

~~REPORT WITH AN AMENDMENT~~

98th CONGRESS
1st SESSION

HOUSE OF REPRESENTATIVES

REPORT
No. _____

FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION ACT OF 1983

Amended to be inserted

Mr. Dingell, from the Committee on Energy and Commerce, submitted the following

REPORT

H. R. 2755

[To accompany _____]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Energy and Commerce

to whom was referred the ~~bill~~ ^{bill} ~~joint resolution~~ (H. R. 2755)

to authorize appropriations for the Federal Communications Commission for fiscal years 1984 and 1985, and for other purposes,

having considered the same, reports favorably thereon with an amendment and recommends that the ~~joint resolution~~ ^{bill} as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

together with
VIEWS

1 SHORT TITLE

2 SECTION 1. This Act may be cited as the 'Federal
3 Communications Commission Authorization Act of 1983'.

4 FEDERAL COMMUNICATIONS COMMISSION APPROPRIATIONS

5 AUTHORIZATION

6 SEC. 2. (a) Section 6 of the Communications Act of 1934
7 (47 U.S.C. 156) is amended to read as follows:

8 'AUTHORIZATION OF APPROPRIATIONS

9 'SEC. 6. There are authorized to be appropriated for
10 the administration of this Act by the Commission
11 \$91,156,000, together with such sums as may be necessary for
12 increases resulting from adjustments in salary, pay,
13 retirement, other employee benefits required by law, and
14 other nondiscretionary costs, for each of the fiscal years
15 1984 and 1985.'.

16 (b) The amendment made by subsection (a) shall apply
17 with respect to fiscal years beginning after September 30,
18 1983.

19 INCREASE IN PUBLIC BROADCASTING APPROPRIATIONS AUTHORIZATION

20 SEC. 3. Section 396(k)(1)(C) of the Communications Act
21 of 1934 (47 U.S.C. 396(k)(1)(C)) is amended by striking out
22 ', and \$130,000,000 for each of the fiscal years 1984,
23 1985, and 1986.' and inserting in lieu thereof ',
24 \$145,000,000 for fiscal year 1984, \$153,000,000 for fiscal
25 year 1985, and \$162,000,000 for fiscal year 1986.'.

26 FEDERAL COMMUNICATIONS COMMISSION ADMINISTRATIVE MATTERS

27 SEC. 4. (a) Section 316 of the Communications Act of

1 1934 (47 U.S.C. 316) is amended--

2 (1) in subsection (a), by inserting '(1)' after
3 '(a)' and by striking out 'and shall have been given
4 reasonable opportunity' and all that follows and
5 inserting in lieu thereof 'and shall be given
6 reasonable opportunity, of at least 30 days, to protest
7 such proposed order of modification; except that, where
8 safety of life or property is involved, the Commission
9 may by order provide for a shorter period of notice.';

10 (2) by adding at the end of subsection (a) the
11 following new paragraphs:

12 '(2) Any other licensee or permittee who believes its
13 license or permit would be modified by the proposed action
14 may also protest the proposed action before its effective
15 date.

16 '(3) A protest filed pursuant to this subsection shall
17 be subject to the requirements of section 309 for petitions
18 to deny.'; and

19 (3) in subsection (b), by inserting before the
20 period at the end thereof the following: '; except
21 that, with respect to any issue that addresses the
22 question of whether the proposed action would modify the
23 license or permit of a person described in subsection
24 (a)(2), such burdens shall be as determined by the
25 Commission'.

1 (b) Section 503(b)(5) of such Act (47 U.S.C. 503(b)(5))
2 is amended by inserting, before the period in the second
3 sentence, the following: "or if the person involved is
4 transmitting on frequencies assigned for use in a service in
5 which individual station operation is authorized by rule
6 pursuant to section 307(e)".

7 FINANCIAL OVERSIGHT OF NATIONAL PUBLIC RADIO BY CORPORATION
8 FOR PUBLIC BROADCASTING

9 SEC. 5. Section 396(1) of the Communications Act of 1934
10 (47 U.S.C. 396(1)) is amended by adding at the end thereof
11 the following:

12 "(4)(A) Subject to subparagraph (C), the Corporation
13 may not distribute to National Public Radio any funds
14 authorized to be appropriated by this Act unless there is in
15 effect a determination by the Corporation that--

16 "(i) National Public Radio has adopted and is
17 implementing a system of financial controls and
18 procedures devised in consultation with, and recommended
19 by, an independent certified public accountant and
20 determined by the Comptroller General as sufficient to
21 assure that the financial transactions of National
22 Public Radio reflect prudent management practices and
23 are accounted for in a manner consistent with generally
24 accepted accounting principles;

25 "(ii) National Public Radio has adopted a budget

1 SEC. 6. (a) Section 396(c)(1) of the Communications Act
2 of 1934 (47 U.S.C. 396(c)(1)) is amended--

3 (1) in the first sentence, by striking out '', and
4 the President of the Corporation''; and

5 (2) by striking out the third sentence.

6 (b)(1) Section 396(d)(1) of such Act is amended by
7 inserting after ''annually'' the following: ''elect one of
8 their members to be Chairman and''.

9 (2) The subsection heading for section 396(d) of such
10 Act is amended by striking out ''VICE CHAIRMAN'' and
11 inserting in lieu thereof ''CHAIRMAN AND VICE CHAIRMAN''.

12 (c) Section 396(e)(1) of such Act is amended by striking
13 out ''No officer of the Corporation, other than a Vice
14 Chairman'' and inserting in lieu thereof ''No officer of the
15 Corporation, other than the Chairman or a Vice Chairman''.

16 ADMINISTRATION OF REGIONAL CONCENTRATION RULES FOR BROADCAST
17 STATIONS

18 SEC. 7. Section 310 of the Communications Act of 1934
19 (47 U.S.C. 310) is amended by adding at the end thereof the
20 following new subsection:

21 ''(e)(1) In the case of any broadcast station, and any
22 ownership interest therein, which is excluded from the
23 regional concentration rules by reason of the savings
24 provision for existing facilities provided by the First
25 Report and Order adopted March 9, 1977 (Docket No. 20548; 42

1 Fed. Reg. 16145), the exclusion shall not terminate solely
2 by reason of changes made in the technical facilities of the
3 station to improve its service.

4 '(2) For purposes of this subsection, the term
5 'regional concentration rules' means the provisions of
6 sections 73.35, 73.240, and 73.636 of title 47, Code of
7 Federal Regulations (as in effect June 1, 1983), which
8 prohibit any party from directly or indirectly owning,
9 operating, or controlling three broadcast stations in one or
10 several services where any two of such stations are within
11 100 miles of the third (measured city-to-city), and where
12 there is a primary service contour overlap of any of the
13 stations.'.

