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ALL-CHANNEL TELEVISION RECEIVERS

MAY 24, 1962.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 8031]

The Committee on Commerce, to whom was referred the bill (H.R. 8031) to amend the Communications Act of 1934 in order to give the Federal Communications Commission certain regulatory authority over television receiving apparatus, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

PURPOSE OF LEGISLATION

The purpose of this legislation is to amend the Communications Act of 1934 so as to authorize the Federal Communications Commission to require that all television receivers shipped in interstate commerce or imported into the United States shall, at the time of manufacture, be capable of adequately receiving all television channels.

GENERAL STATEMENT

S. 2109 and H.R. 8031 were identical bills introduced in the Senate by Senator Warren G. Magnuson and in the House of Representatives by Representative Oren Harris at the request of the Federal Communications Commission.

Essentially, the bills would amend the Communications Act in order to give the Federal Communications Commission certain regulatory authority to require that all television receivers shipped in interstate commerce or imported into the United States be equipped at the time of manufacture to receive all television channels. That is, the 70 UHF and 12 VHF channels.

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Extensive hearings were conducted by your committee on S. 2109 as well as by the House Interstate and Foreign Commerce Committee on H.R. 8031, at which time witnesses representing all segments of the broadcast industry, manufacturers, Government agencies, and the general public, were offered an opportunity to submit testimony.

H.R. 8031, the legislation being considered herein, passed the House of Representatives on May 2, 1962, by a vote of 279 to 90.

In addition, during the course of the hearings on S. 2109, Senator Case of New Jersey, a member of your committee, questioned the members of the Federal Communications Commission closely with regard to the New Jersey television situation. With the designation of New Jersey's only assigned VHF channel (13) to New York educational television interests, New Jersey has become uniquely and unfortunately the only State in the Union without any potential for VHF commercial television under the present FCC's allocations structure.

The Chairman of the Commission, Newton N. Minow, in responding to this line of questioning, indicated that the greater the flexibility accorded the Commission by Congress, the greater the Commission's ability to meet New Jersey's special problem created by its proximity to New York City television covering the northern part of New Jersey, and Philadelphia, Pa., to the south that provides television service to the southern portion of the State. The Chairman of the FCC expressed the hope that the Commission would find a way to resolve the condition whereby 6,500,000 persons are without local initiated, local oriented, commercial television.

In the meantime the FCC Chairman, mindful of the broad responsibility of a a licensee to serve the public interest, was also hopeful that a way could be found to meet the unique needs of local service required in the New Jersey situation.

Your committee believes that this legislation will assist in overcoming the problem which New Jersey faces. Your committee hopes that it will strengthen the Commission's attempt to bring major television coverage to New Jersey with a local television flavor.

NEED FOR LEGISLATION

One of the most valuable national resources which this country possesses is the radio spectrum. In carrying out its statutory mandate to provide the people of the United States with a truly nationwide and competitive broadcasting system, the FCC has allocated sufficient spectrum space to accommodate 2,225 television stations, which includes 1,544 UHF stations and 681 VHF stations. But, chiefly because of the nonavailability of television receivers which are capable of picking up UHF signals as well as VHF signals, the bulk of the UHF band is unused today, for at present there are only 103 UHF stations and 500 VHF stations in actual operation. This means that only 7 percent of the potential UHF assignments are in actual use, while the remaining 93 percent remains idle.

This legislation is designed to remedy this situation, for its basic purpose is to permit maximum efficient utilization of the broadcasting spectrum space, especially that portion of the spectrum assigned to UHF television. At the same time, this legislation will benefit the public interest in other substantial and important respects, for in

addition to bringing new television service to underserved areas, it will promote the development and growth of educational television.

At present the FCC has reserved 279 television channels for educational purposes, of which only 62 are in use. Of the total reserved for educational purposes, 92 are VHF and 187 are UHF. Only through the establishment of additional educational television broadcasting facilities and the activation of noncommercial educational television broadcasting stations can the goal of creating an educational television system serving the needs of all the people in the United States be accomplished.

Recently the Congress enacted legislation (Public Law 87–477, 87th Cong., 2d sess.) that provides for grants-in-aid for the acquisition and installation of television transmission apparatus for certain educational television broadcasting stations.

During the consideration of this educational television legislation, it became evident, as a result of a national study, that there was a maximum need for at least 97 VHF and 821 UHF channels which should be added to the presently reserved channels to meet the needs of education in the years ahead. This means, in short, that the minimum needs of education projected from a grassroots level from school to school throughout the country will require at least 1,197 television channels for over-the-air broadcasting, in addition to closed circuit systems which might be used.

Therefore, it becomes obvious that this legislation calling for the manufacture of all-channel television receivers ties in significantly with the recently passed educational television legislation. For even in areas where there is extensive commercial VHF service, the all-channel television receiver legislation would help create the type of circulation which will permit the development of the educational television broadcasting stations that use UHF channels.

This goal would be achieved by eliminating the basic problem which lies at the heart of the UHF-VHF dilemma—the relative scarcity of television receivers in the United States which are capable of receiving the signals of UHF stations. Of the approximately 55 million television receivers presently in the hands of the public, only 9 million (or about 16 percent) can receive UHF signals. This scarcity of all-channel receivers is further aggravated by the fact that the overwhelming bulk of television set production is limited to VHF sets only. Moreover, since 1953, the situation has become progressively worse. In that year, over 20 percent of television receivers were equipped at the time of manufacture to receive UHF; by 1961, that percentage had declined to 6 percent.

The practical effect of this scarcity of all-channel receivers is clear: It prevents effective competition between UHF and VHF stations which operate in the same market, thus relegating UHF to those areas where no VHF stations are in competition. Where the two types of stations operate together, advertisers show a marked preference for placing their programs on VHF outlets, as do also networks, who will affiliate with a VHF station wherever possible. Nor has the viewing public shown any substantial willingness to buy receivers capable of receiving UHF signals, except in those areas hwere no VHF programs are available.

At the present time the country is divided into 278 so-called television markets: 127 of these markets have only 1 television station,

70 are 2-station markets, 57 are 3-station markets, and 24 are markets with 4 or more stations. Consequently, under the television market term, almost three-fourths of the television markets have a choice of one or two local stations. The significance of these figures illustrate that our present system of competition in the television field is limited by the allocations structure to no more than three national networks. Moreover, even in terms of the present 3 networks, 1 of them is under a limited handicap because of the second figure (70 markets are limited to 2 stations) and this leads to a situation that makes it difficult for a third network to secure primary affiliates in those markets. In addition, the opportunity for local outlets which would be available for local programing and local self-expression is severely restricted in many of the markets because of the limited number of stations that are available and even in those areas where there are some available, the stations are network affiliates.

