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COMMUNICATIONS ACT AMENDMENTS

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 2343

TO AMEND THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
WITH RESPECT TO PENALTIES AND FORFEITURES

S. 2846

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

S. 2847

TO AMEND SECTION 318 OF THE COMMUNICATIONS ACT OF
1934, AS AMENDED, TO ENABLE THE FEDERAL COMMUNICA-
TIONS COMMISSION TO AUTHORIZE TRANSLATOR BROAD-
CAST STATIONS TO ORIGINATE LIMITED AMOUNTS OF LOCAL
PROGRAMING, AND TO AUTHORIZE FREQUENCY MODULATION
(FM) RADIO TRANSLATOR STATIONS TO OPERATE UNAT-
TENDED IN THE SAME MANNER AS IS NOW PERMITTED FOR
TELEVISION BROADCAST TRANSLATOR STATIONS

JANUARY 21, 1976

Serial No. 94-61

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE



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COMMUNICATIONS ACT AMENDMENTS

WEDNESDAY, JANUARY 21, 1976

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The committee met at 10 a.m., in room 1318, Dirksen Senate Office Building, Hon. John O. Pastore (chairman of the subcommittee) presiding.

Senator PASTORE. The hour of 10 having been reached, this hearing will come to order. We have three bills before us for consideration this morning, which will be inserted in the record at this point. The first bill is S. 2343 which is a bill to unify and strengthen the FCC's authority to impose penalties and forfeitures for violations of the Communications Act and the Commission's rules and regulations.

[The bills follow:]

Staff members assigned to these hearings: Joseph Fogarty, Nicholas Miller, and James Graf.

(1)

94TH CONGRESS
1ST SESSION

S. 2343

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16 (legislative day, SEPTEMBER 11), 1975

Mr. MAGNUSON (for himself and Mr. PEARSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend the Communications Act of 1934, as amended, with respect to penalties and forfeitures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. Section 503 (b) of the Communications Act
4 of 1934 as amended (47 U.S.C. 503 (b)) ; is amended to
5 read as follows:

6 “(b) (1) Any person who—

7 “(A) willfully or repeatedly fails to operate a radio
8 station substantially as set forth in a license, permit, or
9 other instrument or authorization;

10 “(B) willfully or repeatedly fails to observe any
11 of the provisions of this Act or of any certificate, rule,

1 regulation, or order of the Commission prescribed under
2 authority of this Act or under authority of any agree-
3 ment, treaty, or convention binding on the United
4 States;

5 “(C) violates section 317 (c) or section 509 (a)
6 (4) of this Act; or

7 “(D) violates section 1304, 1343, or 1464 of title
8 18 of the United States Code;

9 shall forfeit to the United States a sum not to exceed \$2,000.

10 Each act or omission constituting a violation shall be a sepa-
11 rate offense for each day during which such act or omission
12 occurs. Such forfeiture shall be in addition to any other pen-
13 alty provided by this Act: *Provided, however,* That such
14 forfeiture shall not apply to conduct which is subject to for-
15 feiture under title II of this Act: *And provided further,* That
16 such forfeiture shall not apply to conduct which is subject to
17 forfeiture under part II or part III of title III or section 507
18 of this Act.

19 “(2) No forfeiture liability under paragraph (1) of this
20 subsection (b) shall attach to any person unless a written
21 notice of apparent liability shall have been issued by the
22 Commission, and such notice has been received by such per-
23 son or the Commission shall have sent such notice by regis-
24 tered or certified mail to the last known address of such
25 person. A notice issued under this paragraph shall not be

1 valid unless it sets forth the date, facts, and nature of the act
2 or omission with which the person is charged, and specifically
3 identifies the particular provision or provisions of the law,
4 rule, regulation, agreement, treaty, convention, license, per-
5 mit, certificate, other authorization, or order involved. Any
6 person so notified shall be granted an opportunity to show
7 in writing, within such reasonable period as the Commission
8 shall by rule or regulation prescribe, why he should not be
9 held liable.

10 “(3) No forfeiture liability under paragraph (1) of
11 this subsection (b) shall attach to any person who does
12 not hold a license, permit, certificate, or other authorization
13 from the Commission unless prior to the written notice of
14 apparent liability required by paragraph (2) above, such
15 person has been sent a notice of the violation, has been
16 given reasonable opportunity for a personal interview with
17 an official of the Commission at the field office of the Com-
18 mission nearest to the person's place of residence and there-
19 after has engaged in the conduct for which notice of the viola-
20 tion was sent: *Provided, however,* That the requirement of
21 this subsection for a notice of the violation and opportunity for
22 a personal interview shall not apply if the person is engag-
23 ing in activities for which a license, permit, certificate, or
24 other authorization is required or is providing any service
25 by wire subject to the Commission's jurisdiction; *And pro-*

1 *vided further*, That any person who has been sent a notice
2 of the violation, has been given a reasonable opportunity
3 for a personal interview and thereafter engages in the conduct
4 for which the notice was sent shall not be entitled to a
5 further notice for the same conduct and may be subject to
6 forfeiture for the initial and all subsequent violations.

7 “(4) No forfeiture liability under paragraph (1) of
8 this subsection (b) shall attach for any violation—

9 “(A) by any person holding a broadcast station
10 license under title III of this Act if the violation oc-
11 curred (i) more than 1 year prior to the date of the
12 issuance of the notice of apparent liability or (ii) prior to
13 the date beginning the current license term, whichever
14 date is earlier, or

15 “(B) by any other person if the violation occurred
16 more than 1 year prior to the date of issuance of the
17 notice of apparent liability.

18 “(5) In no event shall the total forfeiture imposed for
19 the acts or omissions set forth in any notice of apparent
20 liability issued hereunder exceed—

21 “(A) in the case of (i) a common carrier subject
22 to this Act, (ii) a broadcast station licensee or permittee,
23 or (iii) a person engaged in distributing to the public
24 broadcast signals by wire or engaged in distributing to

1 the public other program services by wire if such activity
2 is the subject of Commission regulation, \$20,000;

3 “(B) in the case of any other person, \$5,000.”.

4 SEC. 2. Section 510 of the Communications Act of 1934,
5 as amended (47 U.S.C. 510), is hereby repealed.

6 SEC. 3. Section 504 (b) of the Communications Act of
7 1934, as amended (47 U.S.C. 504 (b)), is amended by
8 deleting the words “parts II and III of title III and section
9 503 (b), section 507, and section 510” and substituting the
10 words “title II and parts II and III of title III and sections
11 503 (b) and 507”, and by deleting the phrase “, upon
12 application therefor,”.

13 SEC. 4. Any act or omission which occurs prior to the
14 effective date of this Act and which incurs liability under the
15 provisions of section 503 (b) or 510 as then in effect will
16 continue to be subject to forfeiture under the provisions of
17 sections 503 (b) and 510 as then in effect.

18 SEC. 5. The amendments made by this Act shall take
19 effect on the thirtieth day after the date of its enactment.

94TH CONGRESS
2D SESSION

S. 2846

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1976

Mr. MAGNUSON (for himself and Mr. PEARSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend the Communications Act of 1934, as amended, with respect to commissioners and Commission employees.

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

5 “(b) (1) Each member of the Commission shall be a
6 citizen of the United States. A commissioner shall not engage
7 in any other business, vocation, profession, or employment.
8 He shall not, for a period of one year following the termina-
9 tion of his service as a commissioner, represent any person
10 before the Commission in a professional capacity, except that
11 this restriction shall not apply to any commissioner who has

1 served the full term for which he was appointed. Not more
2 than four members of the Commission shall be members of
3 the same political party.

4 “(2) No member of the Commission or person in its
5 employ shall be financially interested in, be employed by, or
6 have any official relation to—

7 “(A) any person engaged in radio broadcasting, or
8 the distribution of programs over wire;

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

11 “(C) any person a substantial part of whose activi-
12 ties consists of the manufacture or sale of apparatus for
13 wire or radio communication.

14 “(3) Nothing herein shall preclude investment in mu-
15 tual funds, holding companies, or other investment com-
16 panies unless their investments are concentrated substantially
17 in the areas covered by clauses (A) through (C) of para-
18 graph (2).

19 “(4) Nothing herein shall be construed to limit any au-
20 thority given to the Commission under Public Law 87-849
21 or other law or Executive order to restrict further the finan-
22 cial interests or official relations of its employees.

23 “(5) Paragraph (2) of subsection (b) of this section
24 shall not apply if the commissioner or employee advises the
25 Government official responsible for appointment to his posi-

1 tion of all pertinent circumstances and receives a written de-
2 termination made by such official that the financial interest,
3 employment, or official relation to a person described in
4 paragraph (2) is not so substantial as to be deemed likely
5 to affect the integrity of the services which the Government
6 may expect from such commissioner or employee.”.

7 SEC. 2. The second sentence of subsection (j) of section
8 4 of the Communications Act of 1934, as amended, is hereby
9 repealed.

94TH CONGRESS
2D SESSION

S. 2847

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1976

Mr. MAGNUSON (for himself and Mr. PEARSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend section 318 of the Communications Act of 1934, as amended, to enable the Federal Communications Commission to authorize translator broadcast stations to originate limited amounts of local programming, and to authorize frequency modulation (FM) radio translator stations to operate unattended in the same manner as is now permitted for television broadcast translator stations.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That clause (3) of the first proviso of section 318 of the
4 Communications Act of 1934 (47 U.S.C. 318) is amended—
5 (1) by striking out “solely” and inserting in lieu
6 thereof “primarily”, and
7 (2) by striking out “television”.

Senator PASTORE. I understand we have Nick Johnson here this morning who is going to testify in relation to this bill, and he may step forward and make his presentation. You may proceed.

**STATEMENT OF NICHOLAS JOHNSON, CHAIRPERSON, NATIONAL
CITIZENS COMMUNICATIONS LOBBY**

Mr. JOHNSON. Thank you, Chairman Pastore. I appreciate your invitation.

I appear here this morning principally in my role as a former FCC Commissioner to speak about these bills.

I want to say something about the problems regarding conflict of interest that the act is designed to deal with, some suggestions as to what the committee ought to do before it seriously addresses this legislation at all from the Commission, then say something about the FCC bill and some other proposals for dealing with conflict of interest, and, finally, some examples of conflict of interest at the FCC.

As I just explained to you informally, the reason for not having a formal statement is that we only received your invitation a couple of days ago, I was out of town, and frankly, I am also recovering from the flu. But given that, my assistant, Anne Coffey, and I have put some ideas together for you that I hope will be helpful. There are some exhibits which will be provided to the committee later.

The reason for conflict of interest legislation and standards is that we want public officials who can give a judicious consideration to all points of view. There are many problems of bias and past experience that we really can't do anything about, but there are two or three that we can do something about and those we try to treat.

One is financial interest, another is prior participation, and a third is a full efforts clause concept.