14 CLARIFICATION AND ADMINISTRATION OF SECTION 223

15 SEC. 8. (a) Section 223 of the Communications Act of
16 1934 (47 U.S.C. 223) is amended by inserting '(a)' before
17 'Whoever' and by adding at the end thereof the following
18 new subsection:

19 '(b)(1) Whoever--

20 '(A) in the District of Columbia or in interstate
21 or foreign communication, by means of telephone, makes
22 (directly or by recording device) any comment, request,
23 suggestion, or proposal which is obscene, lewd,
24 lascivious, filthy, or indecent, regardless of whether
25 the maker of such comment placed the call, or

1 ''(B) knowingly permits any telephone facility under
2 such person's control to be used for any purpose
3 prohibited by subparagraph (A),
4 shall be fined not more than \$50,000 or imprisoned not more
5 than six months, or both.

6 ''(2)(A) In addition to the criminal penalties under
7 paragraph (1), whoever, in the District of Columbia or in
8 interstate or foreign communication, violates paragraph
9 (1)(A) or (1)(B) for commercial purposes shall be subject to
10 a civil fine of not more than \$50,000 for each violation.
11 For purposes of this paragraph, each day of violation shall
12 constitute a separate violation.

13 ''(B) A fine under this paragraph may be assessed
14 either--

15 ''(i) by a court, pursuant to a civil action by the
16 Commission or any attorney employed by the Commission
17 who is designated by the Commission for such purpose, or

18 ''(ii) by the Commission, after appropriate
19 administrative proceedings.

20 ''(3)(A) Either the Attorney General, or the Commission
21 or any attorney employed by the Commission who is designated
22 by the Commission for such purpose, may bring suit in a
23 district court of the United States to enjoin any act or
24 practice which allegedly violates paragraph (1)(A) or
25 (1)(B).

1 ''(B) Upon a proper showing that, weighing the equities
2 and considering the likelihood of ultimate success, a
3 preliminary injunction would be in the public interest, and
4 after notice to the defendant, such preliminary injunction
5 may be granted. If a full trial on the merits is not
6 scheduled within such period (not exceeding 20 days) as may
7 be specified by the court after issuance of the preliminary
8 injunction, the injunction shall be dissolved by the
9 court.''. .

10 (b) Section 223 (a) of the Communications Act of 1934
11 (as redesignated by subsection (a) of this section) is
12 amended--

13 (1) in paragraph (1), by striking out subparagraph
14 (A) and by redesignating subparagraphs (B), (C), and (D)
15 as subparagraphs (A), (B), and (C), respectively; and

16 (2) in paragraph (2), by inserting ''facility''
17 after ''telephone''.

18 DIRECTION ON USE OF FUNDS REGARDING SPECTRUM ALLOCATION AND
19 ASSIGNMENTS FOR PUBLIC SAFETY PURPOSES

20 SEC. 9. (a) Funds authorized to be appropriated under
21 section 2 of this Act shall be used by the Federal
22 Communications Commission to establish a plan which
23 adequately ensures that the needs of State and local public
24 safety authorities would be taken into account in making
25 allocations of the electromagnetic spectrum. In establishing

1 such a plan the Commission shall (1) review the current and
2 future needs of such public safety authorities in light of
3 suitable and commercially available equipment and (2)
4 consider the need for a nationwide contiguous frequency
5 allocation for public safety purposes.

6 (b) Pending adoption of a plan, the Commission, while
7 making assignments and allocations, shall duly recognize the
8 needs of State and local public safety authorities.

SUMMARY AND PURPOSE OF THE LEGISLATION

The bill, H.R. 2755, amends the Communications Act of 1934 to authorize appropriations for the Federal Communications Commission (FCC) for fiscal years 1984 and 1985 at a level of \$91.2 million. The legislation also amends the Communications Act of 1934 to authorize supplemental appropriations for the Corporation for Public Broadcasting for fiscal year 1984 at a level of \$145 million; for fiscal year 1985 at a level of \$153 million; and for fiscal year 1986 at a level of \$162 million.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1981, Congress adopted a two-year authorization for the Federal Communications Commission (P.L. 97-35). That authorization expires on September 30, 1983. This legislation would reauthorize the agency for an additional two years, providing additional personnel and resources to meet policy needs in several key areas.

MASS MEDIA RESOURCES

The mass media marketplace is in the midst of tremendous change. There exists the potential to greatly expand the number of delivery systems and outlets that can bring electronic information and programming to the public. The FCC has made some strides toward meeting its Congressional mandate to bring new services to the public.

But in order for the Commission to fulfill this mandate, the Committee feels that it must be given the appropriate resources to do its job. Within the past four years, the Commission has greatly reduced the amount of paperwork it requires of broadcast license renewal applicants, and Congress significantly extended license terms, creating some savings with respect to existing Commission resources.

However, applications for existing and new services have inundated the Commission, creating an enormous backlog. The Commission has indicated in its budget request that it currently lacks the resources to keep up with the increasing volume of applications for existing services. For example, the Commission has requested funding for 32 additional positions to help reduce the backlog of applications for FM radio licenses. The Commission asserts that with these additional resources, it would be capable of processing 500 more applications in FY 84 and approximately 1,300 more applications in FY 85 than it would be able to process at current funding levels. The Committee has allocated \$896,661, for the 32 staff positions, noting that

without such additional resources, there will clearly be long delays in getting this additional radio service to the public.

The FCC also indicates that it does not have the staff resources to process additional petitions that are expected to be filed as a result of Commission action on new services. For example, up to 300 new VHF outlets could be created as a result of Commission action on the VHF drop-in proceeding (FCC Docket 20418). An anticipated 2,125 VHF applications would need processing. The Commission has requested an additional 15 positions in order to have sufficient resources to process this service once it is approved. The Committee has allocated \$376,380 for the funding of these staff positions so these important, additional video outlets can become operational.

The Commission also has requested additional personnel and resources to process the volume of applications resulting from final action on the FM drop-in proceeding (BB Docket 80-90). An additional 750 new and major change applications are anticipated in fiscal year 1984 as a result of this action. The Commission indicated that without the requested additional positions, the workload backlog would be 2400 applications; with the requested 30 positions, approximately 300 additional applications could be processed. The Committee has allocated \$705,214 for the funding of these staff resources to permit efficient processing of FM channel assignments. The Committee also intends that \$18,000 should be allocated for the purchase of six computer terminals for the staff to perform engineering data entry and facilitate computer-generated FM authorizations.

Also pending before the Commission are 12,000 low power television (LPTV) applications. The Commission has not requested any additional personnel over its FY 83 levels for the processing of this service. The Commission has begun to process these applications by computer, and has adopted lottery rules, pursuant to Congressional directive, which will further expedite processing of this service.

The Committee is concerned, however, about the projections now being made by the Commission with regard to the number of LPTV construction permits which may be issued in 1983. These projections are at variance with figures given to Congress as late as January, 1983, and do not meet the expectations raised in 1982 when Congress authorized the Commission to use random selection procedures to allocate low power television construction permits among mutually exclusive applicants.