Over the years, this problem has been exhaustively considered by your committee, the House Committee on Interstate and Foreign Commerce, and the Federal Communications Commission. Since 1953, numerous hearings have been held on this subject, and both Congress and the Commission have explored various alternative solutions for the UHF problem. One of these proposed solutions—the possibility of obtaining from the Department of Defense additional frequencies for use in the VHF and lower UHF portions of the lower portions of the radio spectrum—turned out to be impracticable because of the disruption which would have been caused to Government radio services operating on the frequencies proposed to be reassigned.

Another proposed solution contemplated a 70-channel UHF-only television system. But the FCC rejected this proposal on the grounds that it would cause a tremendous and unwarranted dislocation of services, and further, that there is a definite need for utilizing both UHF and VHF television channels. There is thus a vicious cycle; refusal by the public to buy UHF sets until there are UHF stations offering attractive programs, and the inability of UHF broadcasters to provide good programing in the absence of an audience which will attract advertisers and networks. The net result: Very few UHF stations have dared to go on the air; of those that have, 100 had to give up and are now dark.

In light of these considerations, your committee was impressed by the following judgments reached by the FCC:

First, that it is necessary to break this vicious cycle that has been strangling UHF television.

Second, that this must be done by striking at the root cause of the problem—namely, the lack of television receivers capable of receiving UHF signals.

And, finally, that the only practical and effective means of insuring that such receivers get into the hands of the public is to enact legislation requiring that all sets manufactured are capable of receiving all of the channels allocated for television use in both the UHF and VHF portions of the spectrum.

We have fully considered the various arguments which have been advanced against this legislation. It has been argued that it would be a dangerous precedent which might lead to congressional control of all types of manufactured products. It must be remembered that

this involves a unique situation which would not in any way constitute a general precedent for such congressional regulation of manufactured products. Thus we are here concerned with an instrumentality of interstate commerce. Television receivers are an essential factor in the use of the spectrum, and, as such, are clearly within the ambit of congressional legislation.

While initially there will be an increased cost, it is expected that this will be substantially reduced once the benefits of mass production are fully realized. In any event, the relatively slight increase in cost will be a small price to pay for the unlocking of the 70 valuable UHF channels.

CONSTITUTIONALITY OF LEGISLATION

When the all-channel television receiver legislation was first proposed, questions concerning its constitutionality were raised. Your committee received a detailed opinion on the constitutionality of this proposed legislation from the General Counsel of the Federal Communications Commission which appears on page 6 in the printed hearings on S. 2109.

Also, on February 15, 1962, the chairman of the Subcommittee on Communications, Senator John O. Pastore, requested the views of the Department of Justice on this same question and on March 19, 1962, Deputy Attorney General Byron R. White (Senator Pastore's letter and the views of the Department of Justice are set out in app. A of this report) supported the position that this legislation is a constitutional exercise of congressional powers under the commerce clause of the Constitution. Television receivers as well as other technical devices designed to transmit or receive radio communications by whatever means science may develop are instrumentalities of commerce and thus subject to the regulation of commerce.

DEINTERMIXTURE POLICY

When the FCC adopted its allocations plan in 1952 it intermixed VHF and UHF assignments in the hope that this would bring about multiple outlets to most communities in the United States. Needless to say, this has not worked out.

On the basis of hindsight it is clear that this allocations structure has led to the creation of the very problem of which this all-channel legislation proposes to deal.

Since 1954 extensive hearings and numerous studies and many reports have been written on the subject of UHF and VHF. The FCC in an attempt to meet some of the problems has moved in a patchwork manner and one of the policies pursued involved deintermixture. The policy of deintermixture involves the encouragement of UHF by selecting certain communities and to provide in those communities for more effective local competition through the device of making these communities all UHF communities instead of intermixed VHF and UHF communities.

During the hearings conducted by your committee a number of witnesses strongly criticized the Commission's proposals with reference to deintermixture. Your committee wishes to emphasize therefore that an important corollary of this legislation is the policy which the Commission intends to follow with respect to certain deintermixture

proceedings in the event the all-channel legislation is enacted. The Commission has made it clear that it does not view deintermixture as a general or long-range solution for the television allocations problem. Quite to the contrary, the Commission has emphasized that an intermixed system utilizing both UHF and VHF channels is needed to achieve our long-range goal of an effective national television system and that the all-channel receiver legislation is the key to that long-range goal. In view of the long difficult history of the television allocations structure since 1952, your committee is impressed with the judgment of the Commission that development of an adequate, truly nationwide television system requires the use of all 82 channels and it is for this reason that it is urging the enactment of this legislation. But equally important, your committee feels that until the effectiveness of this legislation can be tested, the interim short-range policy of selective deintermixture should be held in abeyance.

The Commission's policy with regard to deintermixture was set forth in a letter dated March 16, 1962, to the chairman of the Subcommittee on Communications, Senator John O. Pastore, and concurred in by Commissioners Minow, Hyde, Bartley, Craven, Ford, and Cross (app. B). In that letter the Commission represented its judgment that a combined VHF–UHF system is needed; that if all-channel receiver legislation is enacted by this Congress the Commission would not proceed with the eight deintermixture proceedings initiated by it on July 27, 1961; and that a sufficient period of time should be allowed to indicate whether the all-channel television receiver legislation would, in fact, achieve the Commission's overall allocations goal of a satisfactory system of intermixed UHF–VHF assignments.

The FCC also represented that it would make periodic reports to Congress and that before it undertook any further action with respect to deintermixture, it would advise the Congress of its plan and give the committees of Congress an appropriate period of time to consider such plans.

Your committee considers these representations by the Commission to be of paramount importance and has taken action on this legislation in specific reliance on them.

Under the bill time will have to be allowed for the Commission to implement this legislation and for manufacturers to convert to production of all-channel sets. Your committee cannot state with any degree of accuracy how long a period of time will elapse before the effectiveness of this legislation can be assessed or how long the Commission's moratorium on deintermixture may last. However, in view of the representations made by the Commission, this period of time may possible last from 5 to 6 or 7 years. Further, in accordance with the written representations of the Commission the moratorium on deintermixture does not apply to existing deintermixture proceedings other than the eight proceedings referred to in the Commission's letter. There are three (and conceivably four) other deintermixture proceedings referred to in detail in the appendix to the Commission's letter in the case of which the Commission may find it necessary to go forward with such proceedings and to reach a decision which the Commission determines to be in the public interest under the particular facts of the proceedings. In deciding these cases, however, your committee expects the FCC to give weight to

the congressional policies set forth in this report, and specifically, to any loss of service to the public which would result in the abandonment of VHF channels allocated to the particular communities involved in these cases.

CONCLUSION

For almost 10 years now, both the Congress and the Commission have sought a solution to the difficult television allocations problem.