In terms of financial interest, there is the problem that we refer to as the "revolving door" problem of those who were formerly with the industry and leave to go to an agency and then go back into industry again. On this I have an article from the Washington Star that I would like to include in the record.

[The article follows:]

[From the Washington Star, January 1975]

REVOLVING DOOR: REGULATIONS AND INDUSTRY

(By Robert Pear)

Peter Barton Hutt: Born in Buffalo, N.Y., Nov. 16, 1934. Graduated from Phillips Exeter Academy. B.A., Yale University. LL.B., Harvard Law School. Graduate work at New York University under fellowship from the Food and Drug Law Institute. Attorney with Covington & Burling, 1960-71. General counsel, Food and Drug Administration, 1971-75.

Hutt, with his blue-ribbon credentials, excited curiosity among his colleagues in government and the legal profession when he left FDA last May, his career plans undisclosed.

The suspense ended this week when Hutt, after a summer of crosscountry travel with his family, settled again at Covington & Burling, an elite law firm that represents food and drug companies, among other clients.

Hutt's career illustrates what critics have called the "revolving door syndrome," the tendency of regulatory personnel to work in or for regulated industries, either before or after government service.

Earlier this week it was disclosed that the FDA led a list of nine agencies in the number of its top-level employes—115—who used to work for regulated industries. Of 391 senior FDA officials, 14 came directly from industry, and 101 had some prior industrial experience.

The finding came as no surprise to those who follow FDA, although the agency insists that recruits from industry constitute a small percentage of its total work force.

The problem, a perennial one faced by nearly all federal agencies, has worried consumer advocates and government personnel managers for years. It has no simple solution.

Currently, the Federal Trade Commission, the Securities and Exchange Commission, the Environmental Protection Agency and the Federal Power Commission each have 30 or more employes who worked for regulated industries.

The agencies compiled the employe lists in response to a questionnaire from Rep. John E. Moss, D-Calif., chairman of the investigations subcommittee of the House Commerce Committee. The agencies, of course, differ in size.

In two highly visible cases, the government's top health officials left for industry this year:

Dr. Charles C. Edwards, former assistant secretary for health in the Department of Health, Education, and Welfare and onetime chief of FDA, joined Becton, Dickinson & Co., a New Jersey company that makes fever thermometers and other medical supplies.

Dr. Henry E. Simmons, deputy assistant secretary of HEW and former director of FDA's Bureau of Drugs, joined the J. Walter Thompson Co., the world's biggest advertising agency, as senior vice president for health activities.

Simmons cited financial reason for his resignation, which ironically was announced by the ad agency a day earlier than by HEW. He advises Thompson clients on "government affairs" connected with health.

When Hutt left FDA, his administrative assistant, Linda Broadwater also left. She now is special assistant to the president of the Cosmetic Toiletry and Fragrance Association the trade association for the cosmetic industry, which is regulated by FDA. The association had been a client of Hutt's before he went to HEW.

A major argument for drawing regulatory personnel from industry is that they have unique expertise. "Our answer," says Dr. Sidney M. Wolfe, a consumer advocate, "is that we'd rather have people who are competent, intelligent and hard-working and can apply general principles to specific situations without the guaranteed biases that are going to exist if they come from industry.

"You don't want people who are that specialized—they don't have a broad view societally, legally or scientifically," said Wolfe, director of the Health Research Group of Public Citizen, Inc., a Ralph Nader organization.

Hutt, named by a civic group last year as one of the 10 most outstanding young federal employes, wrote scores of FDA regulations. He said he legally can and probably will advise clients on food and drug law, including how to comply with regulations that he himself wrote.

Hutt confirmed that he recently had been elected to the board of directors of the American Sterilizer Co., an Erie, Pa., concern that makes hospital equipment.

To avoid conflicts of interest, Hutt said, he probably will not appear before FDA as a private attorney during his first year away from the agency. He hopes to direct his career toward other legal specialties.

The law says that after leaving government, a person may not act as attorney for a private party in a proceeding in which he "participated personally and substantially" as a federal employe.

Robert G. Johnson, an FDA personnel specialist said: "This is a very difficult statute for a government agency to enforce because it requires an employe to search his mind for personal and substantial involvement. We do not engage in surveillance of former employes. We would not go to Mr. Hutt and check his activities as a private citizen."

Johnson said FDA was preparing a manual entitled "Guidelines for Protection Against Post-Employment Conflicts of Interest."

Federal regulations also prohibit an FDA employe from disclosing trade secrets and from furthering private interests by means of official information not available to the general public.

Hutt suggested that he had little "inside information" of which the industry was unaware, now that the Freedom of Information Act was available.

He said that unfortunately there was no conflict-of-interest law for people coming into government (although FDA has rules of its own). "I could have

turned around legally," Hutt said, "and worked on the other side, for government, of the same issues I worked on at Covington & Burling."

In fact, Hutt drew criticism from consumer groups when he failed to disqualify himself from an FDA review of Alka-Seltzer, a product manufactured by one of his former clients.

The FDA commissioner concluded there was "no impropriety" because Hutt had not advised Miles on issues involved in the review. But because of the controversy, Hutt said, he has "tentatively decided to refrain from further dealings with Miles."

In 1971, Hutt became counsel of FDA one day after his predecessor, William W. Goodrich, became president of a food producers association that Hutt had represented as a private attorney.

The switch promoted the president of the Federation of Homemakers to ask, "What is taking place, an Alphonse-and-Gaston mutual benefits act?"

Hutt's successor in the sensitive position of FDA counsel, Richard A. Merrill, most recently was a law professor at the University of Virginia. Previously he had worked at Covington & Burling for four years.

Theodore E. Byers, compliance director in the Bureau of Drugs, contends that "my 2½ years in industry made me a better compliance officer." He worked for FDA from 1950 to 1954, then joined the Warren-teed pharmaceutical company and in 1957 returned to FDA. "Awareness of the problems of commercial production gives you a better idea of the good manufacturing practices that government should require," he said.

The director of cosmetic technology in the Bureau of Foods, Heinz J. Eiermann, came to FDA in 1973 from Shulton, Inc., a division of American Cyanamid that makes Old Spice aftershave and other toiletries.

"My first act when I came aboard," said Eiermann, "to avoid any personal sleepless nights, was to say that I didn't want to know anything about regulatory matters that concern Shulton."

The last director of the Bureau of Foods, Virgil O. Wodicka, came from Hunt-Wesson Foods, Inc., of Fullerton, Calif. He has returned to Fullerton as a private consultant for food companies, advising on such matters as product development and quality control.

A little-noticed bill approved by the Senate this week would make the top three FDA employees—commissioner, deputy commissioner and general counsel—presidential appointees subject to Senate confirmation. At present, all are staff appointments within HEW.

Former HEW Secretary Caspar W. Weinberger opposed making the deputy commissioner and general counsel presidential appointees, saying the change was "unnecessary and undesirable." He did not object to making the commissioner a presidential appointee, though he saw no reason to do so.

Following, as reported to Congress, is a list of key FDA officials who have worked at some point for industry, with the date of their last employment by a regulated company:

Marion J. Finkel, FDA's director of new drug evaluation, Merck & Co. (a drug manufacturer), 1961.

Larry R. Pilot, compliance director in FDA's Bureau of Medical Devices, Pharmaceutical Manufacturers Association, 1969.

David H. Link, acting director, Bureau of Medical Devices, who worked until 1969 as an engineer at Hewlett-Packard marketing medical instruments such as electrocardiographs.

Robert G. Pinco, director of over-the-counter drug evaluation, American Pharmaceutical Association, 1969.

Robert C. Wetherell, director of legislative services, Sunburst Biochemical Works, 1963.

Mr. JOHNSON. Other financial problems are holding stock in a company, or employment with a company, that benefits from the rulings that you give as an official. The receipt of gifts is analogous to the problems of campaign contributions for elected officials.

The prior participation problem also arises with the FCC. The notion is that one should not come into Government and participate in a matter that you participated in on behalf of an industry group prior to coming to Government. By the same token, you should not leave Government and then represent before the Government agency

a private company with regard to some regulation that you had a role in creating in the first place.

The third area, the full efforts clause concept, is that one ought to be giving full time to Government employment. That is the reason FCC Commissioners are precluded from taking pay for speeches or the writing of books and magazine articles while serving as FCC Commissioners.

Since Watergate, especially, but really throughout our history, we have been concerned about conflict of interest problems. There has been the campaign finance reform recently, and the GAO has been investigating the agencies, and it seems rather bizarre on the part of the FCC to choose this of all times to try to loosen, to lessen, to reduce, the requirements of conflict of interest so far as the Commission is concerned.

At the very least, it might have been more politic to come in at this time with proposals for how to strengthen the enforcement of the conflict of interest standards that do exist and then perhaps tack on to that the proposal for loosening some particular thing.

There is also a question of why the Commission is dealing with this subject at all at a time when we have so many important communications issues pending. Why do they now take up the committee's time with a bill like this?

I think it is also worthwhile noting a number of facts. No. 1, 85 percent of the American people don't own any stocks at all. I expect they would not look on this hearing especially kindly. The average American, earning a minimum wage and making between \$4,000 and \$5,000 a year, is not apt to have much sympathy for an FCC civil servant who is earning \$30,000 a year or more and has problems with his or her stock portfolio.

The second footnote is that the FCC created the problem when it started to permit conglomerates to own broadcasting companies, when it started loosening the standard for investment in broadcast companies. Banks and outside investment groups of many kinds, which many people have said was a great mistake, both in the Senate and House—

Senator PASTORE. If I may interrupt you; I will tell you frankly that while there may be certain instances where exceptions may be justified, it must be recognized that this is a Presidential election year with little time and great pressure on this committee.

We have lived with this for a long, long time. I don't think we ought to belabor the subject this morning. I think we ought to move to the next bill.

I don't think this committee is going to seriously consider any loosening up of the conflict of interest requirements at the present time. There may be more stringent standards imposed upon the FCC than there are other agencies, but that is something to be considered at some other time, and I don't think we ought to belabor it at this time.

Mr. JOHNSON. Since the FCC has raised it, however, there are perhaps some things into which the committee might want to inquire.

The GAO has done some studies of the conflict problems of other agencies. It found that only 7 out of 125 top employees at the FPC filed proper financial disclosure forms. Only 61 of 125 new employees

were even required to file them. At the Food and Drug Administration, 223 failed to file proper forms.

The fact that the GAO has to be brought into this field at all, and that when they find infractions they haven't been corrected, suggests that this committee ought to ask the GAO to do a study of the FCC. Let's find out what is Chairman Wiley's precise procedure at this time, what assurances does he have that the GS-13's and over—as required by the executive order of 1965 and CSC—what assurances does he have that those employees have fully reported for 1974 and 1975? Do those reports simply refer back to some prior report that can't be found, or is not existent, or some see attached statement" that isn't there? Do they really have that information there? And at the same time that GAO is looking at that, maybe they can look at some other problems as well.