The Committee urges the Commission to move expeditiously to complete the processing of rural, "Tier One," low power television applications no later than early 1984. The Committee notes that the large number of applications for rural areas already on file at the Commission suggests that the Commission's goal of introducing the LPTV service first to areas most in need of new television services will be met. At the same time, the

Committee does not believe that the introduction of LPTV service to more populous parts of the country should be delayed indefinitely. A substantial question exists as to whether existing resources will be adequate to expeditiously process backlogged LPTV applications, particularly if that service is to be available in major markets in the near future. The Committee is particularly interested in LPTV applications being processed for major metropolitan areas since a large number of these have been filed by minority and women applicants. If Commission resources are inadequate, then the Committee expects the Commission to request the additional processing staff necessary to accomplish the goal.

NEW TECHNOLOGIES

The Committee has long encouraged the FCC to foster the delivery of new services and new technologies to the public in order to increase competition and promote diversity. Development of new electronic technologies and services has been, and will continue to be a significant factor in creating new jobs and providing U.S. leadership in the new world information era.

The commercial risk in the process of developing new technologies and new applications of those technologies is substantial. The Communications Act, particularly section 303(g), provides ample authority for the affirmative use of developmental and experimental licenses to assure that the development of these new technologies is encouraged. The Committee encourages the Commission to grant experimental and development licenses liberally and expeditiously for this purpose.

EQUAL EMPLOYMENT OPPORTUNITY

Very serious questions have been raised about the underrepresentation of minorities in the Commission's own workforce, particularly at the senior executive service level. The Committee believes that it is imperative that the FCC's hiring practices be a model to the industries it regulates. Since H.R. 2755 includes funding which is targeted for increased hiring at the Commission, the Committee requests that the FCC provide the Committee, at the earliest possible date, a concrete plan of action which is designed to assure that there will be no deficiency in the representation of minorities within the Commission's workforce. The Committee notes that this effort should be part of a broader initiative which must be aggressively undertaken to ensure both strict industry compliance with EEO requirements and much broader minority ownership in the telecommunications industry.

COMMON CARRIER RESOURCES

In the common carrier area, the settlement of the antitrust

suit between AT&T and Department of Justice, a series of FCC decisions, and continued technological developments have spurred a restructuring of the industry. THE FCC has played, and will continue to play, a crucial role in fostering the development of a truly competitive marketplace, while assuring that telephone service remains universally available and affordable. The FCC must have the resources to make rational decisions on a wide variety of common carrier issues, to understand the changing structure and status of competition in the telecommunications industry, and to ensure that this country's long-standing commitment to universal telephone service is maintained in an increasingly competitive environment.

The replacement of the existing separations and settlements process and division of revenue is necessary in light of changes in the telecommunications industry. Development and implementation of a replacement scheme will require a significant expenditure of money and manpower. The Committee intends that \$150,569 be allocated for an additional five positions to handle this task. The Commission's long distance access charge order (CC Docket 78-72 Phase I) represents a fundamental change in the allocation of the costs of jointly used facilities between long distance carriers and local customers. The Committee is considering legislation that would overturn this order. The Committee notes that in the event that Congress acts to reverse the existing access charge decision, the additional positions and monies should be used to develop an access charge plan consistent with Congressional intent.

Recent Commission decisions have authorized a number of new common carrier services. However, applications to provide these services have created an enormous backlog. Between December 1981 and March 1983, for example, 1,110 applications for cellular radio licenses were filed at the Commission. Currently, 16 staff persons carry the entire burden of processing pending cellular applications. According to the Mobile Services Division of the Common Carrier Bureau, the addition of 15 positions would reduce by one year the time necessary to process these applications. Accordingly, the Committee has allocated \$427,742 for that purpose.

In July 1982, in an effort to relieve the shortage of paging frequencies, the Commission allocated spectrum space for 68 paging channels and 12 multiple address paging control channels. Currently, there are over 6,000 applications pending for these services. The Committee has allocated \$223,559 for an additional 8 positions to process these applications.

Additionally, there are thousands of applications pending for microwave frequencies, multipoint distribution service, and newly-authorized paging services; the Commission has also begun to receive applications for digital electronic message service. The Committee believes that the \$223,559 it has allocated for these purposes would enable the FCC to make substantial progress

in processing these applications.

UNIVERSAL SERVICE

The Committee is committed to ensuring that all Americans have access to telephone service. At the same time, we recognize that technological innovation is changing the communications industry, introducing competition where there were once only "natural monopolies". The Committee supports the growth of competition in the telecommunications industry; but competition need not -- and should not -- undermine this country's 50 year commitment to universal service.

Nonetheless, a number of recent FCC decisions (such as access charges and changes in depreciation schedules for telephone network equipment), together with the divestiture of AT&T, may have a cumulative effect on local telephone rates that could jeopardize universal service. The Committee is currently considering legislation to address this issue.

It would have been prudent for the FCC to institute an inquiry or a rulemaking process to investigate and evaluate the impact its contemplated changes in industry structure and regulation would have on universal service, and use the results of that proceeding as a template against which to judge its actions. Unfortunately, the FCC did not undertake such an investigation until late this year.

On June 29, the Subcommittee on Telecommunications, Consumer Protection and Finance, by unanimous vote, adopted H. Res. 231 which calls on the FCC to begin such an inquiry. On July 27, the FCC belatedly agreed to commence a formal investigation along the lines prescribed in H. Res. 231. The Committee expects that the public record developed through this inquiry, together with clear Congressional guidance, will assure that Commission actions safeguard universal service in an increasingly competitive environment.

UNIFORM SYSTEM OF ACCOUNTS

The Committee has repeatedly expressed its intent that ratepayers of regulated telephone services not bear any of the costs of a carrier's competitive ventures, and it has directed the Commission to take all steps necessary to afford that protection. Such protective steps must include a revised uniform system of accounts which separates the costs and usage for unregulated operations from the the costs and usage for regulated facilities and services.

As the GAO has repeatedly found, the FCC's present accounting requirements are incapable of performing these tasks, and despite many promises to this Committee over the past

several years, the FCC is not close to adopting the requisite revisions. The Committee reminds the Commission of its public responsibility to insure that regulated rates do not rise in order to subsidize unregulated activities and directs the Commission to honor that public trust.

TELECOMMUNICATIONS TRADE WITH CHINA

The Committee is extremely interested in expanding exports of telecommunications facilities and services. The People's Republic of China (PRC) is a huge potential market for American telecommunications firms, and it is now placing major emphasis on upgrading its telephone system.

The Committee understands that the Executive Branch is in the process of negotiating a telecommunications protocol with the PRC to increase cooperation between the two countries in this area.

This authorization includes \$50,000 to defray the in-country expenses of technical delegations from the PRC which visit U.S. telecommunications agencies and private firms pursuant to the protocol.