The all-channel receiver legislation proposed here has the unanimous and enthusiastic support of the Federal Communications Commission, which considers this legislation the most important item in its legislative program. Many Members of Congress have testified in support of this legislation, which is designed to implement the Congress' and the Commission's long-range policy of developing an 82-channel system. This bill further has been actively supported by the broadcasting industry, including the television networks as well, and by a significant portion of the television receiver manufacturers.

We emphasize that the aim of this measure is an intermixed television system using both 12 VHF and 70 UHF channels. In this regard, we stress again that we consider the Commission's representations regarding deintermixture to be of critical importance, for those representations insure that existing VHF service will be maintained pending the passage of sufficient time to test the effectiveness of this legislation.

Your committee has carefully appraised all of the arguments for any against this bill, and is impressed with the Commission's position that this legislation is the only practical means by which an adequate and truly nationwide commercial and educational television system can be put into effect in the United States. The 12-channel VHF system to which television has been largely relegated in this country has been squeezed to the limit. Yet, our population expands; new families are formed; per capita income trends upward; leisure time becomes increasingly available and new products and new companies seek advertising outlets. All of these economic and social factors indicate the need, and provide firm support for, an expanded system of commercial and educational television.

In light of these considerations, your committee urges the prompt adoption of H.R. 8031.

AMENDMENT

On page 1, line 8, insert "adequately" between the words "of receiving".

As originally proposed the language of S. 2109 and H.R. 8035 would have granted the Commission blanket authority to prescribed "minimum performance standards" for all television receivers shipped in interstate and foreign commerce. This provision was widely criticized during the hearings held by your committee and before the House Interstate and Foreign Commerce Committee on the ground that it was too broad and that it would give the FCC authority to prescribe any and all performance characteristics of television receivers. As an example, it was suggested that this broad authority would permit the Commission to adopt standards covering the manufacture of color television receivers. The Commission agreed that this authority was broader than was necessary. Consequently, H.R. 8031 was amended to eliminate this broad approach.

As passed by the House of Representatives, H.R. 8031, would only give the Commission authority to require that all television sets be "capable of receiving" all television channels. The provision with regard to authorizing the Commission to prescribe minimum performance capabilities was stricken. However, in the report accompanying the legislation it was indicated that the language "be capable of receiving" contemplated that all receivers shipped in interstate or imported would be constructed with equipment inside its cabinet which would have performance characteristics sufficient to permit satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels in any location where in the light of the normal state of receiver development at the time such reception could be expected. Further, it was indicated that the performance capabilities of such sets for receiving UHF signals should be adequate to assure that the purchase of these sets will in fact get comparable reception from UHF and VHF stations.

The Federal Communications Commission in a letter dated May 11, 1962 (app. C) expressed deep concern to your committee that the legislation as amended could be construed as being too limited and would make the Commission powerless to prohibit the shipment in interstate commerce of all-channel television sets having the barest capability of receiving signals which therefore could not permit satisfactory and usable reception of such signals in a great many instances.

According to the FCC it was not clear how far the Commission could proceed in promulgating rules regarding the performance characteristics sufficient to permit satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels. Or to what extent, if any, enforceable rules could be promulgated concerning the performance capabilities for all-channel television sets that would assure the purchasers of these sets that they were in fact getting comparable signals from UHF and VHF stations.

In view of this doubt on the part of the Commission and its assertion that the bill as passed by the House might not accomplish the objective of the legislation, i.e., to provide authority necessary to insure that all television sets be capable of effectively receiving all channels, your committee, therefore, adopted a simple amendment that should remove all doubt. This amendment merely requires that all channel receivers shall "be capable of adequately receiving" all frequencies allocated to television broadcasting. This amendment should prove to be effective. It should meet the question raised by the FCC; to do less would be to permit the whole thrust of this legislation to be thwarted.

In adopting this qualifying amendment there are several things which your committee desires to make clear. The FCC has assured us that the practical need for procuring authority which would permit effective enforcement of this legislation would not involve the Commission broadly in the dealings of television set manufacturers. On the contrary, the Commission's authority, restrictive as it would be of section 303(s), would be most limited and narrow. On the basis of these representations, your committee agrees that the authority given to the Commission to require that all channel receivers "be capable of adequately receiving" UHF channels is narrow in scope and in the main consistent with what the House did in reporting its legislation.

MINORITY VIEWS

By requiring that TV sets be capable of receiving all 82 channels instead of just the 12 VHF channels, the bill sets a dangerous and far-reaching precedent. It substitutes Government regulation for the public's freedom to choose among manufactured products. It is a forerunner of the consumer controls of the future, and opens whole new vistas of coercion and confusion.

If, today, we force people to buy TV sets they don't want and can't use, where will we draw the line tomorrow, if, in fact, there is any line left to draw? Why not force automobile manufacturers to make only compact cars because limousines take up too much room, or only convertibles because sunshine is good for people? It is no excuse to say that the bill's purpose, the extension and improvement of television service, is laudable. Justice Brandeis scotched that when he said "Experience teaches us to be most on our guard to protect liberty when the Government's purposes are beneficent."

Furthermore, it is estimated the bill will add about $25 to the cost of each TV set, an added burden on consumers amounting to $150 million a year at the current level of sales. It will not correct the basic disadvantages of UHF television, which can be received only at substantially shorter distances and with more troublesome interference than VHF, but it will lend new impetus to the drive to move all television to the UHF channels, with a consequent loss of service, particularly in rural and suburban areas.

The bill's intended results will not be realized for at least 6 to 8 years, for it will take that long, according to Commerce Department estimates, to substantially replace the sets now in use, and by then it may not be needed at all. All-channel set production so far this year is 100 percent greater than for the same period last year, in response to rising public interest in UHF broadcasting, especially educational TV which will get an extra shot in the arm from the new Federal-aid program.

We cannot support legislation which asserts the Federal regulatory power for purely social ends, however desirable. The precedent will plague us from now on.

JOHN M. BUTLER.
NORRIS COTTON.

S. Rept 1526, 87-2——2

APPENDIXES

APPENDIX A

U.S. SENATE,
COMMITTEE ON COMMERCE,
February 15, 1962.

Hon. BYRON R. WHITE,
Deputy Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. WHITE: I have enclosed copies of S. 2109, a bill introduced on June 20, 1961, by Senator Magnuson at the request of the Federal Communications Commission, and the Commission's justification therefor. This bill would give the Commission certain regulatory authority over television receiving apparatus and will be the subject of a hearing before the Subcommittee on Communications of the Senate Commerce Committee on February 20, 1962.

We realize that the general subject of this bill is not a matter of specific concern to the Department of Justice. But the Department will be called upon to prosecute all necessary court proceedings, both civil and criminal, for the enforcement of the bill's provisions. See sections 401, 501, and 502 of the Communications Act of 1934, as amended (47 U.S.C. 401, 501, 502).

We are most interested in obtaining the Department's views as to the constitutionality of the bill, since such constitutional questions may arise in court proceedings involving the bill's provisions.

