AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 903

AN ACT TO AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO PAINTING, ILLUMINATION, AND DISMANTLEMENT OF RADIO TOWERS

S. 1554

AN ACT TO AMEND SUBSECTION (b) OF SECTION 214 AND SUBSECTION (c) (1) OF SECTION 222 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, IN ORDER TO SUBSTITUTE THE SECRETARY OF DEFENSE (RATHER THAN THE SECRETARIES OF THE ARMY AND THE NAVY) AS THE PERSON ENTITLED TO RECEIVE OFFICIAL NOTICE OF THE FILING OF CERTAIN APPLICATIONS IN THE COMMON CARRIER SERVICE

S. 1948

AN ACT TO AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO COMMISSIONERS, EMPLOYEES, AND EXECUTIVE RESERVISTS OF THE FEDERAL COMMUNICATIONS COMMISSION

SEPTEMBER 14, 1965

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AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

TUESDAY, SEPTEMBER 14, 1965

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 1:50 p.m., pursuant to call, in room 2123. Rayburn Building, Hon. Oren Harris (chairman) presiding.

The CHAIRMAN. At this time the committee will make a record on bills S. 903, S. 1554, and S. 1948.

(S. 903, S. 1554, S. 1948, and department reports on S. 903 follow:)

[S. 903, 89th Cong., 1st sess.]

AN ACT To amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303(q) of the Communications Act of 1934 (47 U.S.C. 303(q)) is amended by inserting after the period at the end thereof the following: "The permittee or licensee shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation."

Passed the Senate July 30, 1965.

Attest: FELTON M. JOHNSTON,
Secretary.

[S. 1554, 89th Cong., 1st sess.]

AN ACT To amend subsection (b) of section 214 and subsection (c)(1) of section 222 of the Communications Act of 1934, as amended, in order to substitute the Secretary of Defense (rather than the Secretaries of the Army and the Navy) as the person entitled to receive official notice of the filing of certain applications in the common carrier service

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 214 of the Communications Act of 1934, as amended (47 U.S.C. 214(b)), is amended by deleting from the first sentence thereof "the Secretary of the Army, the Secretary of the Navy," and inserting in lieu thereof "the Secretary of Defense".

SEC. 2. That subsection (c)(1) of section 222 of the Communications Act of 1934, as amended, is amended by deleting from the first sentence thereof "the Secretary of the Army," and "the Secretary of the Navy," and inserting in lieu thereof "the Secretary of Defense," immediately after "Secretary of State," in such sentence.

Passed the Senate July 30, 1965.

Attest: FELTON M. JOHNSTON,
Secretary.

[S. 1948, 89th Cong., 1st sess.]

AN ACT To amend the Communications Act of 1934, as amended, with respect to commissioners, employees, and executive reservists of the Federal Communications Commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 4 of the Communications Act of 1934, as amended, is amended to read as follows:

"(b)(1) Each member of the Commission shall be a citizen of the United States. A commissioner shall not engage in any other business, vocation, profession, or employment. He shall not, for a period of one year following the termination of his service as a commissioner, represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party.

"(2) No member of the Commission or person in its employ shall have a financial interest in, be employed by, or have any official relation to—

"(A) any person engaged in radio broadcasting;

"(B) any person engaged in communication by wire or radio as a common carrier;

"(C) any person a substancial part of whose activities consists of the manufacture or sale of radio apparatus for wire or radio communication;

"(D) any person a substantial part of whose activities consists of the installation, servicing, operation, or maintenance of apparatus used for the transmission of communications by wire or radio;

"(E) any person a substantial part of whose activities consists of the providing of services to any other person a substantial part of whose activities consists of radio broadcasting or communications by wire or radio as a common carrier; or

"(F) a holding company, mutual fund, or other investment company whose investments are concentrated substantially in the areas covered by clauses (A) through (E) of this paragraph (2).

"(3) Paragraph (2) of subsection (b) of this section shall not apply—

"(A) to a 'special Government employee' as defined in section 202(a) of chapter 11 of title 18 of the United States Code; or

"(B) to persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended (69 Stat. 583; 50 U.S.C. App. 2160 (e)), and (i) not otherwise employed by the Government in a full-time capacity, or (ii) when employed full time in time of war or during periods of national emergency declared by the President.

"(4) Paragraph (2) of subsection (b) of this section shall not apply if the commissioner or employee advises the Government official responsible for appointment to his position of all pertinent circumstances and receives a written determination made by such official that the financial interest, employment, or official relation to a person described in paragraph (2) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such commissioner or employee."

SEC. 2. The second sentence of subsection (j) of section 4 of the Communications Act of 1934, as amended, is hereby repealed.

Passed the Senate August 3, 1965.

Attest:

FELTON M. JOHNSTON,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 1, 1965.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 903, an act to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers.

S. 903 would authorize the Federal Communications Commission to require the painting and illumination of abandoned radio towers until their dismantlement. It would also empower the Federal Communications Commission to require dismantlement of unused towers when the Administrator of the Federal

Aviation Agency determines that a tower constitutes a menace to air navigation.

There would be no objection from the standpoint of the administration's program to enactment of S. 903.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 12, 1965.

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

DEAR MR. CHAIRMAN: This will acknowledge receipt of your letter of August 6, enclosing for the Commission's comments on S. 903, an act to amend the Communications Act of 1934, as amended, with repsect to painting, illumination, and dismantlement of radio towers. S. 903 was approved by the Senate on July 30, 1965.

This measure is part of the Commission's legislative program for the 1st session of the 89th Congress and was transmitted to the Speaker of the House on December 31, 1964. It was thereafter referred to your committee but has not been introduced in the House.

The Commission supported such legislation in testimony before your committee on February 18, 1965, dealing with House Joint Resolution 261 and before the Subcommittee on Communications of the Senate Commerce Committee on June 23, 1965. We have no further comment to make other than that contained in our memorandum of explanation which accompanied our proposal, a copy of which is enclosed.