FUNDING FOR PUBLIC BROADCASTING

Under the Public Broadcasting Amendments Act of 1981, federal authorizations for public radio and television were significantly reduced from \$220 million in FY 1983 to a level of \$130 million for each of fiscal years 1984, 1985, and 1986. Similarly, appropriations for public broadcasting have declined 25%, from \$172 million in FY 1982 to \$130 million budgeted for FY 1984 and 1985.

The public broadcasting provision of H.R. 2755 increases funding levels for the Corporation for Public Broadcasting (CPB) to \$145 million for FY 1984, \$153 million for FY 1985 and \$162 million for FY 1986. These figures represent an increase of 5.6% over the amount appropriated in FY 1983-- the expected inflation rate, during the next three years, according to the Administration's budget submission to Congress. At the time of the Public Broadcasting Amendments Act of 1981, it was hoped that alternate means of financing public broadcasting (in part provided for in that Act) would substitute for the reduced funding. In the 1981 Conference Report, Congress expressed concern that while public broadcasting should sustain its fair share of budgetary cuts, its Congressional mandate to provide programs of high quality, diversity, creativity and excellence—

HEARINGS

The Subcommittee on Telecommunications, Consumer Protection and Finance has held periodic oversight hearings at which officials from the Federal Communications Commission have testified. On April 19, 1983, the Subcommittee held a hearing on H.R. 2755, to authorize appropriations for the Federal Communications Commission, and for other purposes. The Chairman of the Federal Communications Commission, Mark Fowler, and the other Commissioners, Anne P. Jones, Henry Rivera, James H. Quello, and Steven Sharp appeared before the Subcommittee accompanied by key Commission staff.

COMMITTEE CONSIDERATION

On April 28, the Subcommittee met in open markup and by voice vote ordered H.R. 2755 to be reported to the Full Committee on Energy and Commerce.

On June 30, 1983, the Full Energy and Commerce Committee met in open markup. The Committee, by voice vote, adopted an amendment, creating a new section in the legislation, that places strict financial management conditions on the distribution of funds to National Public Radio by the Corporation for Public Broadcasting.

By voice vote, the Committee adopted a new section dealing with CPB administrative matters. This amends the Communications Act of 1934 to allow the CPB Board of Directors to select a Chairman of the Board from among themselves. Present law requires that as of October 1, 1983, the President of CPB would serve on the Board, and as Chairman of the Board.

The Committee believes that the public interest will best be served if the present practice of the publicly selected Board choosing its own chairman is continued. The Committee further believes that this scheme will continue to foster the type of independence of the CPB Board as has been contemplated by Congress.

The Committee, by voice vote, adopted three other amendments. An amendment was adopted that deals with the administration of regional concentration rules for broadcast stations. The Committee also adopted an amendment to amend section 223 of the Communications Act to extend the prohibition against obscene telephone calls to prerecorded messages, regardless of whether the sender of the message initiated the call.

Finally, the Committee agreed to an amendment that requires the FCC to establish a plan that assesses current and future frequency needs of public safety authorities and adequately assures that the needs of state and local public safety authorities are taken into account when making frequency allocations.

The Committee rejected an amendment, by voice vote, that would have deleted the supplemental authorization of funding for fiscal years 1984-86 for the Corporation for Public Broadcasting (CPB). The Committee also rejected, by a vote of 27 to 13, an amendment that would have reduced the amount of the supplemental authorization for CPB to \$134 million in FY 1984, \$138 million in FY 1985, and \$142 million in FY 1986.

The Energy and Commerce Committee, by a recorded vote of 39 to 2, a quorum being present, ordered H.R. 2755 to be reported with amendments to the House of Representatives with the recommendation that the bill do pass.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause (2)(1)(3)(a) of rule XI of the Rules of the House of Representatives, the Committee has made general oversight findings set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause (2)(1)(3)(b) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement regarding the inflationary impact of the bill as reported:

The Committee believes that enactment of H.R. 2755 will have a minimal inflationary impact, if any, on the overall economy. The Committee further notes that the provision of new telecommunications technologies and services to the public, which this legislation encourages, will have a positive effect on this country's productivity, create new jobs, and will actually help to reduce the rate of inflation.

COMMITTEE COST ESTIMATE



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Alice M. Rivlin
Director

July 29, 1983

Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2755, the Federal Communications Commission Authorization Act of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin
Director

cc: Honorable James T. Broyhill
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 29, 1983

1. BILL NUMBER: H.R. 2755

2. BILL TITLE: Federal Communications Commission Authorization Act of 1983

3. BILL STATUS:

As ordered reported by the House Committee on Energy and Commerce, June 30, 1983.

4. BILL PURPOSE:

H.R. 2755 authorizes the appropriations of \$91.2 million in each of the fiscal years 1984 and 1985 to carry out the activities of the Federal Communications Commission (FCC). In addition, the bill authorizes such sums as may be necessary for adjustments in pay, retirement and other benefits for the FCC.

H.R. 2755 would also increase the authorization of appropriations for the Corporation for Public Broadcasting (CPB) in fiscal years 1984 through 1986. Fiscal year 1983 appropriations to date for the FCC are \$83 million, and are \$137 million for the CPB. The President's 1984 budget request includes \$86 million for the FCC and \$130 million for the CPB.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal years, in millions of dollars)

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
<u>Authorization Level</u>					
Function 370					
Specified	91.2	91.2	---	---	---
Estimated	1.8	1.8	---	---	---
Function 500	15.0	23.0	32.0	---	---
Total	<u>108.0</u>	<u>116.0</u>	<u>32.0</u>	---	---
<u>Estimated Outlays</u>					
Function 370					
Specified	85.3	91.2	5.9	---	---
Estimated	1.6	1.8	0.2	---	---
Function 500	15.0	23.0	32.0	---	---
Total	<u>101.9</u>	<u>116.0</u>	<u>38.1</u>	---	---

Basis of Estimate:

This bill increases the amounts authorized to be appropriated for the CPB in fiscal years 1984 through 1986 from \$130 million each year to \$145 million in 1984, \$153 million in 1985, and \$162 million in 1986.

For purposes of this estimate, it was assumed that the entire amounts authorized in each fiscal year will be appropriated prior to the beginning of the fiscal year. Authorizations for pay and other benefit increases for the FCC were estimated consistent with the First Concurrent Resolution on the Budget--Fiscal Year 1984. Outlays for each agency reflect historical spending patterns.

Authorizations and outlays for the FCC occur in Function 370, additional authorizations and outlays for the CPB are shown under Function 500.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS: None.
7. ESTIMATE COMPARISON: None.
8. PREVIOUS CBO ESTIMATE:

On April 13, 1983, CBO prepared a cost estimate for S. 607, as ordered reported by the Senate Committee on Commerce, Science and Transportation, March 22, 1983. S. 607 authorized the appropriation of \$88.9 million in each of the fiscal years 1984 and 1985 for the FCC, plus such additional sums as would be necessary for adjustments in pay, salary, retirement and other benefits.

