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GOVERNMENT

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HEARING
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 4214, S. 17

BILLS TO AMEND THE COMMUNICATIONS SATELLITE ACT
OF 1962 WITH RESPECT TO THE ELECTION OF THE BOARD OF
DIRECTORS OF THE COMMUNICATIONS SATELLITE CORP.

FEBRUARY 18, 1969

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HEARING

BEFORE THE

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

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COMSAT BOARD OF DIRECTORS

TUESDAY, FEBRUARY 18, 1969

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

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

This morning we are holding hearings on two bills which in all substantive respects are identical, H.R. 4214, which I introduced, and S. 17, which was passed by the Senate on January 31.

(The bills referred to, and reports thereon, follow:)

[H.R. 4214, 91st Cong., first sess.]

A BILL To amend the Communications Satellite Act of 1962 with respect to the election of the board of directors of the Communications Satellite Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 303 of the Communications Satellite Act of 1962 (47 U.S.C. 733(a)) is amended to read as follows:

"SEC. 303. (a) The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the number of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers is less than—	But not less than—	The number of members which stockholders who are communications common carriers are entitled to elect shall be—	And the number of members which other stockholders are entitled to elect shall be—
45 per centum.....	40 per centum.....	5	7
40 per centum.....	35 per centum.....	4	8
35 per centum.....	25 per centum.....	3	9
25 per centum.....	15 per centum.....	2	10
15 per centum.....	8 per centum.....	1	11
8 per centum.....		0	12

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section 27(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-911(d)). The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than 66 $\frac{2}{3}$ per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, if such vote complies with all other requirements of this Act and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such by-laws as shall, notwithstanding the provisions of section 36 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-916d), provide in the event of a national emergency for the continued ability of the board to transact business."

SEC. 2. As promptly as the board of directors of the Communications Satellite Corporation shall determine to be practical after the date of the enactment of this Act, a meeting of the stockholders of the corporation shall be called for the purpose of electing twelve members of the board in accordance with subsection (a) of section 303 of the Communications Satellite Act of 1962 as amended by the first section of this Act. The members of the board elected at such meeting shall serve until the next annual meeting of stockholders or until their successors have been elected and qualified.

SEC. 3. The status and authority of the members of the board of directors of the Communications Satellite Corporation who were elected to the board before the date of the enactment of this Act and who are serving as members of the board on such date shall not be in any way impaired or affected until their successors have been elected and qualified in accordance with section 2 of this Act.

[S. 17, 91st Cong., first sess.]

AN ACT To amend the Communications Satellite Act of 1962 with respect to the election of the board of the Communications Satellite Corporation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303(a) of the Communications Satellite Act of 1962 (47 U.S.C. 733(a)) is amended to read as follows:

"SEC. 303. (a) The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the number of members to be elected

at such meeting by each group of stockholders shall be determined in accordance with the following table:

When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers is less than—		The number of members which stockholders who are communications common carriers are entitled to elect shall be—	And the number of members which other stockholders are entitled to elect shall be—
But not less than—			
45 per centum.....	40 per centum.....	5	7
40 per centum.....	35 per centum.....	4	8
35 per centum.....	25 per centum.....	3	9
25 per centum.....	15 per centum.....	2	10
15 per centum.....	8 per centum.....	1	11
8 per centum.....		0	12

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section 27(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-911(d)). The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than 66⅔ per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, provided that such vote complies with all other requirements of this Act and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of section 36 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-916d), provide in the event of a national emergency for the continued ability of the board to transact business."

SEC. 2. As promptly as the board of directors of the Communications Satellite Corporation shall determine to be practical after this Act takes effect, a meeting of the stockholders of the corporation shall be called for the purpose of electing twelve members of the board in accordance with section 1 of this Act. The members of the board elected at such meeting shall serve until the next annual meeting of stockholders or until their successors have been elected and qualified.

SEC. 3. The status and authority of the members of the board of the Communications Satellite Corporation who were elected in conformity with the provisions of the Communications Satellite Act of 1962 prior to amendment by this Act and who are serving when this Act takes effect shall not be in any way impaired or affected until their successors have been elected and qualified in accordance with section 2 of this Act.