Now, frankly, Senator, that was the only bill on which I was informed by your staff you wanted testimony from me.

Senator PASTORE. I understand you are interested in the forfeitures and the penalties.

Mr. JOHNSON. No, sir.

We had not received notice that you were interested in that, and we had not—

Senator PASTORE. Are you familiar with the bill that is pending before us.

Mr. JOHNSON. I regret to say I am not. I can probably familiarize myself with it shortly and give you some opinions on it.

Senator PASTORE. We will keep the record open until February 15, and if you have any opinions on it, just submit it for the record.

Mr. JOHNSON. All right.

Senator PASTORE. But I repeat again, this is not the year to get ourselves involved with loosening up the conflict of interest requirements in any shape or form.

We will have to wait for some other time.

Mr. JOHNSON. We have had some examples from the FCC that I would also like to put in the record. One involved the conflict problems surrounding Commissioner Wells which was detailed in Access magazine, and I will put in the record, if I may.

[The article follows:]

CABLE, CITIZEN GROUPS QUESTION WELLS NOMINATION AS OTP DIRECTOR

President Ford's impending nomination of former broadcaster and former FCC commissioner Robert Wells to be director of the Office of Telecommunications Policy has drawn fire from several quarters. The cable industry is upset because it doesn't think veteran broadcaster Wells can give that industry a fair shake. The scientific community—much of OTP's work is technical, involving spectrum allocation and new technologies—had seemingly rallied around one of its own, Dr. Albert Horley (director of the Department of Health, Education, and Welfare's Office of Telecommunications Policy), whose name had been tossed around several months ago but was withdrawn abruptly after the National Association of Broadcasters objected (see "I Dissent," *access* 13). Scholars and policy planners are wondering what in Wells's background qualifies him for the office. And some citizen groups are asking for a closer inspection of Wells's record on the FCC and the circumstances of his association with a broadcast group before and after his tenure on the FCC.

At press time, NCCB was preparing to release an analysis of Wells's voting record, reportedly showing that Wells rarely voted against broadcasters' interests when they were pitted against interests of nonbroadcasters (e.g., cable

industry, other industries, and public groups). It also reportedly shows a penchant in Wells for avoiding rulemakings and deciding matters on a case-by-case basis, which NCCB points out is a curious posture for one discussed as director of OTP—an agency almost totally concerned with policy-making.

Wells is general manager of the Harris Group and is a director and stockholder in five radio stations (see chart, page 5). He had sold the stock to Harris Enterprises, the parent of Harris Group, and resigned his directorships shortly before assuming the FCC seat on November 6, 1969. (The Communications Act prohibits a Commissioner or employee from owning stock in or being otherwise "financially interested" in companies subject to FCC jurisdiction.) He bought back precisely the same stock from Harris Enterprises—a closed corporation—on the day he resigned from the Commission, November 1, 1971. Although Wells claims to have broken cleanly with Harris, the circumstances of the rejicing of Harris and the repurchase of stock—plus a *Broadcasting* report that Wells resumed eligibility in a Harris profit-sharing trust at the level at which he left in 1969—has created questions that NCCB wants answered publicly by Wells. If Wells had (or thought he had) an option to return to Harris after leaving the Commission, then he would have had a "financial interest" in the Harris company, for by its preservation in good financial condition, Wells' option would have been more valuable once he left the Commission.

Wells has indicated a willingness to be questioned completely on his record and on the Harris relationship, but so far he has kept a low profile pending formal announcement of the nomination. Rumor spread in mid-July that his nomination was "dead," but subsequently more powerful rumors said it was still on.

Rep. Torbert Macdonald (D.-Mass.), chairman of the House Communications Subcommittee, has become the strongest public critic of the nomination, along with Senator Vance Hartke (D-Ind.), who sits on the Senate Communications Subcommittee that will advise and consent on the nomination. Chairman John O. Pastore (D-R.I.) has so far remained publicly silent.

WJOL-AM, WLLI-FM

Of 46 position-years full-time in the "top 4" between 1972 and 1975, four were women (two each in 1974 and 1975) and two were minority (both in 1974). Of eight part-time position-years, three were minority, and none was female.

Of 38 position-years full-time in non-"top 4" jobs between 1972-1975, 12 were held by women, and none was minority. Two women and two minority were counted among nine part-time position-years.

These stations show a curious classification change in their 1974 reports. In 1972 and 1973, they averaged five "top 4" positions and 15 non-"top 4" positions; in 1974 and 1975, the averages were more than reversed: 18 "top 4" positions and only 4 non-"top 4." This at least suggests a reclassification in order to make more jobs sound as if they are "top 4" jobs, one effect of which would be to demonstrate that women and minorities are "ascending" to the top jobs in the station.

KFKA-AM

Of 50 position-years full-time in the "top 4" between 1972 and 1975, 13 were held by women, and one by a minority (a minority female in 1975). Of 15 part-time "top 4" position-years, four were women and none was minority.

Two white men, two white women, and two minority women held the six non-"top 4" full-time position-years between 1972 and 1975. Four women and no minority were among the six part-time non-"top 4" position years.

KTOP-AM-FM

Of 42 full-time "top 4" position-years between 1972 and 1975, two were held by women and none by a minority. Of 16 part-time "top 4" position-years, three were minority-held (one each for the last three years).

Women held each of the eight full-time non-"top 4" position-years—two per year. Of two part-time non-"top 4" position-years, one was held by a woman and the other by a white male.

KIUL-AM

One female (in 1975) held a full-time "top 4" position-year between 1972 and 1975. The other 28 were held by white males. Of ten part-time non-"top 4" position-years, nine were held by white males and one by a white woman.

All four full-time non-"top 4" position-years were held by women. Of six part-time non-"top 4" position-years, five were held by women, and one (in 1974) was held by a minority male.

TWO GROUPS HIT FCC'S CLOSING OF CONGLOMERATE INQUIRY

In separate filings, NCCB and the Philadelphia Community Cable Coalition asked the FCC on July 18 to reopen the 6½-year-old study of conglomerate ownership it closed four weeks before (Docket 18449). In addition, NCCB requested, under the Freedom of Information Act, to inspect the documents generated by the inquiry. Both NCCB pleadings were filed by its counsel, Citizens Communications Center.

NCCB complained that the FCC failed to support its decision to terminate. (The Commission's order ending the inquiry was only three paragraphs long and merely stated that "data did not establish a need to continue.") On top of that, said NCCB, the facts publicly known (press reports of staff findings) point in the opposite direction—toward a greater FCC role in examining conglomerates' role in communications ownership.

During the course of the inquiry, the FCC's Conglomerate Task Force gathered data on 37 companies and prepared an analysis and a set of recommendations for the Commission. For it then to conclude that no action was warranted is, said NCB, an "arbitrary and capricious act."

In fact, NCCB said, the data could have been used to justify rules not only over conglomerates, but in broadcast-newspaper, broadcast-CATV, and newspaper-CATV cross-ownership, regulation of which the FCC has all but ceased over the last six months.

An additional point raised by NCCB concerns the "shell game" the FCC is often accused of playing. Ever since it set up the conglomerate ownership inquiry, the Commission—and the U.S. Court of Appeals, in at least one case—has deferred all "case-by-case" examinations (as in broadcast license renewal applications) of conglomerate influence to its formal inquiry. Thus for over six years, said NCCB, there has been virtually no regulation of conglomerate abuse.

NCCB asked the FCC to reopen the inquiry and propose rules designed to curb conglomerate abuse. It noted that the FCC in 1969 disclaimed formal status for the proceeding and has not made available information on which the public can intelligently comment.

In its freedom of information request, NCCB asked for the following documents—to aid in a possible appeal of this proceeding, to aid in filing comments in three pending proceedings on ownership (see Current Docket), and in connection with its appeal in the broadcast-newspaper cross-ownership proceeding (Docket 18110), the briefs for which are due in the U.S. Court of Appeals in Washington on September 30:

- (1) a copy of the pilot questionnaire sent to parent companies of six broadcast licensees in the course of the inquiry.
- (2) all responses to the two questionnaires sent in the course of the inquiry, including all documents submitted in response, all responses in the form of citations to material already before the Commission, and all updating of responses.
- (3) all licensee requests that materials submitted to the FCC be withheld from public inspection and all FCC rulings on these requests.
- (4) all information and documents collected by the staff in "field inquiries" and all staff summaries and analysis of this data and recommendations.
- (5) all communications between the FCC and the Justice Department in furtherance of the inquiry.
- (6) all communications relating to the inquiry between the FCC and any employee of any company being monitored.
- (7) all staff and FCC summaries of the responses to the questionnaires or of any other information on the inquiry.
- (8) all staff or FCC analysis and recommendations as to future staff or FCC action on conglomerate ownership.
- (9) all Commission documents that record the full decisions or form the basis for the decisions reported in the following FCC Public Releases [42257 (Dec. 17, 1969), 42274 (Dec. 18, 1969), 44971 (Feb. 20, 1970), 53433 (Aug. 7, 1970), 64110 (Feb. 10, 1971), Report No. 6615].
- (10) all drafts of the pilot and later questionnaires, and any documents suggesting revisions in either questionnaire, in order to see what information still needs to be collected to determine the public interest issues in this inquiry.

Mr. JOHNSON. Another involved Commissioner Quello, and the conflict involved in the conglomerate inquiry. He did participate—did vote—did vote to withhold from the public the information regarding Capital Cities' handling of transactions, when, as you know, he had been associated with that company, and had assured this committee that he would not participate in such matters.

[The article follows:]

METCALF COMMITTEE GETS CONGLOMERATE REPORT; DATA RAISE QUESTIONS ABOUT QUELLO

If the FCC had known last June what was in store, the agency might never have suppressed the results of its "conglomerate inquiry." The Commission has been jumped on by three citizen groups (in Freedom of Information Act requests), has been taken to court by two of the companies studied (to block release of the portions of the data the FCC *did* decide to release), and has become the object of congressional scrutiny over both the substance of the inquiry and the reluctance of the agency to make public its findings.

The few documents the Commission has released under the FOI Act give examples, albeit unspectacular ones, of anticompetitive practices that critics of conglomerates have been hammering at for years. NCCB, the principal petitioner (with the assistance of Citizens Communications Center and the Freedom of Information Clearinghouse), is continuing its fight to get the entire collection of documents and the Conglomerate Task Force's Report to the Commission.

One person who has the Report and access to all the documents is Senator Lee Metcalf (D-Mont.), the chairman of the Subcommittee on Reports, Accounting, and Management (of the Government Operations Committee). Rep. John Moss (D-Calif.), chairman of the Subcommittee on Investigations of the House Commerce Committee, has also indicated an interest in the documents but at press time had not formally requested them.

CAPCITIES AND QUELLO: COMMON (OR IMPROPER) BUSINESS PRACTICES?