9. ESTIMATE PREPARED BY: Mary Maginniss (226-2860)
Stacey Sheffrin (226-2820)

10. ESTIMATE APPROVED BY:



James L. Blum
Assistant Director
for Budget Analysis

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have a minimal budgetary impact for fiscal year 1983 and that the cost of carrying out H.R. 2755 would be \$108 million.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

[to be inserted here]

SECTION-BY SECTION ANALYSIS OF H.R. 2755

Section 1 Short Title

Section 1 states that the bill is entitled the "Federal Communications Commission Authorization Act of 1983".

Section 2 Authorization

Section 2 amends Section 6 of the Communications Act of 1934 to authorize funding for the Federal Communications Commission at a level of \$91,156,000 for fiscal years 1984 and 1985.

Section 3 Public Broadcasting Appropriations Authorization

Section 3 amends Section 396(k)(1)(c) of the Communications Act of 1934 to authorize funding for the Corporation for Public Broadcasting for fiscal years 1984, 1985, and 1986 in the following amounts: \$145 million for fiscal year 1984; \$153 million for fiscal year 1985; and \$162 million for fiscal year 1986. This represents a supplemental increase of 5.6% annually over what has already been authorized for CPB. The Committee notes that expected cost increases and inflation were not factored into the original 1981 authorizing legislation. The Committee feels that, in order for public broadcasting to fulfill its Congressional mandate to offer programming that is of high quality, creativity and diversity, this minimal increase is needed.

Section 4 F.C.C. Administrative Matters

Section 4(a) amends Section 316 of the Communications Act of 1934 to authorize the Commission to modify broadcast station licenses and permits. Section 316 currently provides in relevant part that the Commission may not issue a final order modifying any station license or construction permit "until the

holder of the license or permit...shall have been given reasonable opportunity...to show cause by public hearing, if requested, why such order of modification should not issue..."

A Section 316 proceeding commonly arises where a broadcast licensee, for example, files an application for a license or construction permit modification in order to increase the height of its station transmitter with the intention of widening its coverage area.

Another broadcaster, operating on the same frequency, files an opposition pleading alleging that interference to its signal will result from a grant of the application. Sometimes the allegations have merit. However, in many cases, the pleadings are filed by other stations with the primary purpose of delaying the grant of the application as long as possible, thus preventing a competitor of the station from increasing its service area. In the latter type of case, the Commission will deny the opposition pleading without a hearing and grant the application.

In the past, the Commission believed it enjoyed the discretion to determine, based on the circumstances of each case, whether the "public hearing" requirement in Section 316 could be satisfied by written pleadings or by oral argument. However, the U.S. Court of Appeals for the District of Columbia Circuit recently held that Section 316 requires at least an oral argument in any case where a license modification is alleged. Western Broadcasting Co. v. FCC, 674 F.2d 4 (D.C.Cir. 1982).

The negative impact of the Western decision is further magnified by the fact that Section 316 applies not only to broadcast stations, but also to thousands of radio frequencies in the common carrier and private radio services where specious allegations of interference might be even more common than in broadcasting. The Western decision will make it far easier for existing licensees to use the Commission's processes to delay the startup of additional competition. Thus, these amendments to Section 316 are intended to reverse the Western decision and to restore, on the strength of clearer statutory language, the Commission's discretion in these proceedings.

The Committee intention is to make clear that parties requesting hearings under Section 316 must allege "specific allegations" raising a "substantial and material question of fact" as to the Commission's proposed modification, in order to be entitled to a hearing. That is, the FCC would not have to grant a hearing in such a proceeding if the pleadings did not raise any material question of fact on which to hold a hearing.

Section 4(b) of the bill amends Section 503(b)(5) to clarify that the Commission has authority to levy forfeitures in the first instance against violators in radio services for which

an individual license is not required.

Currently, Section 503(b) establishes two types of procedures for levying forfeitures on individuals. For persons who hold a Commission license or other authorization, the agency issues a notice of apparent liability and furnishes a reasonable opportunity for a written response (Section 503(b)(4)). For persons who do not hold a Commission "license, permit, certificate or other authorization," the agency cannot take action unless the person is sent a citation, is given a reasonable opportunity for an interview at a local Commission field office, and then repeats the same violation (Section 503(b)(5)). The 97th Congress enacted the Communications Amendments Act of 1982, Pub. L. No. 97-259, 96 Stat. 1087, Sept. 13, 1982. The statute includes a provision which authorizes the Commission to terminate the individual licensing of operators in the citizens band and radio control services. The legislative history which accompanies the statute states that the Commission should continue to enforce its rules against and prohibit operation by any operator who violates the rules. H.R. Rep. 97-765, 97th Cong., 2d Sess. 36 (1982).

Absent clarification, it might appear that the more burdensome procedures in Section 503(b)(5) must be followed by the Commission before forfeitures could be assessed against de-licensed operators in the citizens band and radio control services. This was not the Committee's intention in adoption of the Communications Amendments Act of 1982.

However, if the Commission were forced to follow the forfeiture provisions of Section 503(b)(5), effective enforcement of these services would be seriously impaired. This clarification is therefore consistent with Congressional intent in enacting the Communications Amendment Act of 1982, which emphasized that the Commission should vigorously enforce its rules in the "de-licensed" services. The Conference Report which accompanied the bill stated:

The Conferees wish to emphasize that this provision authorizes only the "de-licensing" (of individual licenses) of the CB and RC services, and not the "deregulation" of such services. The Conferees fully intend the Commission to vigorously enforce the Communications Act and FCC Rules relating to the CB and RC services, and to use its forfeiture authority against violators where necessary. Since the Commission would no longer have the ability to revoke a CB license if it chose to de-license the service, forfeiture authority should be exercised in a way that demonstrates a commitment to preserving the integrity of the CB service through enforcement....

H.R. Rep. No. 97-765, 97th Cong., 2d Sess. 36 (1982).

The language of this bill would ensure effective

enforcement action against "de-licensed" operators by making clear that Section 503(b) (5) is not intended to apply to operation on frequencies assigned to private radio services in which individual station licenses are not required; rather Section 503(b) (4) would apply to such operation.

Section 5 Financial Oversight of National Public Radio by Corporation for Public Broadcasting

Section 5 requires that CPB may not distribute any funds that are authorized to be appropriated to National Public Radio until there is a determination in effect by CPB at that time that:

(1) National Public Radio has adopted and is implementing a system of financial controls and procedures devised in consultation with an independent certified public accountant. This system must be approved by the General Accounting Office and determined by the GAO to be sufficient enough to assure that the financial transactions of NPR reflect prudent management practices, and are being accounted for in accordance with generally accepted accounting principles. This provision requires CPB to not only determine that adequate financial controls have been developed, but that they are being implemented properly.

(2) NPR has adopted a budget under which expenditures will not exceed revenues; and all projections made in establishing the budget are reasonable; and,

(3) NPR's financial reporting systems provide CPB with continuous access to all of its financial books and records. The term "continuous access" includes a requirement that CPB be provided information in a form that ensures the Corporation's ability to determine that prudent financial practices are being followed.