Passed the Senate January 31, 1969.

Attest:

FRANCIS R. VALEO,
Secretary.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 17, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter of February 12, 1969 requesting the Commission's views on H.R. 4214, a bill to amend the Communications Satellite Act of 1962 with respect to the election of the board of the Communications Satellite Corporation.

Basically, H.R. 4214 would amend section 303(a) of the Communications Satellite Act of 1962 to provide that the number of future directors of ComSat elected by common carrier stockholders will be reduced as carrier ownership of voting capital stock falls below 50% and will be based on the aggregate ComSat voting capital stock owned by such carriers. In thus attempts to create a more equitable voting formula for the election of directors as between private and common carrier stockholders. In addition, the bill contains a provision explaining the procedure and vote necessary to amend the articles of incorporation. Section 1 of the bill also seeks authority to change the Corporation's existing by-laws to enable it to conduct its business, in the event of a national emergency, without a quorum of directors present.

Section 303(a) of the Communications Satellite Act presently provides for appointment of three directors by the President and election of 12 directors by vote of the stockholders. Six of the 12 elected directors are elected by stockholders who are communications common carriers. The remaining six are elected by the non-carrier stockholders. Initially 50% of the voting stock was reserved for purchase by communications common carriers. At no time shall communications common carriers own in excess of 50% of the outstanding stock of ComSat which has voting rights.

The carriers initially purchased the full 50% of the stock to which they were entitled. Implicit in the Communications Satellite Act is the assumption that communications common carriers would at all times exercise their right to own 50% of the outstanding voting stock of ComSat. However, as of December of 1968 the carriers had reduced their aggregate holdings to approximately 38% of the total voting stock. As the Act stands now the carriers are still entitled to elect 50% of the elective board of directors of the Corporation. The fact that this 50% ownership expectation has not been realized is a valid reason for the proposed amendment.

The Commission agrees that at some point when carrier ownership of capital stock falls below 50%, this stockholder group should be entitled to elect fewer than six members of the board of directors, and that the remaining stockholders should be entitled to elect a correspondingly increased number of directors in excess of six.

H.R. 4214 contains a formula proposed to be introduced into section 303(a) of the Communications Satellite Act which changes the number of directors to be elected by each group of stockholders of ComSat as the proportion of outstanding stock held by carriers falls below 50%. As you know, this formula is almost identical to one proposed for consideration in the original bill (H.R. 11040) considered by the House in 1962. The only difference is that H.R. 11040 did not require the complete elimination of carrier representation when their aggregate holdings fell below 8%.

In the course of Senate confirmation hearings the proposed incorporators of the Corporation represented that should disparate board representation occur, corrective legislation would be offered. By requesting enactment of H.R. 4214, ComSat is fulfilling its promise made at that time.

Enactment of H.R. 4214 will ensure that the public's interests will be proportionately represented on the ComSat board of directors.

I therefore wholeheartedly urge that this legislative proposal be enacted into law.

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

Sincerely yours,

ROSEL H. HYDE, *Chairman.*

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., February 20, 1969.

Re H.R. 4214 and S. 17, 91st Congress.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of February 12, 1969, requesting the Commission's views on H.R. 4214, we have examined the bill, together with S.17 which appears to be substantially identical to the House bill and which, we understand, was passed by the Senate and is now before your Committee.

Neither of these bills would appear to affect the Commission's administration of the federal securities laws. Accordingly, the Commission has no comment on these bills.

Sincerely,

MANUEL F. COHEN, *Chairman.*

The CHAIRMAN. These bills would amend the Communications Satellite Act of 1962 so as to—

(1) Assure, insofar as possible, that the board of directors of Comsat reflects the relative stockholdings of communications common carriers and of noncommunications common carriers;

(2) Clarify the act by specifying that Comsat's articles of incorporation may be amended by a vote of two-thirds or more of all outstanding shares voting as a single class; and

(3) Permit Comsat to adopt bylaws which would allow its board of directors to transact business in the event of a national emergency.