The purpose of the conglomerate inquiry was to determine if fair economic competition or the free flow of information is affected by conglomerate control of broadcast licenses. Some instances of the former are visible even from the nearly innocuous documents so far released.¹

Executives of Capital Cities Communications, one of the conglomerates studied, wrote about exercising "contra" advertising opportunities between two Detroit subsidiaries, radio station WJR and *Metalworking News*, a trade publication in the Motor City. WJR's station manager at the time was FCC Commissioner James H. Quello, who admits to participating in the arrangement but denies any wrongdoing.

"We bent over backward at WJR (to avoid wrongdoing)," he told access. He admitted that WJR had several reciprocal advertising arrangements with both crossowned and non-crossowned media in Detroit but thought such trade-offs were common business practices.²

¹ The FCC has released "public information"—such as annual company reports—and some of the intracompany correspondence the conglomerate inquiry task force gathered. But the Commission has withheld, as it is entitled (but not required) to do under the Freedom of Information Act, any internal task force memoranda on the study and intracompany correspondence containing "trade secrets." It is the latter which NCCB says, logically, would bear most heavily on impediments to the free flow of information or to the preservation of economic competition.

² Reciprocal trade agreements in themselves may or may not be improper or illegal. The first question to answer is whether both subsidiary parties contributed fair value. If not, then the benefiting party would have been given treatment more favorable than its competitors would have enjoyed by the subsidiary company. Even if fair value were given to both parties, conglomerates still have an inside track in competition over independents. For instance, if WJR elected to advertise heavily on the noncrossowned Detroit Free Press, that profit would go to the owner of the Free Press. If, on the other hand, WJR and Metalworking News sold time to each other at market rates, the profit would go to CapCities, since it owns Metalworking News.

A further question is why WJR would want to trade ads with Metalworking News, a specialized trade journal in Detroit. Not the least plausible answer is that Metalworking News is commonly owned with WJR. And the most obvious question raised is: If this kind of matter surfaces in supposedly innocuous documents, what questions will arise from the more provocative ones? None of the above is to say that Quello is guilty of wrongdoing. It simply illustrates the questions left unanswered by the termination without comment of the conglomerate inquiry.

The extent, if any, of wrongdoing on Quello's part is unknown, partly by Quello's own FCC votes. He twice joined a unanimous FCC in electing to withhold the bulk of the information—including most of the CapCities data—from the inquiry (once in closing the conglomerate inquiry in June and again in denying NCCB's Freedom of Information request on October 29). The usual practice for a judge or commissioner who has been involved in a matter as a party or who has a personal or financial interest in the outcome of a proceeding is to decline to participate in the matter.

The corporate arm of the Mormon Church, Deseret Management Company (which attempted to block release of some of the now public documents but erred on a legal technicality and was prevented from doing so), also appears to have engaged in some anticompetitive practices, possibly involving newscasts.

THE BATTLE OVER RELEASE

The FCC and the companies have fought public release. The FCC, when it gathered the documents in 1969, assured the companies that it would treat the material in confidence. The companies are now feeling burned that the Commission kept the documents in its files for so long, thus allowing NCCB to file its request. If the Commission had returned the papers after inspecting them, they would be irretrievable by the public at this point.

The main argument against releasing the documents now is, ironically, the economic harm the documents might cause if the companies' competitors learned the contents. NCCB argues that it is unlikely that nine-year-old documents would pose a threat.

The impediment to NCCB's obtaining the Task Force Report is Exemption 5 of the FOI Act, permitting withholding of "internal memoranda," but NCCB contends the Report is not the type of memorandum intended by the Act.

IMPORTANCE OF THE MATERIAL

In addition to the substance of the Report bearing on the ownership question, several aspects of the proceeding raise added questions.

First, of course, is the Quello-CapCities matter. Second, an enormous amount of information is classified by the Commission as "missing," including practically every significant item submitted by Hughes Tool Company, the Howard Hughes conglomerate.

Third, the *Wall Street Journal* had reported in 1970, acting on a leak, that the first stage of the inquiry had turned up some remarkable instances of anti-competitive practices. NCCB has argued that it is unlikely 31 companies instead of 6, could turn up less-damaging information.

An additional matter concerns the Signal Companies conglomerate, one of whose subsidiaries is Golden West Broadcasters. Golden West was recently sued by the Bob Speck Sports Company on grounds that it has been unable to compete for California Angels baseball telecast contracts because the Angels team is co-owned with its broadcast outlet, KTLA-TV. (See *Broadcasting*, October 13, 1975.) Data from Signal may prove to be of use in the Speck suit.

METCALF'S BALL

The key to public release of the information is now in Metcalf's (or Moss's) pocket. Long concerned about corporate ownership abuses in all industries, Metcalf has been especially watchful over the FCC. Although he now has the Task Force Report in his possession (with free access to the underlying data, which remain at the FCC), Metcalf has pledged to treat the information "with utmost care" (that it will not be publicly released unless "adequate prior notice" be given to the FCC.) A subcommittee staff member who was reading the Report declined to discuss any circumstances under which Metcalf might release the Report.

Mr. JOHNSON. Now, I don't raise either of these to make the point that Commissioner Wells or Commissioner Quello are somehow evil men. I like them both personally, and I sympathize with the position in which they found themselves on the Commission. The point is simply that people like this shouldn't be on the Commission in the first place. When you put them on, there is a conflict inherent in their being

there. Inevitably there are going to be problems when you take people out of industry and put them into the FCC. You will have to come up with elaborate schemes for trying to curtail and control things that simply can't be controlled.

Unless I misread your hearings of January 1974, Commissioner Quello, while serving on the Commission, was receiving the benefits of a contract that provided him \$1,000 a month from Capital Cities from September 1972 to April 1976. He was receiving \$4,000 per year from another fund from them for a period of 10 years. He was receiving a fund of \$94,000 from them from another fund that was to be spread over 15 years. I want to check these facts very carefully to make sure, but there is at one point in the record a letter from the company to him saying that these payments would be made, the first to be paid in a lump sum and the others to go on being paid.

[The letter follows:]

CAPITAL CITIES COMMUNICATIONS, INC.,
New York, N.Y., September 27, 1973.

Mr. JAMES H. QUELLO,
Grosse Pointe, Mich.

DEAR JIM: In view of your appointment by the President to be a member of the Federal Communications Commission, you and we have agreed that it would be inappropriate for you to have any direct or indirect interest in the financial well-being of a Commission licensee after you become a Commissioner. Accordingly, this will confirm the understandings we have reached concerning the financial relationships that have existed between you and this Company as the result of your prior employment.

Effective upon your confirmation and the commencement of your service as a Federal Communications Commission member.

(1) The retirement arrangement under which the Company has paid you \$1,000 per month since September 1, 1972, and which was to continue through your 62nd birthday on April 21, 1976, will be terminated and the unpaid balance paid to you forthwith in a lump sum.

(2) Your present Company-financed insurance coverage will be terminated.

(3) You have a vested interest in the Capital Cities Employee Profit Sharing Plan which is based on contributions by the Company and your own contributions during the period you were employed by it and is in no way affected by the current or future operations or profitability of the Company. Funds of this plan are in the custody of the trustee, Marine Midland Bank-New York. Under this plan, which is fully funded, you have elected to receive your benefits in ten annual payments. These payments will vary with the market value of the assets of the plan, none of which consists of securities of Capital Cities Communications, Inc. The first installment of \$3,999.52 to be paid on or before October 1, 1973, represents 10% of your interest in the plan as of August 31, 1973.

(4) In addition, you have a vested interest in The Goodwill Stations Profit Sharing Trust based on contributions by The Goodwill Stations during the period you were employed by it. Funds of this plan are in the custody of the trustee, the National Bank of Detroit. Under this plan, an election as how to receive the proceeds must be made upon the termination of your retirement arrangement with Capital Cities Communications, Inc. You plan to elect the payment option which provides for annual benefits for fifteen years, after which any amount remaining in the account will be paid as a lump sum. Further, you will forthwith transmit such executed election to the trustee. The amount of your vested interest on December 31, 1972, amounted to \$94,248.51.

If the foregoing correctly states our understanding, please sign and return the enclosed copy of this letter.

Sincerely yours,

DANIELS B. BURKE, *President.*

Mr. JOHNSON. That looks very bad. He can be the most honorable guy in the world, and he may have gotten into voting on his own company's interest quite inadvertently, but it doesn't look good to the public.

The FCC needs information from the industry. I recognize that. But I think it ought to get it from advisory committees, consultants, panel discussions, conferences, hearings, onsite visits and these community meetings they have held. But the FCC should not hire people from the industry. They don't really need to have FCC employees from the industry aside from consultants.

They ought to toughen up the standards for returning to the industry, whether or not they complete their terms—myself included. The limitation should apply not just to appearances before the Commission but to any employment by the industry, and not just 1 year but for a longer period of time.

Senator PASTORE. Frankly, I think that ought to be a general rule that applies to all agencies. There is no question about it.

I don't think employment in an agency of the Federal Government should be used in any shape or form as a stepping stone for personal aggrandizement in a particular industry which that agency is supposed to supervise or regulate.

It has happened though. We have a case now before us on the Joint Committee on Atomic Energy, on uranium enrichment. One of the companies submitting a proposal, Bechtel Corp., is one of the largest construction companies in the world. It has Mr. Schultz in its employ, Mr. Feinberger, former manager of the AEC, is in its employ. This raises very serious questions. I think we ought to adopt a rule, the agent rule, according to the great adage, Caesar's wife has to be even above suspicion.

I think that in the long run, it would be good for the public interest. I think that such a rule should be considered in the long run by the various committees with jurisdiction to make sure it applies to every particular agency in Government.

Mr. JOHNSON. The matter of public disclosure ought to be pursued. Some candidates for public office actually disclose their income tax returns, but I wouldn't go so far as to require that of Government employees at this time. However, the financial statements required to be filed under executive order should be public.

Logs of appointments and calls are now kept.

Senator PASTORE. Our requirements should not be designed to subject the individual to mere public curiosity. I think they have to be more purposed than that. I think they have to represent a clearly defined public interest.

If we adopt rules willy-nilly, before you know it, it is going to become almost impossible to become an appointee in Federal Government.

Mr. JOHNSON. I would like to make the point in commendation of Chairman Wiley that he is now making his own logs publicly available and I would like to insert in the record logs for the week of January 5 of the appointments he had.