Yours sincerely,

ROSEL H. HYDE, *Acting Chairman.*

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 303(q) OF THE COMMUNICATIONS ACT OF 1934, RELATING TO THE PAINTING, ILLUMINATION, AND DISMANTLEMENT OF ABANDONED RADIO TOWERS

This proposal would amend section 303(q) of the Communications Act of 1934 to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to license issued by the Federal Communications Commission (47 U.S.C. 303(q)). It further empowers the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

Concern has been expressed by aviation interests, both Government and non-Government, and by the general public, over the potential air navigation hazards posed by abandonment of tall antenna towers, particularly those over 1,000 feet, left standing unlighted and unpainted. The seriousness of this hazard is aggravated by the current trend toward the construction of more and higher radio antenna towers. Being of latticed construction, radio towers are inherently less visible than solid structures such as buildings, water towers, smokestacks, and the like.

Abandonment can occur by voluntary act of licensee, as when the license is permitted to expire or is submitted for cancellation, or when the licensee fails to contest an order to show cause, in consequence of which the license is revoked. Involuntary abandonment normally results from bankruptcy, death, or other legal disability affecting the licensee. Since the events leading to abandonment normally coincide with expiration, cancellation, or revocation of the station license, the Commission is at this juncture powerless to compel continued obstruction marking by invoking the administrative sanctions normally available to it except in those cases where other radio licenses are outstanding in the name of the same person.

The concern about the potential hazard to aviation safety prompted the Air Coordinating Committee to establish a Joint Industry-Government Tall Structures Committee (JIGTSC) to investigate the problems raised in the joint use of airspace by the aviation and broadcast industries and to recommend appropriate action establishing the position of the Federal Government in this matter.

One of JIGTSC's recommendations was that "the Federal Communications Commission require the removal or appropriate lighting and marking of unused or abandoned towers if it has such authority, and if such authority does not exist * * * that the Federal Communications Commission seek appropriate legislation to attain this objective."

After study and consideration of the JIGTSC and other parallel recommendations, the Commission, convinced that the public interest would best be served by implementation of such recommendations, submitted a legislative proposal which was introduced in the 85th Congress. That proposal would have amended section 303(q) of the Communications Act to authorize the Commission to require the continued lighting and marking of radio towers although the tower has since ceased to be used for radio transmitting purposes. The same proposal was introduced in both the 86th and 87th Congresses; however, in the 87th Congress the Senate Commerce Committee added an amendment authorizing the Commission to require the owner to dismantle and remove the tower when there is a reasonable possibility that it may constitute a menace to air navigation (S. Rept. 214, 87th Cong.). The Senate passed the bill, S. 684, 87th Congress, with the committee amendment.

At present, section 303(q) of the Communications Act of 1934 reads as follows:

"SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

* * * * * * *

"(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation."

The subject proposal would amend section 303(q) to read as follows:

"(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation."

The criteria which have been adopted pursuant to the authority under the present section 303(q) against which aeronautical hazard is gaged in particular cases are set forth in part 17 of the rules of this commission and entitled "Construction, Marking, and Lighting of Antenna Structures." In general, these criteria provide that radio towers exceeding 170 feet in height require obstruction marking irrespective of location, and under these criteria the number of radio towers that can be approved without obstruction marking greatly exceeds those requiring such marking. The painting and lighting specifications imposed under part 17 provide an adequate vehicle for the protection of aviation interests and otherwise meet the Commission's responsibilities under present law; however, these criteria are applicable at this point only to towers used in connection with authorized radio operation. Accordingly, these criteria would not be applicable under present law and regulations to towers presently not used in connection with the licensed transmission of radio communications. Such abandoned towers constitute the particular problem sought to be remedied by this proposal.

The language suggested is essentially that approved by the Senate in the 87th Congress (S. 684). The sole difference from S. 684 is that the FCC's authority to require that a tower be dismantled is based upon a finding by the Administrator of the Federal Aviation Agency that there is a reasonable possibility that it may constitute a menace to air navigation.

We believe that the proposal constitutes an effective and desirable solution to a problem raised by the joint use of airspace by the broadcast and aviation industries.

Adopted December 9, 1964.

Commissioner Bartley dissenting and stating: "I know of no necessity for this legislation."

Commissioner Lee absent.

DEPARTMENT OF THE AIR FORCE,
Washington, August 17, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 903, 89th Congress, an act to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers. The Air Force has been designated to express the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Communications Act of 1934 to require that a permittee or a licensee shall maintain the painting and/or illumination of a tower which has been licensed to transmit radio energy. In the event the tower should cease to be licensed by the Federal Communications Commission for the transmission of radio energy, the owner of the tower would maintain the prescribed painting and/or illumination until it is dismantled and the Federal Communications Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

The Department of Defense, as a major user of the airspace, supports the principle that existing radio transmission towers should be adequately painted and lighted and that abandoned or unused radio towers should be dismantled. However, since this matter is of direct concern to the Federal Communications Commission and the Federal Aviation Agency, the Department of Defense defers to these agencies for a determination of the exact statutory legislation required.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

ROBERT H. CHARLES,
Assistant Secretary of the Air Force
(Installations and Logistics).

FEDERAL AVIATION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., August 30, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Agency with respect to S. 903, a bill to amend the Communications Act of 1934, as amended, with respect to painting, illumination, and dismantlement of radio towers.

This proposal would amend section 303(q) of the Communications Act to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to license issued by the Federal Communications Commission. The proposal further empowers the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

The Federal Aviation Agency favors enactment of this bill, for it would remedy a serious problem of long standing. Antenna towers constitute a particular danger to pilots, both because of their height and their peculiar structure. Today we have such towers extending as high as 2,000 feet above ground. These structures, being extremely narrow and of latticed construction, create unusual visibility problems for pilots, and it is particularly important that they be properly marked and illuminated both for the protection of persons using the airways and for the protection of persons on the ground in the vicinity of a tower. As long as a broadcasting tower is subject to FCC jurisidiction, broadcasters are required to provide standard marking and lighting protection prescribed in regulations issued by the FCC. When a broadcasting tower is abandoned, however, the protection

of this marking and lighting is no longer assured, for the Commission's authority to regulate in that area is terminated. S. 903 would extend the Commission's authority to fill this regulatory gap, and thus afford the public continued protection against unmarked and unlighted towers.