In view of the February 20 hearing date, we would appreciate a prompt reply, and, if possible, on or before February 20.

Sincerely yours,

JOHN O. PASTORE,
Chairman, Communications Subcommittee.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
March 19, 1962.

Hon. JOHN O. PASTORE,
Chairman, Communications Subcommittee, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your letter of February 15, 1962, inviting this Department to comment upon S. 2109, particularly with respect to certain constitutional questions which may arise under the measure.

S. 2109 would amend sections 303 and 330 of the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.). The amendment to section 303 would add a new subsection (s) which would confer authority upon the Federal Communications Commission to prescribe minimum performance capabilities for television receivers to be traded or shipped in interstate commerce or imported into the United States for

public sale. The amendment to section 330 would forbid the trading or shipping in interstate commerce or the importation into the United States of television receivers which do not comply with the minimum performance capabilities prescribed by the Commission pursuant to section 303(s). The prohibition would not apply to carriers who simply transported the receivers.

It is our understanding that the Commission would use the authority to be conferred upon it to require that television receivers manufactured for interstate commerce, or imported, after some specific date in the future be capable of receiving on ultrahigh frequency channels as well as on the present very high frequency channels.

The Department of Justice has certain responsibilities for the enforcement of the Communications Act of 1934. Under section 401(a) (47 U.S.C. 401(a)), the Attorney General, upon request by the Federal Communications Commission, may bring mandamus proceedings to enforce the provisions of the act; under section 401(b), he may seek injunctions in the Federal district courts to enforce the orders of the Commission; and under section 401(c) U.S. attorneys, under the direction of the Attorney General and at the request of the Commission, bring all necessary proceedings for enforcement of the act. Section 501 of the act (47 U.S.C. 501) provides penalties for willful acts or omissions in violation of the requirements or prohibitions of the act; and section 502 (47 U.S.C. 502) imposes fines of $500 a day upon persons who wilfully violate regulations imposed by the Commission under authority of the act.

Your letter noted that constitutional questions might arise in court proceedings conducted by this Department in performance of its responsibilities under the act. We have reviewed the matter and conclude that the Department could successfully resist any contentions that the provisions of S. 2109 are unconstitutional.

The issue of constitutionality conceivably could be raised as a defense in proceedings under sections 401, 501, and 502 by persons violating regulations issued by the Commission under proposed section 303(s) or by persons who had shipped in interstate commerce receivers manufactured in violation of regulations under section 303(s).

On the basis of our review of the authorities, we believe that the Congress has all the necessary power under the commerce clause of the Constitution (art. I, sec. 8, clause 3) to authorize the Federal Communications Commission to prescribe minimum performance capabilities for television receivers.

By its very nature, the spectrum available for electromagnetic transmission is limited. This results in a ceiling on the number of channels which can be utilized for television. In order to obtain the greatest television service possible, expansion must be in the direction of more efficient utilization of the television spectrum. The vast majority of the available television channels is in the UHF portion (70 out of 82). Notwithstanding this, most of the television broadcasting stations are crowded into the VHF channels. A major reason why the 70 UHF channels are only sparsely occupied is the scarcity of television receivers capable of tuning to UHF frequencies. This is fundamentally inconsistent with the allocation of 82 channels for television broadcasting and the national need for full utilization of those channels. The purpose of the bill is to remedy this undesirable situation, and the only constitutional question is whether the means proposed by the bill are appropriate to achieve the end sought.

The transmission of intelligence among the States, by whatever means science may develop, is an element of commerce within the regulatory power of the Congress (*Pensacola Tel. Co.* v. *Western Union Tel. Co.*, 96 U.S. 1, 9). There has never been any serious question as to the power of the Congress to regulate electronic communication, for "[n]o State lines divide the radio waves, and national regulation is not only appropriate but essential to the efficient use of radio facilities" (*Radio Comm'n* v. *Nelson Bros. Co.*, 289 U.S. 266, 279).

The Supreme Court has recognized this in cases considering the technology of radio broadcasting (*Fisher's Blend Station* v. *Tax Comm'n*, 297 U.S. 650, 654) and of electric telegraphy (*Western Union Tel. Co.* v. *Foster*, 247 U.S. 105). In the latter case, a receiving instrument, a telegraphic stockbroker's ticker, was held to be part of interstate communications. Further, the Court has held that the gathering and dissemination of national news and advertising are interstate commerce, so that both newspapers and radio stations circulating such information on a local basis are, nevertheless, within the scope of the commerce clause (*Lorain Journal Co.* v. *United States*, 342 U.S. 143).

Under the criteria of these cases, television receivers are obviously instrumentalities of interstate commerce. This is clear from the technological role they play in the process of communication from television studio to television viewer: It is only when the receiver translates the modulations emanating from the transmitter into sound and light that the process of electronic communication is completed. (*Cf. Fisher's Blend Station* v. *Tax Comm'n, supra; Western Union Tel. Co.* v. *Foster, supra.*) This communication is national in scope; that there may be some local transmissions does not defeat the essentially interstate character of the process. Indeed, the Congress has left no room whatever for local regulation of television broadcasting because such regulation would be inconsistent with effective control of interstate activity (*Allen B. Dumont Laboratories* v. *Carroll*, 184 F. 2d 153 (C.A. 3), certiorari denied, 340 U.S. 929). Moreover, the television receiver, like the local newspaper and the local radio station in the *Lorain Journal* case, serves as a device for the dissemination of national news and national advertising. Thus it is an instrumentality of commerce not only for technological reasons but for functional reasons as well.

Since television receivers are instrumentalities of interstate commerce and are therefore within the legislative authority conferred by the commerce clause, the power of the Congress to legislate respecting them is complete and without any limitations except those derived from other portions of the Constitution (*Gibbons* v. *Ogden*, 9 Wheat. 1, 194–197). It thus is fully within the power of the Congress to legislate for the purpose of encouraging a broader range of facilities for television communication. "The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon" (*Wickard* v. *Filburn*, 317 U.S. 111, 128).

The fact that standards for the manufacture of television sets would be authorized under S. 2109 does not derogate from the bill's validity. Constitutional power does not turn on whether an activity is "manufacturing" or "production," but on the actual effect of the activity in question upon interstate commerce (*Wickard* v. *Filburn, supra*, at p. 120). Where the regulation of production is regarded

by the Congress as a suitable means of controlling an aspect of interstate commerce, it has full power under the Constitution to resort to this procedure (*United States* v. *Darby*, 312 U.S. 100).

In the *Darby* case, the Supreme Court sustained the constitutionality of legislation barring from interstate commerce goods which had been produced for it under conditions determined by the Congress to be substandard. That reasoning, we believe, would bind the courts in proceedings challenging the validity of the proposed amendments, for such is the nature of television communications today, that every receiver is manufactured for interstate commerce, because it is itself an instrumentality of that commerce.