[The logs follow:]

	
8:15	2:15
8:30 Bureau + office Chis	2:30
8:45 mtg	2:45
	
9:15	3:15
9:30	3:30
9:45	3:45
	
10:15	4:15
10:30	4:30
10:45	4:45
	
11:15	5:15
11:30	5:30
11:45	5:45
	
12:15	6:15
12:30	6:30
12:45	6:45
	
1:15	7:15
1:30	7:30
1:45 Bill Best (Personal)	7:45


 TUESDAY • JANUARY 1976 • APPOINTMENTS
 FEAST OF THE EPIPHANY • 6TH DAY • 360 DAYS TO COME

8		2
8:15	Speak to F.C.C. Group.	2:15
8:30	Taking Training Course for Nov - January	2:30
8:45		2:45
		Agenda Briefing by Staff
9		3
9:15		3:15
9:30		3:30
9:45		3:45
		Consent Agenda
10		4
10:15		4:15
10:30		4:30
10:45		4:45
11		5
11:15		5:15
11:30		5:30
11:45		5:45
12		6
12:15		6:15
12:30		6:30
12:45		6:45
1		7
1:15		7:15
1:30		7:30
1:45		7:45

8	8:15	2	Mr. Kendig (off Cable Bureau) -
	8:30	2:30	
	8:45	2:45	
9	9:15	3	Walt Henschman (Chief C. C. Bureau)
	9:30	3:30	Int. matters
	9:45	3:45	
10	10:15	4	
	10:30	4:30	
	10:45	4:45	
11	11:15	5	
	11:30	5:30	
	11:45	5:45	
12	12:15	6	Federal Bar Ass'n Executive Committee mtg.
	12:30	6:30	
	12:45	6:45	
1	1:15	7	
	1:30	7:30	
	1:45	7:45	

8 THURSDAY • JANUARY 1976 • APPOINTMENTS
 8TH DAY • 358 DAYS TO COME

8		2
8:15	Phil Home Chief	2:15
8:30	FoB)	2:30
8:45		2:45
9		3
9:15		3:15
9:30		3:30
9:45		3:45
10	DAtaphone - Special	4
10:15	mtg (White Comm.)	4:15
10:30		4:30
10:45		4:45
11		5
11:15		5:15
11:30		5:30
11:45		5:45
12		6
12:15		6:15
12:30		6:30
12:45		6:45
1		7
1:15		7:15
1:30		7:30
1:45		7:45

JANUARY 1976 • FRIDAY 
 9TH DAY • 357 DAYS TO COME

8		2
8:15		2:15
8:30		2:30
8:45	mtg. with Alvin Johnson	2:45
9	Deputy Chief B/C	3 Consideration mtg.
9:15	Bureau re. Pajonier	3:15 (Dept of State)
9:30	mtgs	3:30
9:45		3:45
10	Walt Hansen, C.C.C.	4
10:15	Bureau, Duke Jankowski	4:15
10:30	F.C.C., John Egan, O.P.	4:30
10:45	Freedom, O.P. Keller	4:45
	O.P., Pacific Conf.	
11	Janis Marshall Matoula	5
11:15	Del. at mtg. in Berkeley	5:15
11:30	Bob Luff (Re. Briefing on Community Reporting)	5:30
11:45		5:45
12		6
12:15		6:15
12:30		6:30
12:45		6:45
1		7
1:15		7:15
1:30		7:30
1:45		7:45

Mr. JOHNSON. I think it is a commendable practice. He finds it no burden. I note he doesn't record much. He apparently doesn't eat much either. But I don't mean to pick. He is making logs available publicly, and if he can do it certainly others can.

Finally, I think there ought to be more reporting of gifts than there is and perhaps a little more stringent standard as to value.

Senator, that covers fairly briefly what notions I had to share with you this morning on the subject of conflict of interest.

Senator PASTORE. I repeat again, we are not ready to liberalize in this area.

Mr. JOHNSON. If you do get to it, however, the bill presented to you is inartfully drafted, among other things.

The most convenient way to deal with the problem would be merely to add a simple clause describing the minimum interests which are permitted. That's much cleaner than rewriting the entire law, but that is really a separate subject.

Senator PASTORE. Thank you.

All right, Mr. Wiley.

STATEMENT OF HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. WILEY. Mr. Chairman, I very much appreciate your holding these hearings on the bills which have been introduced at the request of the Commission. Since each bill concerns a separate and distinct subject, I would like to comment briefly on what each would do and why the Commission proposed them.

Let me say at the outset, in light of your comments to former Commissioner Johnson, I don't know if it would serve any useful purpose to discuss the conflict of interest bill. This bill was passed in substantially similar form in 1965 by the Senate. It has been introduced ever since then. It is not a bill I have attempted to push or one I have brought up very recently. It's a bill that has been pending a long time. I think frankly it's a bill that ought to be looked at as it relates to the average Commission employee, career Commission employee, who perhaps has difficulty in owning stocks, participating in activities which other American citizens are able to do and which do not have a real conflict with his position.

It is nothing personal—

Senator PASTORE. The fact still remains, there ought to be a general rule. I don't think we ought to do it in any piecemeal fashion; I don't think we should have a set of rules for this Commission and another set of rules for another agency. At some point I would hope the Congress would get into this in the depth it requires.

Mr. WILEY. I agree with you.

Senator PASTORE. The appropriate committees should resolve this whole question of conflict of interest, not only for employees in the Federal Government and the various agencies and the executive branch, but also with reference to the legislature.

Mr. WILEY. That is fine with me. I think one of the things pointed out—

Senator PASTORE. I have never owned a dime of any interest in any broadcasting institution or any communications business and I don't

intend to. I always felt that it was my duty as an elected public official presiding over this very agency to stay out of it, and I have stayed out of it.

Mr. WILEY. Of course, that is my own personal position.

Senator PASTORE. And I think everybody else ought to follow on the same suit. There are so many places where an investor can put his money without raising a question of conflict of interest.

Mr. WILEY. I agree.

I think you have to understand, Senator, as long as the question has been raised, that subsection 4(b) of our act goes considerably beyond what the statute that Congress has enacted in this area intended. It really restricts an employee of the FCC from being able to hold a stock which might, for example, just simply have a radio license for their executive airplane. For example, Commissioner Johnson wanted to teach at Georgetown University and one of the lawyers looked into that and said that would be prohibited by 4(b). He appealed the ruling because he wanted to teach.

It seems he ought to have an opportunity to teach and provide the kind of expertise he wanted to. And, simply because Georgetown University had a radio license, it was said he couldn't. I think it would be unfortunate if FCC employees are prevented from owning stocks that have a very remote or incidental relationship to the FCC or have some activity which really only, because of some very subsidiary remote interest, they might be prohibited from engaging in.

But I am not here really to be a champion for this bill. If that is your feeling about it, that is all right with me.

Senator PASTORE. I will repeat again, this is a Presidential election year and there is going to be a convention in July, and another convention in August. And we have to conclude our business. I don't think this is the right year to be discussing this. Maybe next year when you have a new chairman of the Subcommittee on Communications you can go into it.

Mr. WILEY. That is all right with me. I want to make the record crystal clear, as Mr. Fogarty knows, what you have done today is bring up all the pending legislation we have, which I think was very fine of the subcommittee to be willing to look at what we have. This just happened to be one of them. So this isn't something that we are pushing.

Senator PASTORE. Let's move on to the other bills.

Mr. WILEY. The other two bills, as you know, have to do with translators and forfeitures. Let me turn to my testimony and talk about S. 2847 which would amend section 318 of the Communications Act to enable the Commission to authorize translator broadcast stations to originate limited amounts of local programming and also to authorize FM radio translator stations to operate without a licensed operator as is now permitted for television translator stations.

Translator stations are low-power broadcasting stations which receive signals from either television or FM radio stations and retransmit those signals to communities where, because of terrain or extreme distances, it is not possible to receive the signals directly. They frequently provide small communities with their only source of television or FM radio service.

Section 318 of the Communications Act limits such stations to the rebroadcast of signals of their primary stations. They are not allowed to make any significant alteration of the characteristics of the incoming signals, and while the Commission has interpreted section 318 to allow 30 seconds of commercial advertising per hour by television UHF translators, no program origination is allowed. Because of these restrictions, such stations are not self supporting. Rather, they must rely on public generosity for their support.

Furthermore, in many instances these restrictions deprive those people dependent on translator service of their only possible source of local programming, such as emergency weather alerts and information on local political events. S. 2847 would solve these problems by giving the Commission authority to allow a limited amount of program origination on such stations.

S. 2847 would not set a specific limitation on the amount of local origination that would be permitted. Rather, it would be the responsibility of the Commission to set an appropriate limitation. We contemplate that such a limitation could best be determined in a rulemaking proceeding where the comments of all interested parties could be analyzed and evaluated. I should emphasize, however, that the Commission in deciding on an appropriate limitation would still be bound by the requirement of section 318 that such originations be limited to the extent necessary to insure that translator stations retain their primary characteristic as rebroadcast stations.

S. 2847 would also allow operation of FM translators without a licensed operator as is now permitted for television translator stations. In 1960, when Congress enacted section 318, the only translator stations in existence were those rebroadcasting television signals. In the last decade, technological advances have made FM translator stations possible. However, in order to make them economically feasible, they need to be covered by the same operating requirements that are now imposed on television translators. S. 2847 would accomplish this simply by deletion of the word "television" from section 318.

Senator PASTORE. Now, you are about to move to the other bill. Is there anyone here who wishes to speak for or against this bill, S. 2847? Are you opposed?

STATEMENT OF LEON KNAUER, COUNSEL TO THE NATIONAL TRANSLATOR ASSOCIATION

Mr. KNAUER. We support the bill.

Senator PASTORE. You may make your presentation.

Mr. KNAUER. We have submitted a statement for the record which is 12 or 13 pages long. I would like to request that this statement be included in the record.

Senator PASTORE. Without objection it will be placed in the record in its entirety.

[The statement follows:]

STATEMENT OF NATIONAL TRANSLATOR ASSOCIATION

National Translator Association ("NTA") supports the proposed amendment to § 318 of the Communications Act of 1934, as amended, which, if enacted,

would permit television and FM translator stations to originate programming and would also permit FM translators to operate unattended.

INTRODUCTORY STATEMENT

NTA is an organization which represents the owners and operators of approximately 3,000 television translator stations throughout the United States. The Association is nonprofit. The President of the Association is Judge Nat Allen who receives no compensation for his services whatever. NTA operates on a minimal budget, most of which is expended for its monthly bulletin.

The function of television translator stations was well stated in the House Report which accompanied a 1960 amendment to § 318 of the Communications Act of 1934, as amended:

"[Translators] serve hundreds of landlocked areas, sparsely settled communities and sections that are distant from regular television stations which otherwise would be without television service. In most cases the installations are cooperatively financed. The contributions are solicited, in nearly all the cases, throughout the community or memberships are sold in a television club in order to finance maintenance and operation of the system." H.R. 1888, 2 U.S.C.C.A.N. 2802 (86th Cong., 2d [Sess. 1960]).

For this and other reasons, Congress saw fit to amend § 318 of the Communications Act to permit unattended operation of television translator stations.

Most television translator stations are located west of the Mississippi River and serve small rural communities. For example, there are over 275 translator stations in Montana, 315 translator stations in Colorado, over 250 translator stations in California, and approximately 50 translator stations in Virginia. There are also many translator stations in Utah, Colorado, Montana, Wyoming, Arizona, Nevada, New Mexico and, to a lesser extent, Oregon, Texas and Washington.