The board of directors of Comsat consists of 15 members. Three members are appointed by the President of the United States by and with the advice and consent of the Senate for terms of 3 years. The other 12 members are elected annually by Comsat stockholders. Under existing law, six members are elected by stockholders who are communications common carriers, and six are elected by stockholders who are not communications common carriers, regardless of the relative stockholdings of the two groups.

In 1962, the House version (H.R. 11040, 87th Cong.) of the legislation which became the Communications Satellite Act of 1962, provided that the communications common carriers representation on the board of directors would be relative to their ownership of stock in Comsat. Those provisions were not in the legislation as it was finally enacted.

The bills before us would almost take us back to the original House version by establishing a formula to relate the number of Comsat directors elected by carriers and noncarriers to their respective Comsat stockownership.

Originally the communications common carriers owned about 50 percent of Comsat's stock, but they have reduced their holdings until now they own approximately 38 percent of Comsat stock.

A bill similar to those now before us was introduced in the last Congress but because of the pressure of other business was not acted upon.

I understand that there is no opposition to these bills and that the management of Comsat is very desirous of early action on them so that they will not have to call an extra stockholders meeting which would entail considerable expense to the Corporation.

Our first witness is Mr. James McCormack, chairman of the Communications Satellite Corp. Mr. McCormack, would you take the stand, please, identify yourself and the gentleman you have with you for the record, please. You may proceed.

**STATEMENT OF JAMES McCORMACK, CHAIRMAN, COMMUNICATIONS SATELLITE CORP.; ACCOMPANIED BY DAVID C. ACHE-
SON, VICE PRESIDENT AND GENERAL COUNSEL**

Mr. McCORMACK. Thank you, Mr. Chairman. I am James McCormack, chairman of Comsat. With me is Mr. David C. Acheson, general counsel.

Mr. Chairman, I would like to present this in whatever way best suits the purposes of the committee. You have in fact in your opening remarks made the principal points.

The CHAIRMAN. If the gentleman will yield there, I might say that if you have a prepared statement of any length, if you would care to insert it in the record and summarize it, it would be fine with the committee, I am sure.

Mr. McCORMACK. All right, sir. We will do that.

(Mr. McCormack's prepared statement follows:)

**STATEMENT OF JAMES McCORMACK, CHAIRMAN, COMMUNICATIONS SATELLITE
CORP.**

I am James McCormack, Chairman of the Communications Satellite Corporation. We appreciate this early opportunity to appear here and urge favorable action on H.R. 4214 and S. 17, companion bills to amend the Communications Satellite Act of 1962. The major objective of these bills is to assure that the composition of the Board of Directors of Comsat will reflect as fully as possible the relative holdings of stock by stockholders who are communications common carriers and stockholders who are not communications common carriers. This is an objective in which the Congress, the Executive Branch, the Federal Communications Commission and all the Directors of Comsat appear to share a common, favorable interest.

The Satellite Act, which provided for the creation of Comsat, authorizes the Corporation to issue stock and provides that 50% of the stock authorized for issuance at any time be reserved for purchase by communications common carriers. Section 303(a) of the Act provides that the Corporation shall be managed by a 15 member Board of Directors. Three members are to be appointed by the President of the United States, by and with the advice and consent of the Senate. Of the remaining twelve members, six are to be elected annually by those stockholders who are communications common carriers and six by those stockholders who are not carriers.

In February, 1963, Comsat was incorporated in the District of Columbia. Its Articles of Incorporation provided for one class of no par value common stock and its initial offering in June, 1964, consisted of 10 million shares. As the Congress had anticipated, the established carriers subscribed to 50% of the stock and the general public bought the remaining 50%. Thus, representation on the Board of carrier and non-carrier stockholders by the twelve elected directors was proportionate to the shareholdings of the two groups.