Within 15 days after enactment, CPB must report to this Committee and the other appropriate Committees of Congress on what actions NPR has taken to meet the requirements of this Section, and what specific efforts CPB has undertaken with respect to restoring NPR to financial health. These requirements will no longer be effective when CPB certifies to the appropriate Committees in the Congress that all of NPR's indebtedness related to the present financial crisis has been liquidated in full.

The Committee believes that stringent oversight of NPR's financial activities by CPB is necessary to (1) assure that NPR regains its financial viability, and (2) adequate accountability exists with respect to the expenditure of public funds. Although granting CPB these extraordinary powers is temporarily

necessary, the Committee intends that NPR's independence as a producer and distributor of alternative programming to the nation's public radio stations be maintained to the greatest extent possible within the framework set forth by the Amendment.

Section 6 Corporation for Public Broadcasting Administrative Matters

Section 6 amends Section 396(c)(1) of the Communications Act of 1934 to enable the Board for the Corporation for Public Broadcasting to choose the Chairman of the Board from among the Board members. This procedure is the one presently used for the selection of a Board Chairman, and will allow for the chairmanship to continue to be held by an outside director. The Public Broadcasting Amendments Act of 1981 contained a provision, scheduled to go into effect this year, directing the President of the Corporation to also serve as its Board Chairman, which, but for this amendment, would have become effective.

Section 7 Administration of Regional Concentration Rules for Broadcast Stations

Section 7 amends the Communications Act of 1934 to clarify the regional concentration rules for broadcast stations (FCC Docket No. 20548).

The Regional Concentration Rules (Sections 73.35; 73.240; and 73.636 of title 47, CFR) prohibit any party from directly or indirectly owning, operating or controlling three broadcast stations in one or several service areas where any two stations are within 100 miles of the third. When the FCC adopted this regulation, it did so prospectively. Persons already owning stations that would be in violation of this regulation were grandfathered. The Commission has indicated that only a small number of stations were in fact grandfathered.

The intent of this section is to clarify that a station that is exempt from the regional concentration rules because of the grandfather clause, may make changes in the technical facilities of the station without losing its grandfathered status. The Committee notes, however, that the grandfather status would not continue if the proposed change involved a change in frequency or a change in class of the station but the status would continue in the event of a change in transmitter location, antenna height, or power. This is intended to be a very limited exception to the administration of the Commission's grandfather rule, and applies to those select number of stations that were in fact grandfathered under the rule. The Committee

wishes to make clear that this section addresses an exception to existing Commission rules and does not express any intent with respect to the ability of the Commission to revise or modify these rules.

Section 8 Clarification and Administration of Section 223

Section 8 amends section 223 of the Communications Act of 1934 by adding a new subsection (b).

Paragraph (1) of the new subsection extends section 223's prohibition against obscene telephone calls to prerecorded messages. Obscene messages, whether made directly or by recording device, are prohibited without regard to whether the sender of the message initiated the call. The Committee intends that this section will prohibit obscene messages otherwise available over "Dial-It" services.

Any person who makes obscene comments over the telephone, or any person or entity who knowingly permits a telephone facility under his control to be used to make obscene comments, shall be in violation of this section. The maximum criminal penalty for violations is set at \$50,000, or six months imprisonment. The Committee intends that enforcement of this section be consistent with Supreme Court rulings on obscenity.

Paragraph (2) provides additional sanctions when a violation of subsection (b)(1) occurs for commercial purposes. In that case, violators are subject to a maximum civil fine of \$50,000 for each day during which a violation occurs, in addition to the criminal penalties prescribed under (b)(1).

The civil fine may be imposed under paragraph (b)(2) by either a Federal court, pursuant to a civil action brought by the FCC, or the FCC itself, after appropriate administrative proceedings.

Paragraph (3) enables either the Department of Justice or the Commission to initiate a civil injunctive action, in U.S. District Court, against any alleged violator of section 223(b). The provision instructs a court to issue a preliminary injunction against the further use of the telephone for purposes which violate section 223(b) upon a showing that, weighing the equities and considering the likelihood of success, such action would be in the public interest.

If a preliminary injunction is issued, the subsection puts the burden on the Government to seek a full trial on the merits to be scheduled within 20 days of the issuance of the preliminary injunction. If a trial is not scheduled within 20 days, the injunction must be dissolved. The Committee intends for these procedures to preclude undue harm to the defendant by

assuring prompt adjudication on the merits.

Section 9 Direction on Use of Funds Regarding Spectrum
Allocation and Assignments for Public Safety Purposes

Section 9 requires that the FCC establish a plan which adequately ensures that the needs of State and local public safety agencies will be taken into account when the FCC makes decisions regarding spectrum allocations. Specifically, in establishing the plan, the FCC must (1) review the current and future needs of such public safety authorities in light of suitable and commercially available equipment; and (2) consider the need for a nationwide contiguous frequency allocation for public safety purposes. The provisions require the FCC, pending adoption by the FCC of a plan, to recognize the needs of state and local public safety agencies in making frequency assignments or spectrum allocations.

At the present time, certain public safety authorities must use as many as five different sets of frequencies, each necessitating different equipment. This system can be both inefficient and dangerous, as different public safety authorities within the same locale (e.g. police, fire, and ambulance) might not be able to effectively coordinate operations because they cannot easily communicate with each other. Such scattered frequency allocations are increasingly inadequate to meet the increased demands being placed on our police, fire, and other safety authorities.

This Committee recognized the importance of providing adequate frequency to meet the needs of public safety users of the spectrum when it adopted the "Communications Amendments Act of 1982", later passed by Congress and signed into law (Public Law 97-259, - Stat.-, Sept. 13, 1982). That legislation directed the Commission to consider the needs of public safety agencies when taking actions to manage the private land mobile radio spectrum. The Conference Report (Report 97-765) stated with respect to this issue:

The Commission should be ever vigilant to promote the public land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public. (p. 52)

In adopting Section 5, it is the Committee's intent that the Commission proceed immediately to address the shortage problems, as well as any potential future problems confronting the public safety sector. This Commission undertaking should identify the needs, assuming use of equipment which is suitable and commercially available, of public safety authorities. The

Committee notes that public safety officials have indicated that frequency shortages are particularly acute in congested, urban areas which are also the areas where public safety must place the greatest demand on their communications capabilities in order to manage properly their large operations and to assure a rapid and efficient public safety response capability.

The Committee expects the Commission to proceed expeditiously to carry out these actions, and the Committee will closely monitor its progress. The Committee believes, as it has stated on prior occasions, that public safety consideration should be a top priority when frequency allocation decisions are made.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

[To be inserted here]

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the ^{bill,} joint resolution, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

LINE OF 7 STARS

AUTHORIZATION OF APPROPRIATIONS

7 ⁷ SEC. 6. There is authorized to be appropriated for the administration of this Act by the Commission \$76,900,000, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1982 and 1983.

