thereby making that fiscal management responsibility even more difficult.

2. Most importantly—at the risk of appearing to oppose motherhood, apple pie and Arthur Godfrey—let me raise a dissenting voice by suggesting that the "insulation from political pressure" so fervently endorsed by the advocates of this bill in this form might in fact be an unhealthy thing in a competitive democracy. I want the public broadcasters of this country to remain independent of any and all political pressures. But I do not honestly think that structural niceties can preserve that independence.

Insulation does not preserve freedom in a competitive democracy or in any other institution that I know of. Guts and commitment may, but insulation does not. And I think it is healthy to have *every* segment of our society hanging in there battling for our freedoms: freedom of expression, freedom of association, freedom of religion—all of the freedoms guaranteed to us on paper by the Constitution, but preserved for us in the last analysis by our active and continuous vigilance.

The insulation for public broadcasters sought in this bill would remove from the shoulders of one important group in our society the direct necessity to remain in the fray. I think that would be bad for the country because we need all the people we can get to participate daily in the battle to preserve our constitutional freedoms. And we best fight that battle if *our* freedoms, and not just the other guy's, are in danger of being lost or diluted.

I just happen to have a suspicion that the less the American people—and especially their opinion leaders—are insulated in any way from the potential venality of their elected officials, the more attention they are likely to pay in the first place to the character and judgement of the people they elect to exercise power. That is the fundamental reason that leads me to strongly support the position of the Appropriations Committee on this matter.

DAVE OBEY.

ADDITIONAL VIEWS OF THE HONORABLE LOUIS STOKES

I concur in the action of Chairman Flood and the Subcommittee in rejecting the attempted encroachment upon the jurisdiction of the Appropriations Committee by a legislative committee. Given the established committee system in the House of Representatives, as currently constituted, it is imperative that we scrupulously respect and maintain the jurisdictional integrity of the various committees. To do otherwise would be to invite confusion, uncertainty and, eventually, legislative chaos.

Chairman Flood is to be commended for the thoroughness of the inquiry into the merits of the Public Broadcasting Financing Act of 1975. The hearing, lasting some seven and one-half hours, elicited extensive data and information concerning the progress, plans and needs of Public Broadcasting.

Significantly, however, neither the testimony presented or elicited during the entire hearing, nor materials subsequently submitted, made a convincing case for long-term, "insulated" funding of the Corporation for Public Broadcasting (CPB). The major thrust of the presentations, i.e., the need to shield Public Broadcasting from undue political pressures inherent in the regular Federal budget—appropriations process, simply did not stand the test. Indeed, under close questioning by members of the Committee, including my personal inquiries, the principal industry representatives, Messrs. Robert S. Benjamin of CPB and Ralph Rogers of the Public Broadcasting Service (PBS), quite candidly admitted that they have experienced no incidents of interference or pressure from members of the Committee or other Members of Congress. This leads me to the inescapable conclusion that the real justification for "insulation" is that Public Broadcasting executives are too busy to be burdened with appearing before the Committee annually, to account for their use of the public funds they have received.

It cannot be reasonably doubted that Public Broadcasting, as an educational, noncommercial communications medium, is vital to the social and economic welfare of our nation. Nonetheless, it is imperative that the Congress insist upon accountability by those who would spend Federal funds, however good or noble the purpose for which such funds are expended: to do otherwise would amount to dereliction of a constitutional duty by the Congress itself.

Moreover, given the poor record of Public Broadcasting in the areas of equal employment of minorities and women, and balanced programming reflecting their particular needs and interests, the Committee and the Congress would do well to insist upon continuing Congressional oversight in order to insure more substantial progress in these extremely important and neglected areas of public concern.

The vigorous and steady growth of Public Broadcasting, which I will continue to strongly support, gives testimony to the probability that Congressional oversight has served, however incidentally, as an aid and not a hindrance to this important industry.

LOUIS STOKES.