S. 903 also authorizes the Commission to require the dismantling of abandoned towers constituting a menace to air navigation, and it identifies the Administrator of the Federal Aviation Agency as the individual authorized to make the determination on the question of the effect of an abandoned tower on air navigation. We believe this measure necessary and appropriate for the public protection. Where a tall tower no longer serves a useful purpose, and where its existence may create a hazard to air navigation, its owner should be required to dismantle and remove it.

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

Sincerely,

WILLIAM F. MCKEE, *Administrator.*

CIVIL AERONAUTICS BOARD,
Washington, D.C., August 18, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your letter of August 6, 1965, requesting the Board's comments with respect to S. 903, an act to amend the Communications Act of 1934, as amended, with respect to painting, illumination and dismantlement of radio towers.

S. 903 would amend section 303(q) of the Communications Act of 1934, authorizing the Federal Communications Commission to require the painting and illumination of radio towers used in connection with the licensed transmission of radio energy when it believes such towers constitute a menace to air navigation, so as to require that abandoned or unused radio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used pursuant to license. The Commission would also be empowered to require the dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

The Commission pointed out in its letter transmitting draft legislation to the Congress which was identical to S. 903 that since the events leading to abandonment normally coincide with expiration, cancellation, or revocation of a station license it is powerless to compel continued obstruction marking except in those cases where other radio licenses are outstanding in the name of the same person. The Commission also pointed out that a Joint Industry Government Tall Structures Committee (JIGTSC), established to investigate the joint use of airspace by the aviation and broadcast industries, recommended that the Commission seek legislation, if necessary, authorizing it to require the removal or appropriate lighting and marking of unused or abandoned towers.

Since S. 903 would contribute to air safety by requiring appropriate markings of unused or abandoned radio towers, the Board urges its enactment.

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

Sincerely yours,

CHARLES S. MURPHY, *Chairman.*

The CHAIRMAN. I might state that I believe that we have identical bills in the House introduced—H.R. 6482, H.R. 7790, and H.R. 11003. I had been led to believe that these three bills are virtually noncontroversial. The Chairman of the Federal Communications Commission, carrying out his responsibility, has been requesting the committee over a period of months now to provide the Commission with these proposed bills to assist them in carrying out their duties and responsibilities. I suppose as far back as 6 months ago I promised you, Mr. Chairman, that we would take these matters up during this session.

The committee has been occupied with other legislation, and time is getting away from us. So I decided, in carrying out my promise to you and in view of the schedule of the committee, that we would schedule them for hearings this afternoon and put all three of them together.

In view of the fact that the Senate has passed these three bills, we decided that we would just take the Senate bills, since they are identical, and hold a hearing on them. So, unless there develops some controversy over it, we should be able to complete the hearings during the brief time that we will have this afternoon.

So we are glad to have you back with us. I suppose it would be appropriate to express the hope that you had a very enjoyable vacation. You look as if you had been out in the open. Probably you came back vigorous, healthy, and ready to go again for several months.

Anyway, we are glad to give you an opportunity to give the committee the benefit of your suggestions and recommendations on these proposals.

STATEMENT OF HON. E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. HENRY. Thank you, Mr. Chairman.

I do appreciate very much your willingness and the willingness of this committee to hear us on these matters. We know how busy you are and we are very grateful that you could work us into your schedule.

I have a statement prepared on each of the three bills. With your permission, I would merely summarize briefly what those bills provide, and put my statement in the record.

The CHAIRMAN. You have separate statements on each of the bills?

Mr. HENRY. Yes, sir.

The CHAIRMAN. Suppose we let the statement go in the record and your summary will be interspersed with the three separate bills so that they will have continuity and go in the record together.

Mr. HENRY. All right, sir.

(Mr. Henry's statement follows:)

STATEMENT OF HON. E. WILLIAM HENRY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ON THREE BILLS INTRODUCED IN THE 89TH CONGRESS AT FEDERAL COMMUNICATIONS COMMISSION REQUEST (S. 903, S. 1554, AND S. 1948)

My name is E. William Henry and I am Chairman of the Federal Communications Commission.

Being aware of a number of pressing matters in other areas which are receiving the attention of this committee, I especially appreciate your kindness in scheduling hearings on these three bills requested in the Commission's legislative program for the 89th Congress, and the opportunity to appear in support of them.

S. 903 and S. 1554 passed the Senate on July 30, 1965, and S. 1948 on August 3, 1965.

Unless the committee prefers otherwise, I shall discuss them in numerical order.

S. 903: TO AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO PAINTING, ILLUMINATION, AND DISMANTLEMENT OF RADIO TOWERS

S. 903 would amend section 303(q) of the Communications Act of 1934 to require that abandoned or unused ratio towers continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with the transmission of radio energy pursuant to a license issued by the Federal Communications Commission. It further empowers the

Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

Under section 303(q) of the Communications Act, the Federal Communications Commission has authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. Pursuant to this statutory authority, the Commission has adopted criteria to gage the aeronautical hazard in particular cases and has prescribed rules specifying the painting and lighting requirements for these towers.

However, when a radio station license expires, is canceled, or is revoked, these towers are no longer used in connection with authorized radio station operation. They are then "abandoned towers," and as such, would not appear to fall within the Commission's jurisdiction so as to compel continued marking or lighting. Radio towers, which are of latticed construction, are inherently less visible than solid structures such as buildings, water towers, smokestacks, and the like. The potential menace to air navigation of such a tower left standing unlighted and unpainted is obvious.

The Joint Industry Government Tall Structures Committee (JIGTSC) established by the Air Coordinating Committee to investigate the problems raised by the joint use of airspace by the aviation and broadcast industries, and to recommend appropriate action establishing the position of the Federal Government, recommended in 1957 that "the Federal Communications Commission require the removal or appropriate lighting and marking of unused or abandoned towers if it has such authority, and if such authority does not exist * * * that the Federal Communications Commission seek appropriate legislation to attain this objective."

After study and consideration of the JIGTSC and other parallel recommendations, the Commission, convinced that the public interest would be served by implementation of such recommendations, submitted a legislative proposal which was introduced in the 85th Congress. That proposal would have amended section 303(q) of the Communications Act to authorize the Commission to require the continued lighting and marking of radio towers although the tower has since ceased to be used for radio transmitting purposes. The same proposal was introduced in both the 86th and 87th Congresses. In the 87th Congress, the Senate Commerce Committee added an amendment authorizing the Commission to require the owner to dismantle and remove the tower when there is a reasonable possibility that it may constitute a menace to air navigation (S. Rept. 214, 87th Cong.). The Senate approved the bill, S. 684, 87th Congress, with the committee amendment.