8 ● Authorization of Appropriations
9 P ● Sec. 6. There are authorized to be appropriated for
10 the administration of this Act by the Commission
11 \$91,156,000, together with such sums as may be necessary for
12 increases resulting from adjustments in salary, pay,
13 retirement, other employee benefits required by law, and
14 other nondiscretionary costs, for each of the fiscal years
15 1984 and 1985.

TITLE II—COMMON CARRIERS

LINE OF STARS

SEC. 223. Whoever—

(1) in the District of Columbia or in interstate or foreign communication by means of telephone—

(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(2) knowingly permits any telephone under his control to be used for any purpose prohibited by this section, shall be fined not more than \$500 or imprisoned not more than six months, or both.

21 (b)(1) Whoever--

22 (A) in the District of Columbia or in interstate
23 or foreign communication, by means of telephone, makes
24 (directly or by recording device) any comment, request,
25 suggestion, or proposal which is obscene, lewd,

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1 lascivious, filthy, or indecent, regardless of whether
2 the maker of such comments, placed the call, or

3 (B) knowingly permits any telephone facility under
4 such person's control to be used for any purpose
5 prohibited by subparagraph (A),

6 shall be fined not more than \$50,000 or imprisoned not more
7 than six months, or both.

8 (2)(A) In addition to the criminal penalties under
9 paragraph (1), whoever, in the District of Columbia or in
10 interstate or foreign communication, violates paragraph
11 (1)(A) or (1)(B) for commercial purposes shall be subject to
12 a civil fine of not more than \$50,000 for each violation.
13 For purposes of this paragraph, each day of violation shall
14 constitute a separate violation.

15 (B) A fine under this paragraph may be assessed
16 either--

17 (i) by a court, pursuant to a civil action by the
18 Commission or any attorney employed by the Commission
19 who is designated by the Commission for such purpose, or

20 (ii) by the Commission, after appropriate
21 administrative proceedings.

22 (3)(A) Either the Attorney General, or the Commission
23 or any attorney employed by the Commission who is designated
24 by the Commission for such purpose, may bring suit in a
25 district court of the United States to enjoin any act or

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1 practice which allegedly violates paragraph (1)(A) or
2 (1)(B).

3 ~~2~~ (B) Upon a proper showing that, weighing the equities
4 and considering the likelihood of ultimate success, a
5 preliminary injunction would be in the public interest, and
6 after notice to the defendant, such preliminary injunction
7 may be granted. If a full trial on the merits is not
8 scheduled within such period (not exceeding 20 days) as may
9 be specified by the court after issuance of the preliminary
10 injunction, the injunction shall be dissolved by the
11 court.

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LINE OF 2 STARS

TITLE III—PROVISIONS RELATING TO RADIO
PART I—GENERAL PROVISIONS

LINE OF 7 STARS

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a)

3 STARS

LINE OF 7 STARS

23 (e)(1) In the case of any broadcast station, and any
24 ownership interest therein, which is excluded from the
25 regional concentration rules by reason of the savings
1 provision for existing facilities provided by the First
2 Report and Order ^{adopted} ~~issued~~ March 9, 1977 (Docket No. 20548), ^{342 Fed. Reg. 16145},
3 the exclusion shall not terminate solely by reason of
4 changes made in the technical facilities of the station to
5 improve its service.

6 (2) For purposes of this subsection, the term
7 "regional concentration rules" means the provisions of
8 sections 73.35, 73.240, and 73.636 of title 47, Code of
9 Federal Regulations (as in effect June 1, 1983), which
10 prohibit any party from directly or indirectly owning,
11 operating, or controlling three broadcast stations in one
12 several services where any two of such stations are within
13 100 miles of the third (measured city-to-city), and where
14 there is a primary service contour overlap of any of the
15 stations.

MODIFICATION BY COMMISSION OF CONSTRUCTION PERMITS OR LICENSES

SEC. 316 (a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: *Provided*, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice.

and shall be given

8 reasonable opportunity, of at least 30 days, to protest
9 such proposed order of modification; except that where
10 safety of life or property is involved, the Commission
11 may by order provide for a shorter period of notice.

14 ¶ (2) Any other licensee or permittee who believes its
15 license or permit would be modified by the proposed action
16 may also protest the proposed action before its effective
17 date.

18 (3) A protest filed pursuant to this subsection shall
19 be subject to the requirements of section 309 for petitions
20 to deny.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

except

23 that, with respect to any issue that addresses the
24 question of whether the proposed action would modify the
25 license or permit of a person described in subsection
1 (a)(2), such burdens shall be as determined by the
2 Commission.

LINE OF 7 STARS

TITLE V—PENAL PROVISIONS—FORFEITURES

LINE OF STAFFS

¶ SEC. 503. (a) 3 STAFFS

(b) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or ~~(a)~~ of this Act; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section ~~(a)~~ of this Act.

(2) The amount of any forfeiture penalty determined under this subsection shall not exceed \$2,000 for each violation. Each day of a continuing violation shall constitute a separate offense; but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

(A) \$20,000, if the violator is (i) a common carrier subject to the provisions of this Act, (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

(B) \$5,000, in any case not covered by subparagraph (A).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(3) (A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with

section 554 of title 5, United States Code. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (ii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required ~~or~~ is a cable television system operator.

Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

or if the person involved is

- 6 transmitting on frequencies assigned for use in a service
- 7 which individual station operation is authorized by rule
- 8 pursuant to section 307(e)

ADDITIONAL VIEWS ON H.R. 2755 - FCC REAUTHORIZATIONS/CPB
ADDITIONAL FUNDING

H.R. 2755 contains authorization levels for the Federal Communications Commission for FY 1984 and 1985. Moreover, the bill amends the Communications Act in a variety of ways. We have no serious opposition to any of these provisions.

However, in addition the bill also authorizes increased Federal funding for public broadcasting during each of the next three Fiscal Years (1984 through 1986) by an average of 18% each year above the amounts that Congress has already authorized for these years. While we could support more modest increases in Federal support for public broadcasting, we strongly oppose the substantial funding increases granted by this bill.

In 1981, legislation was enacted by Congress (Public Law 97-35) that set the authorization levels for public broadcasting for the three years covered by the present bill. The measure was passed substantially in advance of the 1984-86 authorization period with which the legislation dealt as a method of minimizing governmental intrusion into public broadcasting in accordance with long-established Congressional policy.