The question was raised by Congress in 1962 whether carrier representation on the Board should be reduced if carrier shareholdings were to become substantially diminished. In fact, the House version of the Satellite Act contained a provision which, from the outset, would have related carrier representation on the Board to carrier shareholdings. These present bills are largely based upon the formula in the 1962 House version of the Satellite Act. The incorporators of Comsat and the Department of Justice also noted concern about the relationship of representation to ownership. Mr. Sam Harris, Vice Chairman of the incorporators, advised Senator Anderson, Chairman of the Senate Space Committee, by letter dated March 30, 1963, that the incorporators would request that the Act be amended to reduce the number of carrier directors, if 50% of the initial offering was not subscribed to by the carriers. The Department of Justice, for its part, advised Senator Anderson by letter dated April 1, 1963 that the Department would recommend such an amendment at any time when carrier shareholdings might be significantly reduced.

Early in 1967, and again early in 1968, International Telephone and Telegraph Co. made sales of Comsat stock aggregating approximately one half million shares.

These sales, plus sales by other carriers in smaller amounts, caused the shareholdings of the carriers to be reduced to about 42% of the total outstanding shares. As a result, at the request of Comsat, Senator Pastore, for himself and Senator Anderson, in July of last year introduced a bill (S. 3884) in the 90th Congress which would have amended the Satellite act to incorporate a formula for adjusting the number of carrier and noncarrier directors consistently with their relative shareholdings. The urgent business of the Congress at that time did not permit action on that bill. In December, 1968, ITT sold an additional block of 400,000 shares of Comsat stock. This reduced total carrier shareholdings to about 38%.

H.R. 4214 and S. 17, which are in all important respects the same as S. 3884, are endorsed by all Comsat directors, including the carrier directors, as was the earlier bill. Like the earlier bill, these bills would incorporate in the Satellite Act a formula for electing 12 members of the Comsat Board proportionately to the relative shareholdings of carriers and non-carriers. The first adjustment would be made as promptly after enactment of the bill as the Board shall determine to be practicable. Thereafter, representation on the Board would be adjusted annually to reflect the relative shareholdings as of the record date for the annual meeting of stockholders. The total number of members of the Board would always remain at 15. Under the formula, and given the present carrier ownership of about 38%, the carriers would be entitled to elect 4 members and the non-carrier stockholders 8 members. The three Presidential appointees, of course, would remain unaffected. As I say, the formula is heavily based upon the bill that passed the House in 1962.

We recognize that an annual adjustment will not permit the composition of the Board to reflect precisely at all times the changing relative holdings of the two series of stockholders. However, we believe that the high cost of special stockholder meetings and other practical problems created by more frequent adjustments militate against a provision for interim adjustments.

Two other matters, not directly related to the problem of proportionate representation on the Board, but appropriate for legislative action, are covered by the bills. They would also amend the Satellite Act in the following two respects:

(1) They would clarify an ambiguity by specifying that the shareholders may amend the Corporation's Articles of Incorporation by a two-thirds vote of all outstanding shares voting together as a single class.

(2) They would authorize the Corporation, which plays a unique and vital role in international communications, to adopt bylaws to assure its ability to operate in accordance with law in the event of a national emergency. In the event of such an emergency and the unavailability of a majority of the Directors, such a provision would take precedence over Section 36 of the District of Columbia Business Corporation Act which requires that a majority of the directors of a corporation be present to constitute a quorum for the transaction of business. Many states already have adopted, as part of their business codes, emergency provisions granting authority similar to that proposed in H.R. 4214 and S. 17.

The Corporation views the proposed amendment as a matter of urgency. The present discrepancy between shareholdings and the Board representation is substantial. It is our hope to rectify the discrepancy at the annual meeting of the Corporation in May. To enable us to do so, however, Congressional action before the end of February is necessary. For this reason, we will appreciate any efforts which can be made to expedite the enactment of this legislation.

Mr. McCORMACK. The proposed legislation, as you have stated, which was approved by all of our board, including the carrier directors, is, to the best of my knowledge, unopposed by anyone.

It does take the formula for directors, carrier and noncarrier directors, back substantially to the context of the House bill which, as we know, fell by the wayside because the Senate bill came out of a cloture vote. One what I would call minor difference is that the original House bill guaranteed the carriers one position on the board no matter how low their stockholdings fell. If there were more than 8 percent, they would have two; and 15 to 25 percent, three; and so on.