The language of our present proposal is essentially the same as that approved by the Senate in the 87th Congress in S. 684. The sole difference is that the Federal Communications Commission's authority to require that a tower be dismantled would be based upon a finding by the Administrator of the Federal Aviation Agency that there is a reasonable possibility that the tower may constitute a menace to air navigation.

We believe that the proposal constitutes an effective and desirable solution to a problem raised by the joint use of airspace by the broadcast and aviation industries.

S. 1554: TO DESIGNATE THE SECRETARY OF DEFENSE, INSTEAD OF THE SECRETARIES OF THE ARMY AND NAVY AS AT PRESENT, AS THE PERSON TO RECEIVE OFFICIAL NOTICE OF THE FILING OF CERTAIN APPLICATIONS IN THE COMMON CARRIER SERVICE

S. 1554 would amend sections 214(b) and 222(c)(1) of the Communications Act of 1934, as amended, to substitute the Secretary of Defense (rather than the Secretaries of the Army and the Navy) as the person entitled to receive official notice of the filing of certain applications.

When a common carrier wishes to extend its lines or to discontinue or curtail existing services, it must file an application for permission to do so. Section 214(b) of the Communications Act provides that among those entitled to receive official notice of the filing of such an application are the Secretary of the Army and the Secretary of the Navy. A similar provision for official service is contained in section 222(c)(1), in cases of consolidations and mergers.

By amending sections 214(b) and 222(c)(1) of the Communications Act to provide for official notice to the Secretary of Defense and to delete "Secretary of

the Army" and "Secretary of the Navy" where those titles appear in such sections, S. 1554 would eliminate unnecessary paperwork. Experience has proved that while copies of applications have been sent to the Departments of the Army, Navy, and Air Force, as well as the Secretary of Defense, the Department of Defense is the agency that makes the required reply in the vast majority of cases.

Limiting official notice to the Department of Defense in such cases should provide adequate notice to the military and, at the same time, eliminate unnecessary administrative work.

S. 1948: TO AMEND THE PROVISIONS OF THE COMMUNICATIONS ACT WITH RESPECT TO THE FINANCIAL INTERESTS OF COMMISSIONERS, EMPLOYEES, AND EXECUTIVE RESERVISTS OF THE COMMISSION

S. 1948 would amend subsection 4(b) of the Communications Act (47 U.S.C. 154(b)) to bring the provisions dealing with the financial interests of Commissioners and Commission employees more closely into line with current national policy on conflicts of interest. It would also exempt from the provisions of subsection 4(b) "special Government employees"; i.e., the short-term consultant, and persons serving in the Commission's executive reserve program.

Conflict-of-interest provisions in the law have the highly salutary purpose of insuring that Government officials act in the public interest and maintain their affairs so that no actual or apparent personal financial motivations cloud their official decisions. We are in full accord with this objective.

Congress has also recognized, however, that Government employees should be free to engage in lawful financial transactions to the same extent as private citizens where no real conflict of interest exists. This approach has been followed in both the general revision of the conflict-of-interest laws enacted by the Congress in 1962 (Public Law 87–849, approved Oct. 23, 1962) and in President Johnson's Executive Order No. 11222 of May 8, 1965, prescribing standards of ethical conduct for Government officers and employees.[1]

Section 4(b) of the Communications Act as it presently stands contains a broad prohibition against any financial interest by any Commissioner or Commission employee in any company connected with radio. It covers not only communication common carriers, and broadcast and other radio licensees, but also any company manufacturing radio apparatus, and every company furnishing services or radio apparatus to companies which are licensees or manufacturers. It prohibits the ownership of "stocks, bonds or other securities of any corporation subject to any of the provisions of the act."

When it was enacted in 1934, the relevant background was the use of radio by broadcast companies and the regulation of communications common carriers. Since that time, however, the Commission has licensed over a million companies and individuals in the safety and special radio services.

Thus, today many corporations having nothing to do with broadcasting or communications common carriers subject to the Commission's regulatory authority are Commission licensees, and our employees are prohibited from buying their stock, solely because their corporate airplane is equipped with radio, or because in some other incidental way they use radio communications in their business. States and municipalities are also usually licensees of police and fire radio systems. In fact, practically every facet of modern industry and commerce, whether it be farming, mining, manufacturing, transportation, or public utilities, uses radio communication and is therefore subject to the licensing provisions of the Communications Act. The growth of mutual funds containing a wide diversity of stocks, some of which are almost certain to be in the communications field, raises further problems under the broad language of subsection 4(b).

While FCC Commissioners and employees should be prohibited from investing in broadcast companies and communications common carriers, we strongly believe that the broad language of subsection 4(b) should be changed to remove the shadow land involving those thousands of companies which use radio merely as an incident of their business, and situations such as investment in an ordinary mutual fund.

S. 1948 would go a long way both in clarifying and making realistic the law in this field, without sacrificing the necessary and meaningful restrictions on substantial outside interests which might affect a Commissioner's or an employee's

[1] See e.g., H. Rept. No. 748, 87th Cong., 1st sess., p. 6, and sec. 203 of Executive Order No. 11222, May 8, 1965, 30 F.R. 6469.

performance of his duties. It would continue to prevent the same types of activities now prohibited by subsection 4(b)—that is, investment, employment by, or holding "official relation to" certain types of companies. It would continue to apply these prohibitions both to Commissioners and Commission employees. It would continue to preclude direct investment by Commissioners and Commission employees in broadcasting or communications common carriers, the primary fields of Commission regulatory activity.