Congress has on other occasions regulated production to protect interstate commerce. For example, no aircraft can qualify to operate in air commerce unless it meets standards as to type, production, and airworthiness established by the Civil Aeronautics Board (sec. 703, Federal Aviation Act of 1958, 72 Stat. 776, 49 U.S.C. 1423).

It is now beyond dispute that Congress has the power to exclude from interstate commerce all goods which do not conform to standards deemed necessary to protect that commerce or encourage its development (*United States* v. *Darby, supra*). Given this power, the proposed section 330 which would bar from trade or shipment in interstate commerce television receivers not meeting minimum Federal standards under section 303(s) is clearly valid under the commerce clause.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

APPENDIX B

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 16, 1962.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the hearings before your committee, you raised the question of the relationship between this legislation and the Commission proceedings proposing to deintermix areas to all UHF. Following our hearings before your committee we testified before the House Commerce Committee. During the House hearings Chairman Harris asked us for written responses to four specific questions. It was agreed that the Commission would supply its answers within a week after the House hearings closed. This time ends today and we have sent to Chairman Harris our response.

The Commission's judgment (Commissioner Lee dissenting) is that if the all-channel receiver TV legislation is enacted by this Congress, it would be inappropriate, in the light of this important new development, to proceed with the eight deintermixture proceedings initiated on July 27, 1961, and that, on the contrary, a sufficient period of time should be allowed to indicate whether the all-channel receiver authority would in fact achieve the Commission's overall allocations

goals. We have reached this judgment on the basis of a number of considerations.

As we made clear in our testimony, we do not conceive of selective deintermixture as a general or long-range solution for the television allocations problem. Rather, we believe that we will need a system using both UHF and VHF channels, and that all-channel receiver legislation is the basic and essential key to that long-range goal. For with this legislation, time would begin to run in favor of UHF development. The UHF operator (both commercial and educational) could look forward to UHF receiver saturation not only in his home city but in the surrounding rural area as well, and could expect improvement in the quality of the UHF portion of the receivers in the hands of the public. With increased use of UHF, and increased incentive for both equipment manufacturers and station operators to exploit its maximum potential, there is reason to believe that several of the problems which presently restrict the coverage of UHF stations would be overcome. In short, as we stated in our notice of proposed rulemaking in docket No. 14229, the all-channel receiver is "critically important" because it is directed squarely to "the root problem of receiver incompatibility." It is our hope and belief that the achievement of set compatibility will make possible a satisfactory system of intermixed assignments, and immeasurably promote educational TV. It will enhance the development of three fully competitive network services and perhaps eventually of still further network service. These then are the reasons for our judgment on this important matter.

The Commission has made the further judgment that any agency moratorium on deintermixture to all UHF would not be applicable to the deintermixture proceedings in (1) Springfield, Ill. (docket No. 14267), (2) Peoria, Ill. (docket No. 11749), (3) Bakersfield, Calif. (docket No. 13608), and (4) Evansville, Ind. (docket No. 11757). The reasons for this judgment are set out in the attached appendix.

Finally, the Commission considered the proposal of a statutory prohibition against any Commission deintermixture action (to all UHF) which would continue until ended by action of both Houses of Congress. The Commission does not favor this approach. For, it means, in effect, that if the all-channel legislation proves inadequate, and the Commission feels that some form of deintermixture is desirable in order to achieve the purposes of the Communications Act (e.g., sec. 1, 303(g)), it would have to seek the equivalent of an amendment to the act. In our opinion, such a statutory scheme would render administrative policy inflexible and ineffective. We strongly urge that the Commission not be deprived, in this area, of the broad discretion which Congress gave it to meet changing problems and circumstances. We believe that there is no reason for not following the established policy of over a quarter of a century of permitting Commission action under the public interest standard, subject to congressional and judicial review.

By direction of the Commission.[1]

NEWTON N. MINOW, *Chairman.*

[1] Because of his former connection (prior to nomination as Commissioner) as engineering consultant in regard to the deintermixture of Springfield and Peoria, Ill., Commissioner T. A. M. Craven did not participate in the consideration of the Commission's comments in this letter with respect to those areas. Otherwise, Commissioner Craven concurs with the views of the Commission majority.

APPENDIX

APPLICABILITY OF ANY DEINTERMIXTURE MORATORIUM TO THE SPRINGFIELD, ILL., PEORIA, BAKERSVILLE, AND EVANSVILLE DEINTERMIXTURE PROCEEDINGS

This appendix deals with the applicablity of any moratorium on Commission deintermixture action (to all-UHF operation) to the deintermixture proceedings in (1) Springfield, Ill. (docket No. 14267), (2) Peoria, Ill. (docket No. 11749), (3) Bakersfield, Calif. (docket No. 13608), and (4) Evansville, Ind. (docket No. 11757). For reasons developed within, the Commission believes that any such moratorium should be inapplicable to these proceedings.

1. *Springfield, Ill., deintermixutre proceeding (docket No. 14267).*—On March 1, 1957, the Commission issued an order in the rulemaking proceeding in docket No. 11747, which removed channel 2 from Springfield, Ill., and added it at St. Louis, Mo., and Terre Haute, Ind., and further assigned UHF channels 26 and 36 to Springfield (22 F.C.C. 318). The Commission's order also modified the existing authority of Signal Hill Telecasting Corp., the then licensee of channel 36 in St. Louis, to provide for temporary operation on channel 2. This order was affimed by the court of appeals (*Sangamon Valley Television Corp.* v. *U.S.*, 255 F. 2d 191 (C.A.D.C.), but the Supreme Court remanded the case to the court of appeals for consideration of certain ex parte activities which had occurred during the rulemaking proceedings before the Commission (356 U.S. 49). The court of appeals remanded the case to the Commission for a determination of the nature and source of all ex parte pleas (269 F. 2d 221). The Commission, after ascertaining such pleas, proposed to give interested parties an opportunity to respond to them but not to comment on matters occurring subsequent to March 1, 1957.

On appeal, the Department of Justice took issue with this latter ruling, urging that the Commission must consider post–1957 facts "if it is to reach a proper rulemaking decision as to where the VHF channel 2 should be allocated for the future" (brief, p. 8). The Commission, in its brief, pointed out that "consideration of subsequent events might well have to include existing service to the public in St. Louis * * *" (p. 18). The court agreed with the Department and ordered the Commission "to conduct an entirely new proceeding," based on the facts as they now exist; it further stated that the existing service on channel 2 in St. Louis may be continued by the Commission during this new preceeding (294 F. 2d 742). On September 7, 1961, the Commission instituted the new proceeding (docket 14267).