This bill simply leaves it that because the carriers can vote cumulatively as the public shareholders can, the carriers would elect a director based on their holdings from 8 percent on down, and they can easily elect one director by cumulative voting at 8 percent.

The other difference from the House bill is that the House bill, while providing for a reduction in the carrier shareholders, did not call for a corresponding increase in the number of public shareholders. This bill would hold the board at 15 members, three appointed by the President as before and the remaining 12 elected in proportion to the shareholdings by the carriers and by the public.

There are two additional elements in the bill of some significance, neither of the level of importance of this proportion of directors. One is that the present bill provides for emergency procedures in the board of directors in the case of a national emergency, the sort of thing that is provided in most if not all of the State laws. It is not provided for in the laws of the District of Columbia.

Comsat, as the operator of a global communications satellite system, carrying the preponderance of the world traffic in the very near future, would, of all U.S. corporations, be required to operate as best it can in the event transportation is cut off and the things that could happen in a national emergency. This, I suggest, is just a formality, but it could be an important one in this event, which, needless to say, we neither predict nor hope for.

On the other change, about the two classes of stock voting together to amend the articles of incorporation, actually we have only one class of stock but, because the law requires that we treat carrier shareholders differently from public shareholders, we speak of the series 1 shares and the series 2 shares somewhat separately for administrative purposes.

For example, no carrier can vote for more than three directors on the board. There are a number of things that have had to be administered in a different way for the carrier-held shares than for the publicly held shares.

In what the lawyers call an abundance of caution, we suggest that if there is any ambiguity at all on this point, that there really is only one class of shares, and that is the reason for the clause in the legislation that says that all of the shares will be voted together for amending the articles of incorporation.

Those, Mr. Chairman, are the main points in the bill. I would like to say we very much appreciate the willingness of this committee to give this bill the sort of urgent attention you are giving it. It is very important to us from the point of view of the running of the business smoothly and also the cost of the holding of the shareholders' meetings to have this through in time to send the proper slate to the shareholders preceding the annual election, and the closeout date for going to the printer with the proxy materials is about the end of March so that we are short of time.

The CHAIRMAN. Thank you very much, Chairman McCormack.

As I understand it, two of the directors have already resigned.

Mr. McCORMACK. That is true, sir.

The CHAIRMAN. And the carriers themselves have said that they realize that if this is kept the way it is, that it would be an unfair representation of the carriers or the public.

Mr. McCORMACK. This is certainly what you would draw from their attitude. Actually our carrier directors said, "We think this is right; we vote for it."

The CHAIRMAN. Do you know of any opposition?

Mr. McCORMACK. None at all.

The CHAIRMAN. It passed the Senate without opposition on January 31.

Mr. McCORMACK. That is true, sir.

The CHAIRMAN. I would like to say to the committee that we will restrict all questions to the legislation before us. If they want Comsat back to ask questions about their operations, worldwide or otherwise, we will have them back, but I think at this time we will restruct all questions directly to the bills before us.

Are there any questions on the committee about the situation?

Mr. Moss. Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. In the provisions on page 4 of the bill, providing for operation of the corporations by less than a majority of the board of directors in the event of national emergency, are you speaking prospectively in view of the fact that this Nation is and has been in a declared state of national emergency since approximately 1951? Do you mean in the event of a national emergency hereafter declared? I would not want to approve authority to permit you to start operating with a minority of the board at this point.

Mr. McCORMACK. Mr. Moss, I can tell you what we had in mind. I confess that I am not adequate to speak on the present rules under which the country is going, but what we have in mind is conditions that prevent travel which might make it impossible for us to get together a majority of the board at a time when it is extremely important for us to keep the global system operating.

Mr. Moss. Then, Mr. Chairman, that would not contemplate less than a national emergency. You might have a regional emergency that would be rather loose and might be due to the vagaries of weather which might not permit the holding of a meeting on a fixed date.

I think this becomes of some significance when we authorize a board to act with less than a majority.

Mr. McCORMACK. It would be a serious situation, Mr. Moss. I could not conceive of any circumstances where, for our own protection, the directors would act with less than a majority unless it had an overwhelmingly persuasive reason for doing so, such as conditions that prohibited travel.