Moreover, it would continue to apply to relationships with, and investments in, companies a substantial part of whose activities consists of the manufacture or sale of radio apparatus or of apparatus for wire or radio communication or the providing of services to radio broadcasters or to common carriers offering communication services by wire or radio. The language also adds a specific reference to prohibit official relationships with, or investment in, companies a substantial part of whose activities is the installation, servicing, or maintenance of apparatus used for the transmission of communications by wire or radio. These provisions would, for example, preclude investment in networks, manufacturers of telephones, radio, and television sets, etc. However, a furniture store which happens to include a broadcast licensee among its customers would not ordinarily be a prohibited investment, nor would a department store which handles television sets among countless thousands of other items. Such operations clearly have no bearing upon any conflicts of interest, real or apparent, which the section is designed to prevent.

S. 1948 would also prohibit investment in a holding company, mutual fund, or other investment company whose activities are concentrated substantially in broadcasting, communications by wire, or the other mentioned activities. In such circumstances, the non-participation test of Public Law 87–849 would apply, that is whether the investment is so substantial as likely to affect the integrity of the services which the Government may expect, or whether it is too remote or inconsequential to affect the integrity of such services.

Even under these new prohibitions, situations of injustice and hardship could arise in exceptional circumstances. Thus, for example, if a Commission employee were to be named beneficiary of a trust containing, among other things, a few shares of stock of an interstate communications common carrier, he would be in violation of the act if he continued in the Commission's employ. Yet he might have no control over the trust and not be able to get the trustees to sell the offending shares. Other factual situations, each one unique, could arise.

The bill thus contains a provision similar to that in the general conflict of interest law (18 U.S.C. 208), so that the proscriptions of the act would not apply where, after full disclosure, a written determination is made by the appointing official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the Commissioner or employee.

S. 1948 also exempts from the financial interest provisions of subsection 4(b) "special Government employees" as that term is defined in Public Law 87–849, 76 Stat. 1119, approved October 23, 1962, 18 U.S.C. 201. The broad scope of existing section 4(b) stands as an obstacle to the use of part-time consultants contemplated by Public Law 87–849, which has liberalized the conflict-of-interest standards as they apply to special Government employees. That act is designed to "* * * help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government." (Attorney General's "Memorandum Regarding Conflict-of-Interest Provisions of Public Law 87–849" dated Jan. 28, 1963 (28 F.R. 985).)

Such an employee would continue to remain fully subject to all the conflict-of-interest standards now contained in Public Law 87–849. And in the event a "special Government employee" should become a regular employee of the Commission, or a member thereof, he would then become subject to section 4(b)(2) of the Communications Act. In short, it is not intended to confer on "special Government employees" any rights beyond those now set out in Public Law 87–849.

Also exempt from the financial interest provisions of subsection 4(b) would be persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended (69 Stat. 583, 50 U.S.C. App. 2160(e)), and not otherwise employed by the Government in a full-time capacity, and those executive reservists employed full-time in time of war or during periods of national emergency declared by the President.

The executive reserve program, approved in Congress in 1955, authorized the President to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of

emergency. It further authorized the President to provide by regulation for the exemption of members of such reserve from the operation of the conflict-of-interest provisions in sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (sec. 99 of title 5). This he did in his Executive order establishing the national defense executive reserve. (Executive Order 10660, Feb. 15, 1956, 21 F.R. 1117.)

The financial interest provisions of section 4(b) of the Communications Act have been found to be unduly restrictive in the recruitment for the executive reserve training program of the Commission. This has been one of the difficulties encountered in the search for well-qualified appointees. And it is those people who, by reason of their past employment in the Commission or employment in executive positions in the communications industry, are the best qualified and most valuable to serve the Government as full-time Commission employees in periods of national emergency or time of war.

Section 4(b) of the Communications Act was last amended by the Congress in 1960 (Public Law 86-752, approved September 13, 1960). At that time Congress deleted the provision, added to the act in 1952, under which Commissioners were permitted to receive a reasonable honorarium or compensation for the presentation or delivery of publications or papers. The present proposal in no way affects that action of the Congress.

In view of the foregoing, the Commission supports S. 1948 as a bill of important practical significance to its employees and one whose purpose is consistent with the recent expressions of congressional and administration intent, while maintaining full protection to the public interest in leaving administrative proceedings free from actual or potential conflicts of interest.

Mr. HENRY. Referring to them as they passed the Senate, S. 903 would amend section 303 of the Communications Act to require that abandoned or unused radio towers would continue to meet the same painting and lighting requirements that would be applicable to them if they continued to be used in connection with the communications industry.

We now require our licensees to maintain towers, to light them, and to keep them painted so as to prevent them from being hazards or menaces to air navigation. This bill would simply give the Commission power to direct their dismantlement when such towers in the judgment of the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may continue to be a menace to air navigation.

In short, this would simply enable us to keep the towers maintained as they are now when in use, after they are no longer in use. Because, so far as air navigation and air safety is concerned, they are the same, whether they are in use or no longer being used, they are still sticking up in the air.

Mr. Chairman, that is it in a nutshell. This is part of our continuing effort, with which we think we have had a great deal of success, to cooperate with the FAA in handling the various problems that arise in connection with accommodating both the needs of the broadcasters and the needs of those who use the air space in this country.

We recognize that consideration has to be given to each, and we think this is evidence of further cooperation along that same line. The FAA does support this bill, and we are both agreed, the FCC and the FAA, that it will help us both to carry out our statutory responsibilities.

The CHAIRMAN. Is there any opposition to it, that you know of?

Mr. HENRY. None that we know of.

The CHAIRMAN. Mr. Rogers has some questions he would like to ask you.

Mr. ROGERS of Texas. I discussed this with Chairman Henry just briefly before we got into this. I was wondering what attention

has been paid to the possibility of the question of jurisdiction if you had to file an injunction against a former licensee and he came in on the grounds that you did not have jurisdiction to control his property because his license had expired or because it had been canceled since he was no longer in the broadcasting business.

Mr. HENRY. We think it would be a logical extension of our responsibility to make us the agency responsible for seeing to it that it is dismantled if it becomes an air hazard, because we were the ones who authorized its construction in the first place. So, we think this is, in the first place, a logical and reasonable approach, and one that has no constitutional problems involved with it.

In other words, if the Congress sees fit to give us this responsibility, there would be no constitutional problems connected with it. Once you gave us that responsibility, as contemplated by S. 903, then we think this would eliminate any argument about our jurisdiction.