The 1981 legislation reflected the establishment of a very significant new Federal policy on how best to fund public broadcasting. The new policy was designed to wean public broadcasters away from their significant reliance on Federal appropriations without harming their financial viability. On one hand, the 1981 legislation made modest reductions for the three years covered by the bill in Federal taxpayer support for public broadcasting. On the other hand, Congress simultaneously opened up vast new revenue-raising opportunities for public broadcasters. Under the 1981 law, public broadcasting stations are explicitly authorized -- in fact they are encouraged -- to engage in any business venture in which they desire to participate, except for broadcasting

advertisements, in direct competition with private companies. Moreover, public broadcasters are encouraged to use profits from these competitive ventures to help support their public broadcasting enterprises. The only requirement is that the stations must keep separate books and records for their public broadcasting activities in order to minimize the risk that the Federal money appropriated to help support the public broadcasting enterprise will be used to subsidize their new competitive ventures.

By authorizing increased Federal subsidies averaging 18% per year over each of the next three years, the present bill undermines the policy that Congress had established for public broadcasting only two years ago on how best to fund public broadcasting. We oppose this dramatic change in policy for several reasons.

First, no evidence was submitted to the Committee showing a need to revise the funding policy that had been established two years earlier. Not a single hearing was held on the question of whether Congress had erred in establishing this new policy.

In fact, we believe that the new funding methodology established in the 1981 law has proven to be quite successful. We understand that numerous public radio stations have plans to transmit profitmaking programming over their subcarriers. Moreover, public stations are earning profits by leasing unused capacity on their transmission networks to unaffiliated parties. Some stations are earning revenues by leasing their studios to unaffiliated companies for the production of broadcast commercials and other programming. Numerous other examples could be cited of profitmaking ventures now being engaged in by public broadcasting entities, but those we have mentioned are illustrative.

Not only is there no evidence demonstrating a need to change course, but we believe that the change is dangerous as a matter of public policy. By increasing, rather than reducing, Federal taxpayer support of public broadcasting as proposed in the present bill, while at the same time continuing to let public broadcasters engage in unrelated business ventures in direct competition with private companies, the risk is substantially increased that public broadcasters will use Congressionally-appropriated funds, directly or indirectly, to subsidize their new competitive ventures to the detriment of the private companies with whom they compete in these new ventures -- private companies that do not have a guaranteed revenue source from which to subsidize their own competitive activities.

In addition to the fact that increasing the Federal subsidy for public broadcasting will increase the risk that public stations will use Federal tax money to subsidize their new, competitive ventures, it is also terribly unfair for Congress to provide increasing Federal funding for public broadcasting stations at the same time that many private broadcasting enterprises with whom they directly compete for audiences are being forced by economic conditions to cut their budgets. For example, while the increased Federal taxpayer support provided in H.R. 2755 will help guarantee that public broadcasters can retain or even expand their existing budgets for news operations, CBS News has recently announced that it has cut \$19 million from this year's news budget during the past three months.

Finally, whatever the merits of increased Federal funding for public broadcasting in other circumstances, we believe it is inappropriate to provide substantial funding increases at this time because a substantial portion of the higher Federal authorizations would be used in effect to bail out National

Public Radio (NPR) from the economic problems that now beset it as a result of the recently documented gross financial mismanagement there. Due to egregious mismanagement at NPR, independent auditors have recently projected that NPR will experience a \$9.1 million deficit for Fiscal Year 1983. This is an astoundingly large deficit in view of the fact that NPR's 1983 budget was just \$26 million. For Congress to increase NPR's Federal subsidy at this time, as this bill would authorize, would be tantamount to sending a signal to the entire public broadcasting community that Congress will come to the rescue of public broadcasters who engage in similar mismanagement in the future by approving ever-higher Federal subsidies. Such a perception cannot be tolerated.

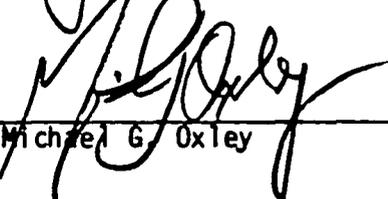
We look forward to the opportunity to work with our colleagues to improve the bill when it is considered on the House Floor.



Thomas J. Bliley, Jr.



Jack Fields



Michael G. Oxley

DISSENTING VIEWS ON H.R. 2755 - FCC REAUTHORIZATION
AND CPB ADDITIONAL FUNDING

Although there is much in this bill that we favor, we voted against the measure on final passage because we strongly oppose the tremendous additional budget authority that it provides to the Corporation for Public Broadcasting and the Federal Communications Commission.

Without any substantial demonstration of need, H.R. 2755 authorizes an added \$70 million in Federal expenditures for public broadcasting over the next three fiscal years in excess of the spending limits that Congress has already approved for those three years. In particular, the bill provides for roughly a 12% increase from current authorization levels for FY 1984, an 18% increase for FY 1985, and a massive 24% increase for FY 1986.

Similarly, the bill authorizes sizeable new budget authority for the Federal Communications Commission. In particular, it authorizes Congress to increase the FCC's budget for FY 1984 by 10% over the 1983 appropriation of \$82.9 million. This is \$5 million more than the Administration had requested.

In terms of the country's total Federal budget, the budget increases authorized by this legislation may not appear significant. However, Congress should not approve new Federal spending authority for any program merely because the increase, by itself, may not significantly affect the Federal budget's bottom line. A series of budget increases, although relatively modest when considered in isolation, can be substantial when considered together. In a period of soaring Federal budget deficits, we believe it is irresponsible for Congress to pass legislation that authorizes dramatic Federal spending increases in any Federal program in the absence of a clear demonstration of need.

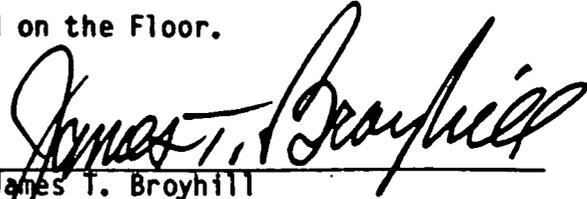
In addition to the fact that we think it is inappropriate to increase Federal funding of these entities while the government faces severe budget problems, we oppose funding increases for public broadcasting at this time for three additional reasons.

First, as pointed out in the Additional Views, increasing public broadcasting's guaranteed revenue substantially increases the incentive it has to subsidize the numerous competitive enterprises that public broadcasting entities are now entering.

Second, it is unfair to increase public broadcasting's Federal revenues at the same time that other broadcasting enterprises are substantially decreasing their budgets due to economic conditions. Why should public broadcasting's budget be increased by \$70 million over the next three years, for example, when CBS News has decreased its own budget by \$19 million in recent months?

Third, to increase the budget for public broadcasting at the same time that we have substantial evidence that National Public Radio has been seriously mismanaged in recent years sends a signal to the entire public broadcasting community that the Federal government will bail out public broadcasters if they run into financial problems due to mismanagement. Congress should not tolerate financial mismanagement by entities which receive substantial Federal appropriations, and one should not foster the perception that such financial mismanagement will be tolerated. Increasing the Federal authorization for public broadcasting will promote such a perception.

For all these reasons, we urge our colleagues to vote against H.R. 2755 in its present form when it is considered on the Floor.


James T. Broyhill


William E. Dannemeyer