We have set out this lengthy history to show that the *Springfield, Ill.*, deintermixture proceeding does not stand on the same footing as the eight deintermixture proceedings initiated last July. If a general moratorium prevents deintermixture in these proceedings, it rightly or wrongly maintains the satus quo in these areas. But a moratorium precluding deintermixture in Springfield would, as a practical matter, upset the status quo. For, as the court recognized, the facts are that since 1957 Springfield has been all UHF and channel 2 has been serving the St. Louis area. Without any consideration of the merits of the matter, the moratorium thus would automatically withdraw channel 2 from service in St. Louis (and from assignment to Terre Haute

where, however, it has been the subject of a comparative hearing) and call for VHF operation in Springfield. We think that such an automatic application of a general moratorium is unsound and that the matter rather should be left to the Commission's judgment. And see section 402(h), Communications Act. It may be that in spite of the dislocation we have described, the Commission might conclude in docket 14267 that the public interest would not be served by ordering deintermixture of Springfield. But certainly that decision is one calling for a judgment on the basis of all the public interest factors—and not for automatic application of any general deintermixture moratorium. This conclusion is buttressed by the domino effect of a moratorium precluding deintermixture of Springfield on the Peoria, Ill., deintermixture case, to which we now turn.

2. *Peoria, Ill., deintermixture case (docket No. 11749).*—The Commission in a report and order issued March 1, 1957, deintermixed the Peoria area, substituting a UHF channel for channel 8 which was reassigned to the Davenport-Rock Island-Moline metropolitan area in order to afford "a third VHF outlet in this major market" (docket 11749, 22 F.C.C. 342).[1] On appeal, the court of appeals affirmed the Commission's order (*WIRL Television Co.* v. *U.S.*, 253 F. 2d 863 (C.A.D.C.)); the case was, however, subsequently remanded to the Commission, not because of any error or because of ex parte factors, but because the Commission's decision was geared, to some extent, to the *Springfield* deintermixture proceeding [2] and accordingly might be affected by a different decision in that proceeding. Since the Commission is to reconsider the *Springfield* matter, the rulemaking with respect to Peoria also was remanded to the Commission, so that it could be reconsidered, if necessary, in the light of the new *Springfield* decision. (See *WIRL Television Co.* v. *U.S.*, 274 F. 2d 83 (C.A.D.C.).)

This means that if a general moratorium causes the Commission to reject deintermixture of Springfield, the *Peoria* deintermixture action would have to be reconsidered in the light of this new factor. But the same moratorium would prevent the Commission from reevaluating and making a new judgment as to whether Peoria should be deintermixed. The actual status quo in Peoria would thus be disturbed without any consideration of the merits of the case. It may be that it should be so disturbed. But it may also be that the Commission would not regard a reversal of the Springfield picture—referred to only in a footnote in the Commission's *Peoria* decision (see footnote 2, supra)—as requiring a different result. Here again, the matter is obviously one for judgment—not rigidity.

3. *Bakersfield, Calif. (docket No. 13608).*—On March 27, 1961, the Commission issued an order deintermixing Bakersfield by substituting UHF 23 channel for channel 10, effective December 1, 1962, or such earlier date as station KERO-TV may cease operation on channel 10 at Bakersfield (21 Pike & Fischer, R.R. 1549). This is final Commission action, with only "formal codification to be accomplished by subsequent order" (21 Pike & Fischer, R.R. 1573). As such, it is

[1] This channel assignment to Davenport-Rock Island-Moline has been the subject of a comparative hearing, which is not yet completed; instructions as to the final decision were announced on June 29, 1961, *Community Telecasting Corp.*, docket No. 12501.

[2] In a footnote in the *Peoria* report, the Commission stated (22 F.C.C. at 352, n. 15): "Our action herein, moreover, comports with our decision in the Springfield deintermixture proceeding (docket No. 11747). In that case we have concluded that the public interest would be served by deleting channel 2 from Springfield. A station on this frequency in Springfield would have provided VHF service to parts of the service areas of the UHF stations in Peoria; and conversely, a station on channel 8 in Peoria would provide VHF service to portions of the area that will be served by UHF stations in the Springfield-Decatur area, which the Commission believes should be all UHF."

appealable and now pending before the court of appeals (*Transcontinent Television Corp.* v. *U.S.*, Case No. 16,541, C.A.D.C.). Obviously, any moratorium on deintermixture would and should be inapplicable to this final Commission action.

If, however, the case were remanded to the Commission for any reason, the question would arise whether Commission reconsideration should be precluded by a general moratorium. We believe that it should not. For, reconsideration in such circumstances stands on a different ground than a new proposal for deintermixture in some area. (Cf. Sec. 402(h) of the act.) Even more important, a moratorium affecting Bakersfield would leave Commission action in this general area (the San Joaquin Valley) in the state of being half complete, half incomplete, and would have seriously adverse consequences on the development of television in the San Joaquin Valley and particularly in the Fresno area. In Fresno, deintermixture action by the Commission is complete, and Fresno station KFRE–TV has shifted from operation on VHF channel 12 to UHF operation. (See FCC 60–814, 60–279.) One of the important aims in the *Bakersfield* case was to complement the Fresno action. As the Commission stated (21 Pike & Fischer, R.R. at pp. 1554–1556):

"7. The potential for the growth and development of multiple-effective local outlets and services in the San Joaquin Valley would be much greater if all television assignments at Bakersfield were in the UHF band. With Bakersfield and Fresno, the two largest expanding population centers of the valley located about 105 miles from each other, and with their trading and market areas extending into the valley between them, where also are located a number of smaller cities where the chances for the establishment of local television outlets are promising, it is inevitable, under the favorable terrain and propagation conditions in the valley, that there is and will be an overlapping of services and a sharing of a common audience by all stations operating at Fresno and Bakersfield or in cities between them. It has been demonstrated that the relatively flat valley floor presents unusually favorable conditions for propagation of television signals. Marietta itself pointed out in comments filed in docket No. 11759 that the 'unique character of the extremely flat and quite treeless San Joaquin Valley, which permits signals to be rolled down the corridor from Bakersfield toward Fresno and from Fresno toward Bakersfield in the manner of a bowling ball, exceeding substantially the normal propagation distances in other areas, is a phenomenon which cannot be ignored.' By virtue of these circumstances, it is essential, we believe, that we make conditions conducive throughout the valley for the growth and successful operation of local outlets by providing an equal opportunity for all valley stations to compete effectively with compatible facilities.