Mr. ROGERS of Texas. Your basic act, your Communications Act, which is your source of authority, has to do with certain limited jurisdiction which the FCC can engage in or apply itself. My point is this. If this act authorizes you to deal with property outside of the jurisdiction of the basic act, because of the cancellation of the license, what would be your answer in court if a court said, "Well, this has nothing to do with broadcasting now; it did, but it ceased to exist."

Mr. HENRY. You mean would it be an improper delegation from the Congress to us?

Mr. ROGERS of Texas. Yes.

Mr. HENRY. Well, there again that gets back to my first point. We do think that it is a reasonable and logical delegation of authority to give it to us, because we authorized it in the first place. We approved its height, its specifications. We are responsible for its care and upkeep during the course—or, at least, our licensee was responsible for the care and upkeep during the term of the license. We just believe it would be a logical extension of that to give us the power to deal with it.

Mr. ROGERS of Texas. I agree to the logic and the reason, but what I am worrying about is the legal end. Once your customer dies, there is no more life in him so far as you are concerned. The only way in the world you could enforce this is by injunction anyway.

Mr. HENRY. Yes, sir.

Mr. ROGERS of Texas. As the matter presently stands.

Mr. HENRY. That is right.

Mr. ROGERS of Texas. Hence, of course that being a civil proceeding, you would have no method of having a fine assessed against him or criminal sanctions against him at all under the circumstances. I was just wondering, under the situation, whether or not maybe a better approach would be requiring this in the original application in which he agrees as part of the responsibility on his part to agree to this jurisdiction situation so far as the Commission is concerned. I guess it is all right to try it this way. If it does not work, we can try something else.

Mr. HENRY. We might well want to do that, and we could impose such a condition in a license even if this legislation were to go through. I think you might have more legal problems if we tried to impose such a condition without this legislation. After the license had been turned in and had expired, then it could well be argued that that condition

no longer existed. But we think with this legislation our power would be clear. The legislation does contemplate that the other Federal agency concerned, the FAA, would be the agency to determine in the first place that the abandoned tower might constitute a hazard or menace to air navigation. And it is to be expected that we would not act unless they advised us that it had become such. So, both agencies are in fact involved here.

Mr. ROGERS of Texas. Do you make a separate distinct grant insofar as the erection of a tower is concerned?

Mr. HENRY. Yes. The construction permit, and then the license, contains the vital statistics of the tower.

Mr. ROGERS of Texas. It would seem to me that it would not be out of line if a requirement were made in that grant that it is made on the condition that it would be taken down if ordered by the Federal Communications Commission, either before or after the license, if it became necessary to do it to require the posting of a bond.

Mr. HENRY. Yes, sir. Those are both good possibilities and good suggestions which we will consider. But we think we need the legislation, too.

Mr. ROGERS of Texas. Thank you very much, Mr. Chairman.

Mr. HENRY. Thank you.

The CHAIRMAN. Mr. Chairman, I think that is spelled out in the language. In the first place,

> The permittee or licensee can maintain the painting and/or illumination of the tower as prescribed by the Commission, pursuant to this section

According to that language, the Commission will prescribe standards, I suppose, to carry out this mandate for the painting or illumination of the tower.

Mr. HENRY. That is correct.

The CHAIRMAN. You can require that be done by the broadcaster.

Mr. HENRY. Yes, sir. That is within our present policy.

The CHAIRMAN. There is no question about that.

Mr. HENRY. That is right.

The CHAIRMAN. In the next sentence—

> In the event that the tower ceases to be licensed by the Commission * * * the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled.

Now who has the duty and responsibility of enforcing that provision?

Mr. HENRY. There again, under this law we would. It is unclear at the present. This is the reason we are seeking the legislation.

The CHAIRMAN. The reason I ask that is, that there is no question about the other sentence. There is no question about this sentence that follows, "And the Commission may require the owner to dismantle," and so forth.

Mr. HENRY. I see. I think it is clearly contemplated that it would be the Federal Communications Commission that would require the painting and/or illumination until it is dismanted.

The CHAIRMAN. Don't you think it might be advisable to make that very clear so there would be no question about it? You can discuss that with your staff.

Mr. HENRY. Yes.

The CHAIRMAN. As a matter of fact, suppose we let our staff and the Commission staff work it out.

Mr. ROGERS of Texas. In the first sentence it is "The permittee and licensee". The second sentence used "owner". The reason that was done, I presume, is the fact that the owner may or may not be the permittee or licensee. In order to get him within your jurisdiction, you have to use the owner of the tower. That is a third or fourth party.

Mr. HENRY. That is true.

The CHAIRMAN. The mandate of the law then would be directed to the owner. Maybe the Department of Justice would have to enforce that.

Mr. HENRY. We could, I think.

The CHAIRMAN. Maybe an individual could do it by bringing action. Maybe an airline or somebody in the aviation industry would want to require it. That is the reason it ought to be made clear.

Mr. HENRY. I think that is a good suggestion. The legislation says owner because it contemplates in many cases that the license will be turned in, and the owner will be neither a licensee or permittee any longer.

Mr. ROGERS of Texas. The tower may have been sold.

Mr. HENRY. That is correct.

Mr. ROGERS of Texas. You have anticipated you want jurisdiction to require whoever owns the tower, whether it is domestic or foreign?

Mr. HENRY. That is right.

The CHAIRMAN. I think that can be worked out.

Are there any further questions?

Now you may proceed to the other.

Mr. HENRY. S. 1554 would amend sections 214 and 222 of the Communications Act to make a simple substitution of language. It would substitute the words "Secretary of Defense" for the words "Secretary of the Army and Secretary of the Navy" as the person entitled to receive official notice of the filing of certain common carrier applications. It is the practice now of the Department of Defense and the Secretary of Defense to take action on these applications, and this legislation would simply clarify that, and bring the statute in line with current procedures.

That is really the sum and substance of it. It would simply substitute the Secretary of the Defense for the Secretary of the Army and Navy in handling common carrier applications.

The CHAIRMAN. Are there any questions?

Thank you very much. You may proceed with the other. There is no objection to either S. 1554 or S. 903 that you know of, is there?

Mr. HENRY. No, sir.

The CHAIRMAN. Very well.