An excellent example of the service which can be provided by television translator stations is in the State of Utah. In Utah, there are over 115 low-watt translator stations operating off 100 or greater watt translators. The net effect is that the three commercial stations and one educational station in Salt Lake City are rebroadcast to every person in Utah and to a number of rural communities in Idaho and Nevada.

It is relevant that a number of state legislatures have enacted laws which provide for the establishment of a means of assisting translator viewers in obtaining funds for the purpose of financing the operation and maintenance of television translator stations. For example, in 1969 the Idaho Code was expanded to include a section entitled: "*Television and Translator Stations*" (§§ 31-4101 through 31-4121 of the Idaho Code). This legislation authorizes the establishment of translator districts and it permits citizens of those districts to be assessed, at a rate not to exceed \$15 a year, for the operation and maintenance of television translator stations. Utah, Montana and other states have enacted similar legislation. (See e.g. Utah Code Annotated § 11-2-2 [1953], Montana Revised § 70-401 through 70-425 [1947]).

The assistance of the state legislatures, the Congress and the Federal Communications Commission has resulted in a substantial growth of television translator stations. For example, 15 years ago, there were only about 800 operating television broadcast translator stations in the United States. Twelve years ago, this number had increased a little in excess of 1,000. Eight years ago, there were over 1,500 operating television translator stations. In 1970 National Translator Association figures indicated the Commission had licensed almost 2,400 translator stations and at present the number of translator stations exceeds 3,000.

It is obvious that rural America, which has low population densities, cannot and will not receive diverse television service as a consequence of subscription television, financing educational stations, encouraging the development of UHF television or recent Commission actions in the area of cable television. Simply stated, the remote areas served by translators do not have sufficient people or the economic base to justify such operations.

Fortunately, television broadcast translator stations, with their relatively low initial capital and low maintenance costs are ideally suited to serve such areas. Historically, as the Congress is well aware, television translator stations have provided a basic and inexpensive television service to otherwise unserved small population centers.

For a period of time, the growth of translator stations was also enhanced by actions of the Federal Communications Commission. This is reflected in the rules of the Commission adopted in 1960 which authorize the operation of low-powered

VHF television translators and provided for the licensing of existing unauthorized translators. (Doc. Nos. 12116, 20 RR 1356 [1960]). In 1965 the Commission amended its translator rules to permit the licensing of high-powered translators on unoccupied channels listed in the Table of Television Assignments (Doc. No. 15858, 1 F.C.C. 2d 15 [1965]). Three years later, the Commission significantly liberalized its translator rules, permitting an increase in power for VHF translators, the use of translators as relays and the origination of announcements by UHF translators (Doc. No. 15971, 13 F.C.C. 2d 305 [1968]).

Some of the above proceedings did indeed accomplish the goal of the Commission respecting better television service for vast remote areas of the United States. However, little has been done recently to enlarge the scope and function of television translator stations. Furthermore, recent technical developments now provide the opportunity to expand and improve translator service if this proposed legislation is enacted.

We are pleased that the Commission has made legislative proposals before this Committee which, if enacted, will put FM translator stations on a parity with television translator stations and will authorize translator stations to expand their public service functions to include originations.

UNATTENDED OPERATION OF FM TRANSLATOR STATIONS

In 1960 Congress saw fit to amend § 318 of the Communications Act of 1934, as amended, so as to afford the Federal Communications Commission discretion to waive the operator requirements for television translator stations. As amended, § 318 precludes the Commission from waiving the operator requirements for "stations engaged in broadcasting (*other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations*) . . ."¹

At the time this legislation was enacted, the Commission's rules did not provide for FM translator stations. However, the Commission's rules were modified in 1970 so as to authorize FM translator stations. (Doc. No. 17159, 35 Fed. Rep. 15388 [Oct. 2, 1970]). Since that date, a number of FM translator stations have been established throughout the United States; particularly in the rural areas. Thus, enactment of this legislation would put FM translators on a parity with television translator stations.

In adopting its FM translator rules, the Commission stated:

"Section 318 of the Communications Act requires that the operation of every broadcast station, with the specific exception of television broadcast stations engaged solely in rebroadcasting be placed in charge of a licensed operator. The Commission cannot, of course, waive this statutory requirement, although we are now preparing a proposal for submission to Congress to amend the statute to allow a similar exception for FM translators. Until Congress changes the law, a licensed radio-telephone operator is required." Doc. No. 17159 at para. 12.

We submit that unattended operation of FM translators will result in FM service to areas of the U.S. not currently receiving such service. There is no good reason why this amendment should not be adopted.

PROGRAM ORIENTATION BY TRANSLATOR STATIONS

In 1970 the question of program origination by television translator stations was considered by the Federal Communications Commission. (*Television Broadcast Translator Station Rules*, 13 F.C.C. 2d 305 [1968]). In that proceeding, the Commission permitted 20-second announcements over UHF television translator stations, which announcements had to be limited to acknowledging financial support. The 20-second limitation was expanded to 30 seconds by action of the Commission in August of 1975 (Doc. No. 19661).

In its 1968 report, the Commission considered the question of whether this limited local origination by television translator stations (which stations had been previously authorized to operate unattended) violated § 318 of the Communications Act. The Commission correctly noted that under § 318 it could waive the operator requirements for broadcast stations ". . . engaged solely in the function of rebroadcasting the signals of television broadcast stations." However, the Commission concluded that these 20-second originations at intervals of no less than one hour were *de minimis* and served the public interest because

¹ Underlined portion is the language of the 1960 Amendment to § 318.

their purpose was to obtain necessary financial support. The Commission concluded:

"We have examined the underlying purpose of section 318, and we do not believe that such a de minimis authorization is inconsistent with that purpose and the statutory provision, any more than origination by translators of call letter identification." 13 F.C.C. 2d at 317.

In the same proceeding, the Commission also considered the overall question of the origination of program material by translators and concluded that such originations were prohibited by § 318 of the Communications Act. However, the Commission did state:

"We have arrived at this judgment with some regret, because there is much appeal in the exploration of possibilities for giving smaller communities which lack direct primary TV station service a means of local self-expression, and of presenting issues of local importance, as well as candidates for local office." 13 F.C.C. 2d at 322.

The Commission was also concerned that "the program generating equipment contemplated by those urging translator program origination does not come up to broadcast standards . . ." (13 F.C.C. 2d at 322). As has been established, the technical development of translator equipment since that report and order has been substantially improved to the point where program origination can be easily undertaken.

NTA submits that the Commission's refusal to authorize translator program originations in 1968 was based on some additional factors. We believe the Commission assumed that much of the television vacuum in the western part of the United States would be filled by community antenna television systems. The Commission was also concerned that the existing state of the technical art was such that translators would be nothing more than substandard, low-powered television stations.

It must be conceded that the Commission's expectations respecting cable television have not reached fruition with respect to service to small rural communities in this country. Nor has there been a development of low-powered community television stations. Moreover, the economics of the broadcast and cable businesses is such that there is little likelihood that cable systems or television stations will ever be built to serve these areas.

Simply stated, the smaller communities which the Commission anticipated would be served by low-powered community television stations do not have the economic base to warrant the substantial investment required because the revenues of broadcasters are determined by the size of the audience they reach; the larger the audience, the larger the revenues. Small communities do not have the population to provide the audience necessary to make television stations, even low-powered community stations, economically viable.

The situation of cable television is similar. Cable was supposed to provide a two-pronged service—it would provide more television signals and it would be a source of new and additional programming. However, it has now become obvious that the problems of cable television and those of television stations are identical in the economic context. It is for this reason that cable systems do not originate programs or provide origination services in communities which have a minimal number of potential subscribers.

The question before this Committee is from what source are smaller communities in the United States, primarily the communities of rural America, going to receive a television service? The simple answer is that for the foreseeable future this service will come from television and FM translator stations.

We submit that the same rationale applied by the Commission when it authorized 20 and then 30-second announcements over UHF translators can be applied to an expanded use of television broadcast translator stations for local program originations. The use of these stations to originate some local programming would not subvert their basic functions as broadcast facilities. At the same time, the origination of local programming would support their rebroadcast function.

As stated, the basic function of translators is to rebroadcast the signals of television and FM stations. However, enactment of this proposed legislation would not jeopardize that basic function. Rather, originations by translators would enable them to better serve the public interest, particularly in two essential areas:

(1) *Financial*.—Currently only UHF translators can originate programs. Those originations are limited to 30 seconds and are restricted to seeking or

acknowledging financial support. Enactment of S-2847 would enable FM and VHF translators to make originations for the purpose of obtaining financial support. Moreover, the Commission would have the power to adopt rules which would liberalize all translator originations in this respect.

(ii) *Emergency messages.*—Situations have arisen where local emergencies have occurred and the most effective or the exclusive means of informing the public of those emergencies was translators. Yet, § 318 of the Communications Act precluded translators from broadcasting those emergency messages. Enactment of S-2847 would enable translators to broadcast information on floods, hurricanes, fires, tornados and other similar messages of an emergency nature.

Clearly, § 318 should be amended to permit originations in these two areas.

NTA admits that originations in other areas does give rise to some problems. Specifically, if translators were authorized to originate 30-minute programs on local events, such as a town meeting, the following matters would have to be resolved:

(i) Reasonably expensive equipment would have to be purchased and, perhaps, authorized by the Commission. This could also affect the unattended operation of translators and bring about the imposition of logging and similar requirements.

(ii) If translators originate, should there be an order of preference with respect to which television or FM stations should be subject to program pre-emptions by translators and should there be an order of preference with respect to what type of television and FM programs (*i.e.*, news, sports, entertainment, etc.) should be pre-empted?

Finally, we wish to emphasize that translators and television licensees have always endeavored to cooperate with each other. In fact, the Commission's regulations require that translator stations obtain written consent to rebroadcast the signals of television stations. This consent has always been given. Moreover, many television stations have assisted translators, financially and otherwise. We are confident that this spirit of cooperation will continue in this new area of originations by translators.

We submit that questions such as these should be considered by the Commission in a rule making proceeding. Certainly, originations by FM translators do not present as many problems as does originations by television translators. However, we respectfully submit that these areas of concern should not impede enactment of S-2847 because it is essential and totally consistent with the public interest to authorize translators to broadcast emergency messages and solicit financial support.

Respectfully submitted,

NATIONAL TRANSLATOR ASSOCIATION.

MR. KNAUER. I would like to identify my clients. The National Translator Association is an association comprised of about 3,000 television translator stations in the United States of which 2,000 are VHF and 1,000 UHF. It is an association that functions on a minimal budget most of which is used for its monthly bulletin.

The Association is most active in the Western States. On the second page of the Association's statement it is shown that there are over 315 translator stations in Colorado, 250 in California and 275 in Montana.

Perhaps the best example of the service translators can provide is found in the State of Utah where about 80 percent of the population is clustered in the Salt Lake City-Provo area. About 20 percent of the population lives in the hinterlands. There are 150 translator stations fed by higher watt translator stations which provide the rural population of Utah with three commercial stations and one education station.