The CHAIRMAN. Would the gentleman yield a moment there?

Mr. Moss. A provision providing in the event of a national emergency hereafter declared.

The CHAIRMAN. Couldn't this be clarified by saying a national emergency declared by the President of the United States?

Mr. Moss. Mr. Chairman, I respectfully point out that the national emergency which has existed for so very many years is a national emergency and has been a national emergency declared by the President of the United States.

Mr. McCORMACK. It may help, Mr. Chairman, to read you a few lines out of the Senate report on this. It goes as follows—

The CHAIRMAN. What page is that?

Mr. McCORMACK. This is page 5 of the Senate report on the bill.

The CHAIRMAN. All right. You may proceed.

Mr. McCORMACK (reading):

As to the term "national emergency," the committee accepts the observations made by the Chairman of the Federal Communications Commission, Rosel H. Hyde, and the chairman of the Communications Satellite Corp., James McCormack, that this provision will be applicable only in those situations specified in section 606 of the Communications Act of 1934, as amended.

Mr. Moss. What are those provisions?

Mr. McCORMACK. They generally describe the inability to travel that I mentioned. I don't know the words, Mr. Moss.

The CHAIRMAN. Can counsel give us some enlightenment on this?

Mr. ACHESON. The provision of the Communications Act, Mr. Chairman, reads: "Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, the President if he deems it necessary in the interest of national security, may suspend rules and regulations," et cetera.

Now, since this was a familiar concept in the regulatory framework in which we live, we thought that this more or less objective standard would be as good a standard as we could possibly write to determine when the quorum provisions that govern our board at the present might be suspended.

Mr. Moss. But wouldn't the gentleman agree that under the declared state of national emergency which now exists and, as I reemphasize, has existed for the entire period since the Korean war, that you would be able, under this language, to operate now with less than a quorum?

Why not have it deal prospectively and deal with any national emergency hereafter declared?

Mr. ACHESON. That is certainly the intention, Mr. Moss and, for that matter, it is clear that the rules and regulations of the FCC are not regarded as suspended in the present state of affairs, so that clearly this language looks to some prospective emergency.

Mr. Moss. I think that brings up another interesting point that we might more thoroughly explore at a future date. I would not want to intermix it with this subject at this moment.

Thank you, Mr. Chairman.

The CHAIRMAN. I think we can clarify it as the gentleman from California has suggested: that the national emergency provisions would only apply in the future.

Mr. Moss. Mr. Chairman, I think in a statute that is ambiguous on its face; we should make it clear. I think that is in that category, and I think we can appropriately make it clear as to the intent of the committee without distorting it.

The CHAIRMAN. Does anybody else have questions?

Mr. SPRINGER. Yes.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, when you make this reduction and roughly 38 percent of the stock was sold, does that mean that there shall be vacancies immediately at the next meeting of the stockholders?

Mr. McCORMACK. It is our scheme, which we have called rough justice, to correct any inequities only at the annual meeting. This has seemed justified to us rather than trying to keep a very fine division as between directors. In the first instance, shareholdings between 35 and 45 percent justify a given number of carrier directors so that you start within 10 percent of stock ownership as a sort of an inexactness in the formula to begin with.

Counsel reminds me that if this legislation were not to emerge until the meeting, presumably the carriers would go to the annual meeting with a full slate of six directors, and then they would have to hold a special election thereafter to reduce the number from six to four, and we would have to hold a special meeting of the public shareholders in order to increase the number from four to six. The cost and inconvenience would be burdensome.

Mr. SPRINGER. What you are anticipating, then, is something done annually; is that right?

Mr. McCORMACK. Yes, sir; at the regular annual meeting, except that the first implementation of the legislation as stated in the bill will be at the first convenient date for calling a shareholders' meeting, which in this case would be our regular annual meeting which is scheduled for early May.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. WATSON. May I ask, What is your present method of replacing resigned or deceased directors?