Mr. HENRY. S. 1948 would amend section 4 of the Communications Act to bring the provisions dealing with the financial interests of the Commissioners and Commission employees more closely in line with current national policy on conflicts of interest.

I think, Mr. Chairman, my statement covers the ground pretty well here. Let me just give you a couple of examples of what we are driving at.

As the statute now stands, neither the Commissioners nor Commission employees may own a financial interest, including common stock, and so on, in any company which is a licensee of the Federal Communications Commission. This prohibits ownership in com-

panies even though their only connection with communications, or the Communications Commission, may be that one of their delivery trucks happens to have a license from us—or their company airplane, or matters of that kind. We think that this does involve us in a shadowland at present to where we are not quite sure just how far the act does intend to go.

Does it intend to go so far as the literal language indicates, and so on? And we think this will clarify it. We still make it quite clear that no Commissioner nor Commission employee can have any interest, or rather, a prohibited interest, in any person or organization engaged in matters with which the FCC is directly concerned, such as radio broadcasting, common carrier, communications common carrier operations, manufacture or sale of radio apparatus, and so forth.

It is only to get at this one instance that I mentioned that the language is changed in that respect. As the law stands also at the present time we have a problem with recruiting members for our executive reserve, the reservists who are designed to take over our functions in the event of an emergency when we cannot function. These generally are members of the industry who are familiar with our operations. As the law now reads, they cannot be members of our executive reserve if they hold any such interest, and this would, generally speaking, exempt them. It would also exempt consultants to us who came to work for only a very short time, which are now included in the act.

We think this is in keeping with the efforts of the Government currently to obtain the best qualified advice when it is needed. And if at any time the consultants became regular employees, then of course the provisions would apply. We think also that the law as it now reads prohibits such obviously innocuous matters as a Commission employee helping out his brother on a Saturday afternoon if his brother owns a gas station, for example, and the gas station has a license from us, or a delivery truck or pickup truck. It is matters of this kind that we are talking about, and only such matters.

We do think that we should have also built into the Communications Act's provisions on conflict of interest the exception that is built into the general conflicts of interest rules which allow a Commission employee to receive a waiver upon full disclosure of his interest. We could have cases, for example, if one of our employees wanted to teach for a month during his vacation at a university, and the university happened to be a licensee of the FCC. This would enable us to give him a waiver for that purpose.

I want to emphasize that we recognize and heartily approve of the conflict of interest laws as they now stand in general, and the intent of those laws. This in no way affects that. We think this brings the Communications Act more into line with those than as it now stands.

The CHAIRMAN. Would an employee right now be restricted from teaching, as an example, even for a limited period of time, or performing some service in an educational institution if that institution had a license?

Mr. HENRY. I think not, Mr. Chairman, but it is unclear. Each time an incident of that kind arises it is unclear and it engenders debate, and we have to solicit the views of the Department of Justice. In general it ties up a lot of people and a lot of time and so on.

The CHAIRMAN. Have you had such situations like this?

Mr. HENRY. Yes, we have had such situations. We have generally interpreted the present law as not preventing it if it is of the kind you mentioned. But we do think it is unclear.

Since we are amending the conflicts of interest section of the Communications Act on some other points we might as well take care of this one while we are at it.

I might note that this section 4(b) of the Communications Act was last amended by the Congress in 1960. At that time the Congress deleted the provision that was in the act and which had been added to the act in 1952 under which Commissioners were permitted to receive a reasonable honorarium or compensation for the presentation or delivery or publication of papers. The present proposal in no way affects that action. That prohibition would still stand.

The CHAIRMAN. It seems to me that we had some kind of proposal that would permit an employee of the Commission, I am not sure of the provision of law, it is unclear to me right now, but it seems to me we had something that would permit an employee to obtain or at least to receive compensation for an article that he might prepare. Did I have a wild dream on this or is that a fact?

Mr. HENRY. No, that was put in the act in 1952, a provision which would allow honorariums for articles.

The CHAIRMAN. But it was repealed in 1960.

Mr. HENRY. It was repealed in 1960.

The CHAIRMAN. Since then it seems to me there has been some kind of proposal for an employee who performs subsequently good services in preparing an article or something for publication to receive pay for it.

Mr. HENRY. I am not aware of it. That may be.

The CHAIRMAN. Maybe somebody just talked to me about it then. Maybe somebody had an article they wanted to publish.

Mr. HENRY. Maybe so. I just am not familiar with it, Mr. Chairman.

The CHAIRMAN. Are there any questions?

Mr. ROGERS of Texas. Only this, Mr. Chairman. I think this is an area which is most difficult to deal with. It is a situation where you can't legislate morals. I think the integrity of the individual is the main thing anyway. The only difference is that you have different people with different definitions of integrity which makes it a very difficult area to legislate. I certainly would have no objection really to opening the thing up completely and trust the man's integrity.

The situation that you have is that you have a sort of Damocles' sword hanging over the people where you have a provision subject to two or three constructions and you don't know what to do. Actually it is sort of like taking a tax deduction without a prior opinion from the IRS.

Mr. HENRY. That is true. We are not going to eliminate all arguments about interpretation of this law I am sure. If we do, it will be the first time. But it will clarify it.

Mr. ROGERS of Texas. Thank you very much, Mr. Chairman.

The CHAIRMAN. I still believe that the restriction on honorariums to the Commission is a wholesome thing. Not that I would condemn this kind of action as such. I think carried out in a reasonable way there would be nothing wrong with it. But there is such an oppor-

tunity for misconstruction. And with a sensitivity of this kind in Government service and having, of course, the responsibility of associating with the industry that is regulated it leaves a gap, it leaves it wide open for someone either intentionally or unintentionally to misconstrue what is happening.

I do feel that if you have someone very capable and who through research and a lot of hard work has developed some worthwhile pamphlet or article for publication, there would be nothing wrong with his getting a reasonable return for that service.

I had something to say on the subject of the frequency of Commissioners of regulatory agencies meeting with trade associations and so forth earlier this year at the U.S. Chamber of Commerce meeting. Very frankly, I was very pleased with the reactions I received from all of the members of your Commission, and I believe most every other Commission. I think when these matters are called to the attention of the regulatory Commissions they see maybe it is better to follow a different course. I am pleased to see that the members of the Commissions now follow that admonition and are giving consideration to such suggestions as have been made.