It is relevant, Senator, that we are here before your committee to ask the assistance of the Congress, because the Association has been very effective in obtaining the assistance of State legislatures. A number of legislatures in Western States, Montana, Utah, and Wyoming, for example, have enacted legislation which permits taxation of citizens in areas, remote areas, so as to underwrite the cost of construction

and operation of translators. The tax, for example, is \$15 a year in Idaho. We have also, over the years, obtained the assistance of the FCC.

It has adopted a number of regulations which have permitted some degree of flexibility as far as the operation of translator stations is concerned. This is shown by the growth of translator stations. There were about 800 translators in the United States 15 years ago. Currently, there are over 3,200 translators operating in the United States, most of them serving rural, remote areas. We submit, and I am not going to go into the details of my statement, but I don't think anyone can argue that the only way one can serve remote areas, distant from major cities which have television stations, is by translator stations.

Their cost ranges from about \$1,200, depending upon the sophistication of the equipment. There are two aspects of the bill which concern the Association. One is that, FM translator stations are shackled, because they cannot operate unattended; a licensed operator is required. I have cited two decisions of the Commission where the Commission clearly states it thinks this is not correct, but its hands are tied. An amendment to the act is required.

Senator PASTORE. This bill takes care of that?

Mr. KNAUER. This bill takes care of it. I know of nobody who could oppose it on any reasonable grounds.

Moving on to program of originations: the history of program originations, again as we cited in our statement, is based on a Commission interpretation of a restriction in section 318 of the act. The restriction states that unattended operation applies only when the facility is used for rebroadcasting exclusively. And the Commission in holding that the application of this restriction was de minimis, has permitted UHF translator stations, or one-third of all translator stations, to originate on a very restricted basis.

At first the permissive origination by UHF translators was 20 seconds an hour. The rule was subsequently amended to permit 30 seconds an hour. These originations are essentially slides with a voice background, acknowledging receipt of funds from local citizens to support the operation and asking for additional funds.

The Commission refused to expand its origination rule to VHF translators because it felt that VHF translator stations did not have as great a need for financial assistance and because section 318 barred or prohibited such originations. The FCC has also permitted originations, very limited, 30 seconds an hour, by FM translator stations.

Senator Pastore, looking to the expertise of the Commission in this area, I cite you a Commission decision about 4 years ago which refers to the subject of origination by translators. The Commission concluded as follows:

We have arrived at this judgment [prohibiting originations by translator stations] with regret, because there is much appeal in the exploration of possibilities for giving smaller communities which lack direct primary TV service a means of local self expression, and of presenting issues of local importance, as well as candidates for local office. 13 F.C.C. 2d 305, 322 (1968).

Moreover, the Commission is on record at least, as having supported the legislation before your committee now.

I would like to discuss the alternatives I have spelled out in my statement and again in the interest of time I will not discuss them in detail.

Obviously, low-powered television stations are not the answer and no cable system is going to serve a community of 75 persons as translators now serve, in for example, Brown Lee, Idaho. The cable rule of thumb is, if there are less than 10,000 people it is a very risky investment.

Now, on the question of originations, Senator, I must be candid with you. Translators can provide originations in three general areas, two of which I think can be disposed of very expeditiously. The first is raising financial support. If this bill is enacted, the primary function of translators will be to continue to rebroadcast, but they will be permitted to originate to some extent, and one area where there is a track record is in the area of attempting to obtain financial support. If your bill is passed and enacted, it will permit both VHF and UHF translators, in addition to FM translators, to solicit funds and not on the very minimal basis currently authorized, which is 30 seconds per hour. Moreover, the 30-second rule does not extend to 65 percent of the operating translator stations, which are VHF—because of section 318 of the act.

Senator PASTORE. Does this bill take care of that?

Mr. KNAUER. Yes, sir, it will give the Commission authority to expand originations to all translators.

Second, situations have arisen where local emergencies have occurred and the most effective or the exclusive means of informing the public of these emergencies was translator stations. Yet, section 318 of the act precluded translators from broadcasting these emergency messages.

Enactment of S. 2487 would enable translators to broadcast messages on floods, tornados, and other emergencies of a similar nature. They have the ability to do this and I believe the Commission wants to authorize them to do it but section 318 currently precludes this public service.

Now, the association, Senator Pastore, must admit to you that originations in other areas do give rise to problems. Problems we think the Commission can solve. Specifically, for example, if a translator was authorized to originate a 30-minute program on local events, say, a town meeting, the following matters would have to be resolved: No. 1, reasonably expensive equipment would have to be purchased and perhaps authorized by the Commission. This also may affect the unattended operation of translators which is currently permitted under 318 of the act.

It also could bring about the imposition of logging and similar requirements. In addition, if translators originate, should there be an order of preference with respect to the television or FM station which is going to be preempted? You may have a community with four translator stations which carry one education and three commercial stations. Should the translator be permitted to discriminate against one television station as opposed to the others? Should the translator be permitted to preempt "60 Minutes" on CBS or some entertainment program? We submit that resolution of these problems should be left to the expertise of the Commission.

Finally, we wish to emphasize that translators and television licensees have always endeavored to cooperate with each other. In fact, the Commission's regulations require—as opposed to cable—that translator stations, before they broadcast the signals of distant tele-

vision stations obtain the written consent of those stations. We are pleased to report the stations have always given that consent. Moreover, many television stations have assisted translator stations, financially and otherwise, and we are confident this spirit of cooperation will continue.

But these are problems which do not relate to emergency messages and to expanding limited originations for the purpose of soliciting funds—rather they relate to the origination of “programs” by translators.

Senator PASTORE. Are all these matters within the rulemaking jurisdiction of the Commission?

Mr. KNAUER. All the powers are. But the point I am trying to make is that a rulemaking might be justified for expanded originations. But we do not think a protracted rulemaking is required to permit translators to solicit financial assistance and for translators to broadcast emergency messages. If there is a long, protracted rulemaking, translators might have to wait a number of years for relief.

I would now like to make a point on cost factors, which also relates to originations. Currently, you can purchase equipment for about \$5,000, which would permit soliciting for funds and emergency messages. When you get into the question of originating programs, Senator Pastore, you start with a low of \$15,000 and run up way beyond \$50,000, if you are talking about microwave equipment, so the cost of origination beyond the emergency messages and financial solicitations is quite expensive.

Finally, it's been brought to our attention that some cable people believe that if you enact this legislation, translator stations will subject cable systems to interference. This, we submit, is a fallacious argument, it is folly. As a matter of fact—

Senator PASTORE. Let me ask Mr. Wiley a question. Have there been any interference problems as a result of unattended television translator operation as allowed under section 318?

Mr. WILEY. Mr. Chairman, as Mr. Knauer mentioned, we have about 3,250 TV and FM translator stations operating in the country today. During fiscal year 1975, our field operations bureau received over 55,000 complaints of interference across the board. Only 18 of these involved licensees in the broadcast auxiliary service, where translators are licensed. I think we can say the question of interference is an extremely minute problem. We don't think it need concern the subcommittee.

Mr. KNAUER. My information is, that there are only 10 or so complaints from cable systems on interference per year. I believe most of these are worked out. The complaints are usually based on the effort of a cable system to bring in a distant city television station, say, on channel 7 and a translator is operating on channel 6 in the cable community. Because the distant city signal is weak and the translator is in the cable community, it causes interference. These are usually resolved by switching channels or by installing traps and filters or by adjusting the transmitting antenna or receiving antenna.

Moreover, in 25 years there are only 17 reported Commission decisions on interference complaints by cable systems against translator stations. Approximately one a year. And in some of those instances where the cable systems complained of interference, the Commission felt the complaint had merit and the translator station was required

to switch channels or go off the air. In other instances the Commission dismissed the complaint.

Senator PASTORE. Weighing that problem against the possibility of denying these people in very remote areas the privilege of having this facility—

Mr. KNAUER. Precisely. I would like to offer this memorandum if I may. It contains a recitation of those 17 decisions.

Senator PASTORE. We are not living in a perfect world. Naturally, we have to weigh sometimes advantages and difficulties, whatever the case might be. In this particular case, I am assured by Mr. Wiley that whatever problems there might be on the question of interference you will have to work them out. Is that correct?

Mr. WILEY. Yes.

Mr. KNAUER. May I leave this summary of the cases on interference?

Senator PASTORE. Yes; we will include it as a matter of reference.

Mr. Wiley. I will move on to the last bill, S. 2343, which would amend the Communications Act of 1934 to unify and strengthen the Commission's forfeiture authority. It is extremely important to our regulatory efforts.

Section 503 of the Communications Act now provides for forfeitures in the broadcast services, while section 510 provides separately for forfeitures applicable to nonbroadcast radio stations. S. 2343 would repeal section 510 and place all classes of forfeitures under section 503. Additionally, section 503 would be enlarged in scope to cover persons subject to the Communications Act but not now under the forfeiture provisions—such as cable television systems, users of part 15 or part 18 devices, persons operating without a valid station or operator's license, and some communications equipment manufacturers.

The proposed amendments would make three additional alterations in the existing forfeiture provisions.

First, the limitations period for the issuance of notices of apparent liability would be extended: for nonbroadcast licensees and others not subject to Commission licensing requirements, from 90 days to 1 year; and for broadcast licensees, from the present 1 year to 1 year or the current license term whichever is longer.

Second: The maximum forfeiture that could be imposed for a single offense would be raised from \$1,000 to \$2,000, while the maximum amount that could be imposed for multiple offenses set forth in any single notice of apparent liability would be \$20,000 in the case of a common carrier, broadcast licensee, or cable system, and \$5,000 in the case of all other persons.

Senator PASTORE. When you say forfeiture, you mean a fine? The reason I raise the question, if someone is operating a broadcast facility for which by law a license must be obtained and does so without a license, I wonder what do you forfeit?

Mr. WILEY. Where there is no license?

Senator PASTORE. No, no. The law requires that certain individuals obtain a license when they operate a facility. There are many who do not obtain a license but do operate.

Mr. WILEY. Correct.

Senator PASTORE. When you discover this, is a matter of imposing a fine or—

Mr. WILEY. They would forfeit a certain amount of money to us. That is the way the language of the statute is.

Senator PASTORE. That is the reason I asked the question. You can't forfeit something that you haven't got.

Mr. WILEY. Forfeiting a sum of money.

Senator PASTORE. That's right. It amounts to the imposition of a fine.

Mr. WILEY. Essentially that's right.

Senator PASTORE. What if they don't pay the fine? What do you do?

Mr. WILEY. Then, of course, we have to proceed through the Justice Department for further remedies in court, to try to—

Senator PASTORE. How does the Justice Department accommodate you on that?

Mr. WILEY. Of course, the Justice Department has many responsibilities and has to weigh the importance of some of the cases involved and we have had difficulties from time to time getting some enforcement of forfeiture. They are cooperating with us but they do have burdens. There is no question about that.