* * * * * * *

"10. With our action removing VHF channel 12 from Fresno and shifting station KFRE–TV on that channel to UHF operation, all television assignments and stations in the valley are now in the UHF band with the exception of station KERO–TV on channel 10 at Bakersfield. At the present time only three stations are operating at Fresno and three at Bakersfield, but there is demand and promise that additional outlets will soon be established at Fresno, and at Tulare, Visalia, and Hanford, which are located in the valley between Fresno

and Bakersfield. [Footnote omitted.] The predicted grade B signal of the VHF channel 10 station at Bakersfield (KERO–TV) extends well beyond Tulare, Visalia, and Hanford where local UHF stations are now contemplated, penetrates the service areas of the Fresno UHF stations, and reaches to within 23 miles of Fresno. There can be no doubt, however, that under the excellent propagation conditions in the valley, its signal penetrates even farther north in the valley. The Nielsen coverage survey for the spring of 1958 indicates that station KERO–TV at Bakersfield reaches and is listened to in homes in Madera County, which is north of Fresno County and principally served by Fresno stations. The 1960 American Research Bureau, Inc., television coverage study of California counties and stations indicates that about 96 percent of the television homes in both Tulare and Kings Counties (Tulare and Visalia are in Tulare County and Hanford in Kings County) and about 58 percent of the TV homes in Fresno County are able to receive station KERO–TV and that station KERO–TV's net weekly circulation (number of TV homes viewing station KERO–TV at least once a week) in Tulare County is about 93 percent, in Kings County about 83 percent, and in Fresno County about 30 percent.

"11. Although our removal of the single VHF outlet at Fresno puts all Fresno stations on a comparable competitive footing which we believe will increase the potential for the growth of healthy competitive services in the Fresno area, we cannot agree with Marietta that deintermixture of the Fresno market can be fully effective notwithstanding its VHF station at Bakersfield. With a VHF outlet at Fresno no longer dominating the Fresno market, there is considerable merit, we believe, to the claim of proponents for UHF deintermixture of Bakersfield that station KERO–TV, as the only VHF station in the valley, would be in a position of conspicuous and unjustifiable dominance over all the competing UHF stations in the valley. This factor and the extent to which station KERO–TV's signal now penetrates beyoud cities between Bakersfield and Fresno where the establishment of additional local UHF outlets is the most promising and into the service areas of the Fresno stations convincingly indicate that the presence of this VHF station in the adjacent Bakersfield market constitutes a significant deterrent to effective and comparable UHF competition in the Fresno market area and to the establishment of effective and beneficial new services, particularly in the smaller cities of the valley. The deterrent would be compounded if Bakersfield were made principally all VHF by the addition of two more VHF outlets, as Marietta suggests, and three Bakersfield VHF stations were to provide service in this now all-UHF area. Complete deintermixture of the entire San Joaquin Valley to UHF is, in our judgment, required for full development and expansion of effective competitive television service throughout the valley."

On this ground also, therefore, Bakersfield should not come within any general deintermixture moratorium but rather should be left to Commission judgment, in the event that reconsideration is called for at some future date.

4. *The Evansville deintermixture proceeding (docket No. 11757).*—On March 1, 1957, the Commission issued a report stating its "judgment that amendment of the table of assignments for television broadcast stations (sec. 3.606(b) of the Commission's rules) by shifting channel 7 from Evansville, Ind., to Louisville, Ky.; assigning channel 31 to Evansville; substituting channel 78 for channel 31 in Tell City, Ind.; shifting channel 9 from Hatfield, Ind., to Evansville where the channel is to be reserved for noncommercial educational use; and by unreserving channel 56 and shifting it from Evansville to Owensboro, Ky., would promote the public interest, convenience, and necessity." The Commission effected the changes as to channel 9 but not those involving channel 7. Because there was an outstanding authorization for operation of station WTVW on channel 7 in Evansville, the Commission instituted show-cause proceedings to modify station WTVW's permit to specify operation on channel 31.

The Commission's action shifting channel 9 from Hatfield to Evansville (for noncommercial educational use) was sustained upon review in court (*Owensboro-on-the-Air, Inc.* v. *U.S.*, 262 F. 2d 702 (C.A.D.C.)). As to the show-cause proceeding, the examiner on July 20, 1961, issued an initial decision recommending that channel 7 be deleted from Evansville and reassigned to Louisville and that WVTW's permit be modified to specify operation on UHF channel 31 (FCC 61D–113). Oral argument on the exceptions to the initial decision will be heard by the Commission on March 29.

Again, we think it apparent that no general moratorium should be applicable to the Evansville area situation. Half the Commission's action in this area is final (i.e., shifting channel 9 to noncommercial operation); the other half—whether channel 7 should be shifted to Louisville to complete the deintermixture of the area and provide Louisville with a third VHF facility—is nearing final decision after a lengthy adjudicatory proceeding. Clearly the judgment as to whether the public interest would be served by such action should be made by the Commission upon the basis of the voluminous adjudicatory record compiled—and not by automatic application of a general moratorium.

Significantly, Senator Capehart, who opposed deintermixture of Evansville in testimony given before the examiner (par. 95, initial decision, FCC 61D–113), concurs in this conclusion. For, while supporting the provision of H.R. 9267 (the Roberts bill) precluding Commission deintermixture, he further stated:

"So that there can be no misunderstanding. I do not take this position in connection with any case that is under adjudication before the FCC. Specifically, my views do not apply to the situation in Evansville where channel 7 has been earmarked for a move for a very long time. The legislative decision in this case was made some years ago. What concerns me is future legislation, or rulemaking, decisions. I think it is proper for me to express my views on such matters, while I should be reluctant to do so as to cases under adjudication" (statement before Subcommittee on Communications, Senate Commerce Committee).

Appendix C

Federal Communications Commission,
Washington, D.C., May 11, 1962.

Hon. John O. Pastore,
Chairman, Subcommittee on Communications,
Committee on Commerce, U.S. Senate, Washington, D.C.

Dear Chairman Pastore: As you know, the House of Representatives, on May 1, 1962, passed H.R. 8031, the Commission's all-channel television receiver proposal. We are extremely gratified by the House passage, and we earnestly hope for favorable Senate action on this legislation.

In one important respect, however, we believe the legislation should be revised so as to insure that it achieves its stated purpose. The Commission is deeply concerned that, as the legislation is presently drafted, we may be powerless to prevent the shipment in interstate commerce for sale of all-channel sets having only the barest capability for receiving UHF signals, and which therefore would not permit satisfactory and usable reception of such signals in a great many instances.

You will recall that the original all-channel receiver proposal would have given the Commission blanket authority to prescribe minimum performance standards for such receivers. At the hearings held both by your committee and the House committee, this provision was criticized on the ground that it would have permitted Commission regulation of all receiver performance characteristics. The Commission made clear its intention to prescribe standards only to the extent necessary to insure that receivers are capable of efficiently receiving all channels, and we agreed that our statutory authority should be so limited. The Commission wishes to emphasize again, and will demonstrate within, that its purpose in this letter is to obtain only the most limited authority needed to accomplish the statutory goal.