Mr. McCORMACK. In a vacancy which occurs when one of an authorized number of directors resigns, as happened in the case of Mr. Kennedy, who became Secretary of the Treasury and therefore went off of our board, the remaining directors of that class can elect his successor. Of course, he has to be reelected at the annual meeting with the shareholders. We are prepared, at the next board meeting this coming Friday, to elect a replacement for Mr. Kennedy.

But vacancies created by this act cannot be filled in that way. They can only be done at the full meeting of the shareholders.

Mr. WATSON. I see. I have one further question, which I may have to ask of your able counsel here. Why has I.T. & T. apparently sold over a million shares? Are they totally out of it now? Is this a trend to get the common carriers out of this field?

Mr. McCORMACK. I can only report to you what I.T. & T. itself said. I.T. & T. initially bought 1,050,000 shares. This was a very large amount compared to that purchased by any other carrier. General Telephone had 300,000, and RCA bought 250,000. I.T. & T.'s first sale was announced as being for the purpose of bringing their holdings more in line with the other comparable carriers, presumably meaning General Telephone and RCA; in addition to which they said they needed the capital in other parts of their business. Their reasons for the second sale were generally stated to be similar.

The reason for the third sale, which has reduced the amount to 100,000 shares out of the original 1,050,000, was that they were in disagreement with the policies under which Comsat was operating, meaning presumably the policies of management as approved by the board of directors.

But all of the sales by all of the other carriers put together has only amounted to 250,000 shares. All the rest all put together wouldn't even come close to triggering our 45-percent threshold for the six directors.

Mr. WATSON. So you do not exempt the communications common carriers from Comsat?

Mr. McCORMACK. We have no reason to believe that, although, I believe there are still 120 carriers owning Comsat stock. With the exception of A.T. & T., which has 2,900,000, and General Telephone

and RCA, which together have 550,000, something like that, the rest are very small holdings. The total is less than 100,000 shares divided among more than 100 carriers. It, really, wouldn't affect the implementation of this bill if they were all sold, and certainly we have no indication at all from these three major carriers left in with large holdings that they have any sales in mind.

Mr. WATSON. Thank you, sir.

The CHAIRMAN. Are there any further questions?

Mr. MOSS. I would like to make one further comment on this matter raised very briefly by Mr. Watson. The I.T. & T. sale was, in part, was it not, aimed at a proposed acquisition of ABC and was done because of a need for ABC; am I correct?

Mr. McCORMACK. I have no knowledge on that. As I recall, the I.T. & T. announcement at the time related more to other developments.

Mr. MOSS. This was the other development. I think we should bear in mind the conditions which appeared to have dictated the actions taken by I.T. & T. Well, the company has been engaged in quite a number of very expensive acquisitions of various sorts.

The CHAIRMAN. Thank you very much.

Mr. McCORMACK. Thank you, sir.

The CHAIRMAN. Our next witness will be Mr. James D. O'Connell. I understand you have a prepared statement which you wish to put in the record. Do you have a short statement to make, sir? We are glad to have you with us.

Mr. O'Connell is the Director of the Telecommunications Management of the Office of Emergency Planning. Identify yourself if you would and the man you have with you.

STATEMENT OF JAMES D. O'CONNELL, DIRECTOR, TELECOMMUNICATIONS MANAGEMENT, EXECUTIVE OFFICE OF THE PRESIDENT; ACCOMPANIED BY JOHN J. O'MALLEY, JR., LEGAL COUNSEL

Mr. O'CONNELL. I would like to introduce Mr. John O'Malley, my counsel.

In view of the very complete statement which you made, Mr. Chairman, and of the discussion made by Mr. McCormack, I think it would be redundant for me to read this statement, and I request that it simply be put in the record.

The CHAIRMAN. That will be done.

(Mr. O'Connell's prepared statement follows:)

STATEMENT OF JAMES D. O'CONNELL, DIRECTOR OF TELECOMMUNICATIONS MANAGEMENT, EXECUTIVE OFFICE OF THE PRESIDENT

Mr. Chairman and members of the committee, it is a pleasure to appear before this Committee and testify in favor of H.R. 4214. The proposed legislation should be enacted as soon as possible to correct an imbalance in the membership of the Comsat Board of Directors which was primarily created by recent sales of large blocks of Comsat stock by one of the carrier shareholders, ITT.