Your entire Commission—I don't know whether it is traditional or not—for the last several years has been going to the annual meeting of the National Association of Broadcasters and subjecting yourself to questions as one panel of all seven members.

My attention was brought to the fact that the American Trucking Associations had their annual convention out in Chicago and 7 of the 11 members of the ICC, I think there was one vacancy I believe and maybe another 1 or 2, were out there spending a week with them.

On the other hand, as you know, it is desirable for the members of the regulatory agencies or Commissions to meet with the industry and find out what is going on. Otherwise you have a commission set up in an ivory tower, which is not the best. So you have to balance these things off with what is the best interest. I have felt pretty strongly about it all these years because there are those who want to do away with the well established principle of regulatory commissions, and make administrators out of them on the one hand and subject them to the executive on the other hand. I have advocated a contrary point of view. I think the way we have it now is best for the public. Unless we have proper procedures and the commissions conduct themselves accordingly to obtain the approbation of the public we will be faced with those kinds of threats.

If I have any legacy at all to leave, it is that I hope that these commissions will continue to be strengthened along the lines that we have developed. I am not concerned about being thwarted at all as long as you have the service which is necessary. That is the reason I feel pretty strong about some of these things. I am glad to know that we are gradually bringing about these improvements that you have suggested today. If some of the statutes are too restrictive I think the committee and the Congress ought to deal with them.

I believe with everybody working toward the same understanding and objective, that will be done. I just feel that this is so important. I want to see the regulatory procedures carried out so that they will bring about improved service to the American people.

Mr. HENRY. Mr. Chairman, I agree with those words. I for one appreciate very much your interest in the way we do perform our

job and your recognition that in cooperation with you and the other members of this committee and the other side of Congress we are all working toward the same goal. That is to see a very healthy and public-service-minded industry performing its function under what we hope is good regulation. Today has been just another example of your willingness to cooperate.

Again I want to say to you how much we appreciate your giving us this time.

The CHAIRMAN. I think your responsibilities are going to become heavier as you go along because your workload will increase. This is obvious because the population is increasing, our economy is expanding, our services are expanding, demands are much greater. You have to face those greater demands in the future, that is all there is to it.

I know our distinguished chairman of the subcommittee here is probably going to have a great deal to do with some of these things in the future. I would like to see an adequate increase in the appropriations to provide the personnel the agencies need. I think one or two of the agencies have had just about the same appropriation over the years for the last several years. Yours has not been increased a whole lot. I do know your work has been heavier. You are doing very well. In some areas I would like to see you improve and I know you would too. Nevertheless I do think that if the Congress is going to recognize the increased demands that you are going to have you are simply going to have to have the personnel to deal with it.

I am one of those who advocates a building for these regulatory agencies, probably all in one, so that you can have joint hearings with them and things of that kind. I think ultimately it will come. It should come, instead of having you scattered all over the Capitol and maybe in close quarters with other agencies that have nothing to do whatsoever with what you are dealing with.

I have talked to members of the Appropriations Committee about it, of the need for one large building that will be sufficient to accommodate these six major regulatory agencies of our Government. I still feel it would be the best for the people of the United States if that is done.

I hope someday it will be done.

Mr. HENRY. Thank you. I do, too.

The CHAIRMAN. Dr. Carter?

Mr. CARTER. No questions.

The CHAIRMAN. Mr. Huot.

Mr. HUOT. No questions.

The CHAIRMAN. Mr. Rogers, do you have anything further?

Mr. ROGERS of Texas. No questions.

The CHAIRMAN. Thank you very much for your appearance and testimony on this, Mr. Chairman. Of course, as far as you know there is no objection to this bill?

Mr. HENRY. So far as I know there is none.

The CHAIRMAN. Thank you very much.

I wonder if there is anyone here who would like to testify or present a statement either for or against either of these three bills we have scheduled for hearing this afternoon? What is the old saying—"Speak up now or forever hold your peace"?

Mr. HENRY. I feel like I am getting married.

The CHAIRMAN. You have been there for some time. This is a second wedding to a regulatory agency.

Thank you very much.

This will conclude the hearings on these bills and we will schedule them for executive session tomorrow just in case we are able to get to them beyond what we have already scheduled.

Mr. HENRY. Thank you, sir.

(The following letter was received for the record:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., September 10, 1965.

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

DEAR MR. CHAIRMAN: The Air Transport Association, in behalf of its 43 air carrier members, heartily endorses S. 903.

Antenna structures such as radio and television towers are of vital concern to our carriers who frequently must make use of airspace in the proximity of such towers in order to provide air transportation. S. 903, by requiring permittees and licensees to maintain the painting and/or illumination of broadcast towers ordered by the Federal Communications Commission until such structures are dismantled, even though they are no longer used for transmission purposes, will be helpful to the airlines and other airspace users in coping with abandoned towers as long as they remain in existence. But surely there is no justification for allowing antenna structures to impinge on aeronautical operations for very long once they cease to be licensed. Therefore, the further provision of this bill, the one making it possible to require dismantlement of an abandoned tower upon a determination by the Administrator of the Federal Aviation Agency that there is a reasonable possibility that it may constitute a menace to air navigation, will make a significant contribution to the safety of air navigation and thus to the public interest.

These things considered, we urge immediate passage of S. 903.

Cordially,

S. G. TIPTON, *President.*

AIRCRAFT OWNERS & PILOTS ASSOCIATION,
Washington, D.C., September 15, 1965.

Congressman OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
U.S. House of Representatives, Washington, D.C.

DEAR SIR: We note that the full Committee for Interstate and Foreign Commerce met on September 14, 1965, to consider S. 903 regarding painting and marking of abandoned radio towers. The problem to be solved by this proposed legislation is of great importance to aviation. Elimination of the hazard created by abandoned towers, unmarked and unlighted, is vital to the use of the navigable airspace in the lower levels by general aviation.

The Aircraft Owners & Pilots Association supports and recommends legislation to carry out the intent of S. 903 at the earliest possible time.

Cordially,

R. G. ARMSTRONG,
Chief, Airspace Department.

(Whereupon, at 2:30 p.m. the hearing was concluded.)

○