As the House report specifically states, the bill passed by the House does not give the Commission any authority to prescribe standards or "minimum performance capabilities for all-channel television sets." On the other hand, the report also states that by "all-channel television sets," it means sets "capable of *effectively* receiving all channels" [emphasis supplied]; and that the language of the section ("be capable of receiving" all television channels) contemplates that all receivers "will have performance characteristics sufficient to permit satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels in any location where, in the light of the normal state of receiver development at the time, such reception can be expected."

First, the House report recognizes that sets must be capable of *effectively* receiving all channels—yet it gives the Commission no authority to enforce or insure such *effective* capability. The statement that a set incapable of effectively receiving all channels would be in violation of section 330(a) and subject to the penalties and sanctions of the Communications Act would, we think, prove inadequate in actual practice. If a set were *capable* of receiving or "tuning in" UHF frequencies—which is all that the Commission can prescribe under the proposed section 303(s)—we do not see how we could establish, in a criminal or civil suit, that its shipment in interstate commerce violated proposed section 330(a), because one or more of its performance characteristics was inferior (or even markedly inferior). On

the contrary, in our view, "capable" would be construed to mean "capable"—not "capable effectively." Only if the performance characteristics were so bad as to render the set *incapable* of receiving all channels could we hope to win such a suit. In short, the report recognizes the importance of this matter of effective capability as against capability so inferior as to frustrate the legislative objective, but seeks to deal with it in the legislative history rather than the statute. If all the manufacturers heed this admonition in the report, there will, of course, be no problem. But, if all do not, the Commission will have no authority to remedy the situation.

Second, we think it important, as a matter of policy, that the Commission not be left powerless to deal with such a situation. We do not say that the situation will develop or is likely to develop. But we cannot say that it is not a possibility in view of the initial competitive factors. If, from the very beginning, there were a heavy demand for UHF receivers, competition could be relied upon to insure adequate performance by the UHF portion of all-channel receivers. But, particularly during the initial period when such demand may be lacking, competitive factors may have the opposite effect. In such circumstances, it is not inconceivable that a few manufacturers may skirt as closely as possible to a mere token UHF receiver component in order to gain a price advantage over their more conscientious rivals. This would hurt not only these rivals but the very important public interest objective of the legislation.

In short, we urge that the legislation should be explicit on this important policy aspect and that there are compelling policy reasons for our position. We also strongly believe that the authority sought by us would not involve the Commission broadly in the details of television set manufacturing, and that, on the contrary, our authority, restricted as it is to the purpose of section 303(s), would be most limited and narrow. We think that we can demonstrate this by making the following representations to your committee, which set out just what the Commission's judgment is, and what it plans to do if given this authority to insure effective capability.

It is the Commission's judgment that effective implementation of the all-channel legislation will necessitate authority for the Commission to specify two receiver characteristics. These two characteristics, which we believe are essential to truly insure the "capability" required by this legislation, are: (1) receiver noise figure [1] at UHF relative to that at VHF; and (2) receiver sensitivity [2] at UHF relative to that at VHF. It is, we think, insufficient to specify merely that the receiver be capable of receiving or "tuning in" all channels, without specifying these characteristics. For in the absence of such specifications, receivers could be legally shipped which while capable of being "tuned" to a UHF channel and thus of receiving it, would require an inordinately strong UHF signal to produce satisfactory picture or sound. Such near-token capability of all-channel reception would obviously be ineffective in achieving the objectives of the legislation. In this connection, we point out again that one of the important objectives is to obtain UHF receiver set saturation in the areas

[1] "Noise" consists of random electrical currents generated by the receiver itself and appears as "snow" in the picture and as audible noise in the sound portion of the TV broadcast. In technical language, "noise figure" is the ratio of the total noise power per unit bandwidth (at a corresponding output frequency) available at the output terminals, to the portion thereof engendered at the input frequency by the input termination, whose noise temperature is standard (290° K.) at all frequencies.

[2] A "sensitivity" requirement would be the specification of the least signal input capable of causing an output signal having desired characteristics.

surrounding communities; *ineffective* capability on the part of the receiver would completely frustrate that objective.

We do not believe Commission rulemaking along the above lines would be onerous or pose any threat to the set manufacturing industry, in view of the following considerations:

(i) The noise or sensitivity characteristics at UHF would be specified *relative* to those of the set at VHF; thus, the manufacturer would be in effect specifying these characteristics of the set (by choosing the VHF figures), and the Commission would only be requiring that the UHF component's capabilities be comparable to that of the VHF component. If, for example, a manufacturer wished to produce a lower-priced VHF set, the UHF component could also be of a similar lower-priced nature.

(ii) In specifying these two characteristics, the Commission would seek to insure *adequate* or *effective* capability of all-channel reception—and not the best possible capability. It would avoid extreme or unreasonable performance specifications, but rather, would select standards which are in the realm of the average characteristics of UHF receivers available on the open market today.

(iii) The numerical values for these specifications and the procedure for assuring compliance would be specified by the Commission only after consideration of these matters in rulemaking proceedings pursuant to section 4 of the Administrative Procedure Act (as *is* now done in the case of transmitter specifications). In such rulemaking proceedings, all interested parties would be given the opportunity to submit fully their views and the Commission would carefully consider such views before reaching a final decision on the rules to be adopted. See section 4, Administrative Procedure Act. And, of course, any arbitrary or unreasonable Commission action could be upset upon appeal to the courts. See section 402(a) of the Communications Act.

(iv) Even more significant is the past experience as to Commission regulation and specification of transmitter performance characteristics. That experience shows that the Commission does not attempt to impose extreme or unreasonable specifications and that the specifications which it does adopt are well accepted by manufacturers and users. Similarly, it is our firm expectation and intent that receiver performance specifications adopted after full consideration in the rulemaking process would also prove generally acceptable. Thus, such Commission specification will protect not only the public but the vast majority of conscientious set manufacturers against any possibility of unfair competition by an unscrupulous few.

We strongly urge, therefore, that the proposed 303(s) be revised to read: "* * * be capable of effectively receiving * * *" (or "* * * be capable of adequately receiving * * *"). We further urge that the committee report spell out the reasons for this authority given the Commission, the Commission's representations as to how it would be employed, the committee's acceptance of those representations and an explicit statement of its understanding that the Commission is thus given only narrow authority, and certainly no broad mandate, to specify performance capabilities for the TV set industry.

Again, we are most grateful for the assistance given us by the House and its committees and your subcommittee. If we can answer any questions you or the subcommittee may have as to this most important legislation, please call upon us.

This letter was approved by the Commission on May 10, 1962.

By direction of the Commission:

NEWTON N. MINOW, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

GENERAL POWERS OF THE COMMISSION

SEC. 303. * * *

(a) * * *

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS

SEC. 330. (a) No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in paragraph (s) of section 303 unless it complies with rules prescribed by the Commission pursuant to the authority granted by that paragraph: Provided, That this section shall not apply to carriers transporting such apparatus without trading in it.

(b) For the purposes of this section and section 303(s)—

(1) The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

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