In view of the fact that the changes proposed in H.R. 4214 are clearly necessary and do not involve any major policy issue which might be inconsistent with the basic purposes of the Communications Satellite Act, these comments will be as brief as possible.

H.R. 4214 would amend the Communications Satellite Act of 1962 so that shareholder representation on the Comsat Board of Directors would be more closely correlated to the actual ownership of stock by the common carriers and the public shareholders.

H.R. 4214 does not involve any change of a policy nature, but simply corrects an inequity which was not contemplated in the Communications Satellite Act.

Passage of this bill would not preclude any future action regarding Comsat which Congress might wish to take.

At present, as the Comsat Chairman has pointed out, the Board of Directors is composed of 15 members, of which three are appointed for 3-year terms by the President, with the advice and consent of the Senate.

The remaining 12 members are elected by the Comsat shareholders. Six are elected by the public shareholders, and six are eligible for election by the carrier shareholders.

It is emphasized that six directors *are eligible* for election by the carriers, because at present there are two vacancies on the Board. These vacancies exist because, after the sale of Comsat stock by ITT, the two directors representing ITT on the Board chose to resign.

It would seem only fair, not only to the Comsat Corporation but to the public shareholders, that a suitable formula be developed so that when the carrier holdings in Comsat drop below certain specified points their representation on the Board of Directors should be commensurately reduced.

The table established in the bill would provide for an equal number of carrier and "public" directors when carrier holdings would be no less than 45% of the outstanding Comsat common stock.

A proportionate reduction in carrier representation on the Board of Directors would be made when the percentage of stock owned by the carriers should decrease below certain points.

There is one additional provision in H.R. 4214 which is important and deserving of comment. This involves the last sentence of Section 1 of the bill. That sentence authorizes Comsat to adopt such by-laws as may be necessary for the Comsat Board of Directors to transact business in a national emergency.

It is understood that under the present District of Columbia Business Corporation Act, eight of the fifteen members of the Board of Directors must be present in order to constitute a quorum for doing business. This bill would permit the Board to transact business even if eight members were not present.

It would seem wise to provide in the Act for flexibility of decisionmaking in times of emergency.

The remainder of the bill involves the manner in which the details of the basic provisions will be worked out.

In summary, the provisions of H.R. 4214 seem reasonable and fair to all concerned.

Passage of this bill is therefore recommended.

Mr. O'CONNELL. I can make my remarks very brief, indeed, by simply saying that it is the coordinated view of the executive branch that this bill is needed and should be supported and request it be expedited in view of the circumstances.

The CHAIRMAN. All right, sir.

Are there any questions of Mr. O'Connell?

You are in complete agreement with the bill and have no objection?

Mr. O'CONNELL. Yes, Mr. Chairman.

The CHAIRMAN. If there are no questions, we want to thank you for coming and being with us.

Our next witness is not here for the purpose of testifying. He is Mr. Kenneth Cox, Commissioner of the Federal Communications Commission, who is here if there are any questions. I understand the rest of the Commission is testifying this morning before the Appropriations Committee and that you are representing them here this morning.

STATEMENT OF HON. KENNETH A. COX, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY ASHER H. ENDE, DEPUTY CHIEF, COMMON CARRIER BUREAU

Mr. Cox. That is right, Mr. Chairman, Chairman Hyde asked me to express his regrets.

The CHAIRMAN. Would you identify yourself for the record and identify the gentleman you have with you?

Mr. Cox. I am Kenneth A. Cox, Commissioner, Federal Communications Commission, and with me is Mr. Asher Ende, the Deputy Chief of our Common Carrier Bureau.

The CHAIRMAN. You are in complete accord with the legislation as proposed?

Mr. Cox. That is true.

The CHAIRMAN. You have no objection?

Mr. Cox. No; we know of none.

The CHAIRMAN. Are there any questions to ask of Mr. Cox?

This completes our hearings on this matter, and the committee will go into executive session at this time.

(Whereupon, at 10:30 a.m., the committee adjourned.)