Existing section 503 provides maximums of \$1,000 for single offenses and \$10,000 for multiple offenses by a broadcast licensee, while those persons subject to existing section 510 are currently liable for \$100 in the case of single offenses and \$500 for multiple offenses. S. 2343 would make a third material alteration in the act's forfeiture provisions by authorizing the Commission to mitigate or remit common carrier forfeitures.

Since we have such authority with respect to all other forfeitures, it seems reasonable to allow the Commission to exercise its judgment in this area also.

Mr. Chairman, we believe the proposed changes in the Commission's forfeiture authority are necessary to our regulatory efforts. Take, for example, the problems we have experienced in the cable area because of our lack of forfeiture authority. Without such authority, the Commission's enforcement of its rules is limited to the cumbersome and time-consuming procedures of cease-and-desist proceedings and, if a cable television operator chooses to disregard the Commission's issuance of a cease-and-desist order, effective enforcement must await civil contempt proceedings which the Department of Justice must agree to prosecute.

Amending the Communications Act to provide specific forfeiture authority to the Commission in cable television matters will enable the Commission to enforce its rules in an effective and expeditious manner. There are a number of situations which typically involve a violation of our rules for which a speedy remedy is not now available. Let me give you some examples.

First, violation of network nonduplication rules by failing to protect a local television station's network programming. In the proceedings leading up to the First Report and Order in Docket 19995, 52 FCC 2d 519 (1975), many broadcasters complained about the Commission's lack of forfeiture authority in this area.

Second, commencement of cable television operations, or continuing cable operations beyond March 31, 1977, without first obtaining the required certificate of compliance.

Third, carriage of signals illegally. Some cable television systems have unlawfully added television signals or commenced the carriage of such signals which the rules do not permit. After the passage of a number of years, it may be impractical to order the termination of service, but a forfeiture may surely be warranted.

Fourth, failure to conduct the annual performance tests our rules require. The Commission has adopted performance standards to insure that cable systems provide high quality service and do not interfere with other modes of communication. Assessing forfeitures will put teeth into these requirements.

Fifth, failure to file annual financial and ownership reports and forms—sections 76.401, 76.405, and 76.409.

Sixth, initiating Cable Television Relay Service—CARS—without a license or even without filing for a construction permit, or failing to adhere to the conditions specified in the construction permit. The Commission issues construction permits and licenses to applicants in the CARS service, but section 510 of the act authorizes forfeitures only for “off-frequency” operations and failing to respond to official correspondence.

Just as in the case of broadcast licenses, it should be emphasized that only a small number of the approximately 8,000 cable systems in the country will ever present occasions for the imposition of forfeitures. The great majority wish to, and do, abide by our rules. With the enactment of necessary legislation, the Commission will possess enforcement authority over cable comparable to that which it exercises over other mediums of communications. This will be especially important since the number of operating cable systems can be expected to increase in the coming years, requiring additional enforcement efforts.

Also important is the extension of forfeiture authority over unlicensed operators.

I am sure you are all aware of the increasing popularity of the citizens band radio service. I might say, it took 15 years to get the first million operating and it has taken just a couple of weeks to get that many recently. The requests for licenses has expanded considerably, creating problems for us both in the application area but also in enforcement.

We have been faced with enforcement problems associated with unlicensed operations. Interference, obscenity, overpower operations or other improper conduct could, if allowed to continue, seriously impair the usefulness of this service to responsible citizens.

Except for the Commission's cease-and-desist authority, enforcement of the act of Commission rules or orders against such persons now must be by judicial action under section 401 or criminal prosecution under sections 501 and 502. Forfeiture authority should prove to be a much more effective sanction for reaching these unlicensed operators.

The proposed extension of the present time limitation for the issuance of notices of apparent liability is also necessary to our regulatory efforts. Usually, violations of the act or of the Commission's rules in the nonbroadcast services are detected through field office monitoring. When an apparent violation is found, the field office as

a matter of practice issues a notice of violation and offers an opportunity to explain or comment on the alleged misconduct. These notices are routinely sent to Washington, where they are checked against the licensee's record. In those cases where there is a history of repeated misconduct, or where the misconduct appears to be willful and sufficiently serious, a notice of apparent liability is issued.

It has been our experience that, because of the increasing work loads in the nonbroadcast services and the limited number of staff personnel to review possible violations, it is often impossible to issue a notice of apparent liability within the 90-day period. Mr. Chairman, you should keep in mind that there are over 2 million authorizations in the Safety and Special Radio Service alone, not to mention the increasing number of individuals who are operating without required authorizations.

A longer limitation period is also necessary in the broadcast area. While some violations may be found during regular station inspections, present personnel shortages preclude us from making more than one inspection during the 3-year license term. Some violations are brought to our attention by complaints sent to the Commission. In these cases, detailed and often time-consuming investigations of the station's operations may be necessary. What is more likely is that violations will be exposed during the Commission's review of the licensee's renewal application, and, in many instances, the 1-year period will have elapsed.

Where, for example, the Commission discovers misconduct occurring more than a year earlier, we have only the alternative of doing nothing or revoking the license, since the statute of limitations for imposing a forfeiture has already run. S. 2343 would obviate this problem by allowing the Commission to impose a forfeiture for any violation during the current license term.

Similarly, we believe the increase in maximum forfeitures would also help us in our regulatory efforts. Quite frankly, the currently available forfeitures are unrealistic and totally inadequate to be an effective deterrent to violations by large communications businesses. The same is equally true in the case of other persons, although we do recognize the need for a lower maximum forfeiture in such cases. Furthermore, I can assure you that the Commission will continue the policy of tailoring forfeitures to the offender and to the nature of the offense.

I would also like to point out a number of procedural protections that have been included in the proposed legislation. To begin with, forfeiture liability would arise only after a person has been served personally or by certified or registered mail with a notice of apparent liability, and has been given an opportunity to show in writing why he should not be held liable. In addition, S. 2343 provides special procedural protection for those persons who may likely be unaware of Commission regulations. For such a person, no forfeiture could attach unless prior to the issuance of any notice of apparent liability the Commission has sent a notice of the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. However, I want to make it clear that this special procedure would not be used if the person is engaged in an activity that requires the holding of a license, permit, certifi-

cate, or other authorization from the Commission, or is providing any service by wire subject to the Commission's jurisdiction.

Mr. Chairman, that concludes my statement and I would be pleased to take any questions on this particular bill.

[The statement follows:]

STATEMENT OF RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee: I very much appreciate your holding these hearings on three bills introduced at the request of the Commission. Since each bill concerns a separate and distinct subject, I would like to comment briefly on what each would do and why the Commission proposed them.

S. 2846 would amend the conflict of interest provisions of subsection 4(b) of the Communications Act to remove certain inequities.

Quite simply, while FCC Commissioners and employees would continue to be prohibited from investing in broadcasting companies, CATV systems, and communications common carriers, such prohibition would not apply to those thousands of companies which use radio merely as an incident of their business or to the purchase of an ordinary mutual fund.

I do not believe this bill should engender any controversy. It is somewhat more restrictive than a similar bill enacted by the Senate in 1965 after hearings and a favorable report by this Committee. That bill, which unfortunately did not receive consideration by the House of Representatives, provided exemptions from the conflict of interest provisions of subsection 4(b) for executive reservists and special government employees. Those exemptions, which were viewed by one member of the House Committee on Interstate & Foreign Commerce as a possible loophole, are not contained in S. 2846. I am hopeful that this bill—which I believe to be a modest and reasonable proposal—will be enacted by both houses in this Congress.

So that your hearing record may be complete, I have included in my statement another four pages explaining the bill. I will be pleased at this point to read it, summarize it or respond to questions as the Chairman may desire.

Subsection 4(b) was enacted to ensure that the decisions reached by Commissioners and Commission employees are shaped by public interest considerations, and not the prospect of personal economic gain. To achieve this objective, Congress saw fit to bar members of the Commission and its employees from having a financial interest in:

1. The manufacture or sale of radio apparatus or apparatus for wire or radio communication;
2. Communication by wire or radio;
3. Companies furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio;
4. Any company owning stocks, bonds, or other securities of any such company.

Moreover, Congress barred such persons from owning stocks, bonds or other securities of any corporation subject to *any* of the provisions of the Communications Act. The various provisions of subsection 4(b) were warranted and altogether appropriate at the time they were enacted. However, in view of subsequent developments, they now sweep with much too broad a brush.

Since that time, communications equipment has been used in ways and to a degree not anticipated. At present, radio communication apparatus is employed in virtually every facet of business. It is found in delivery trucks, taxicabs, aircraft, boats and automobiles, and it is used in such diverse fields as farming, fishing and mining. A literal application of subsection 4(b) would preclude Commissioners and Commission employees from owning stocks, bonds, or other securities of any corporation which holds even a single Commission radio license for perhaps a delivery van or a corporate airplane, or any corporation providing services, such as building maintenance, to such corporations. Given such broad application, it is difficult to conceive of a security which Commission personnel could purchase. The Commission does not believe that Congress intended this result. Accordingly, the proposed amendment makes clear that subsection 4(b) would not apply to securities of corporations whose use of radio is merely incidental to their primary business.

In addition, advancements in the area of corporate organization and the means by which securities are distributed have caused subsection 4(b) to become outdated. In recent years, we have witnessed the development of many complex corporate interrelationships. As a result, many large corporations now have connections—some quite remote—with licensees of the Commission. Consequently, it is altogether possible that Commissioners and Commission employees may acquire securities in a corporation having such connections which are not readily apparent, and thus unknowingly violate the Act. The proposed amendment would make clear that subsection 4(b) does not apply to securities of corporations whose relationship to corporations subject to the Communications Act is remote.

The recent proliferation of mutual funds also raises subsection 4(b) questions. Since almost any mutual fund would hold some communications securities—such as AT&T, GE or RCA—a strict application of the subsection would preclude Commissioners and Commission employees from purchasing shares in such funds. The Commission believes that investment in mutual funds should be permitted where the fund's holdings are not concentrated in broadcasting companies, cable television systems, communications common carriers or companies engaged in the manufacture or sale of apparatus for wire or radio communication. The proposed amendment would implement this belief.

As further justification for the proposed amendments, I note that 18 U.S.C. 208, the general statute addressing conflicts of interest, is far less restrictive than subsection 4(b). Section 208 bars an officer or employee of the executive branch from participating in decisions in an official capacity in which he has a financial interest, absent disclosure of the nature and circumstances of his interest and receipt of a ruling that such interest is so insubstantial as to be unlikely to affect his decision; or exemption of his interest by general rule or regulation.

The Commission recognizes, of course, that where employees of a federal regulatory agency are involved, additional restrictions may be appropriate. For this reason, the proposed subsection 4(b) would continue to prohibit Commissioners and Commission employees from having a direct financial interest in, employment by or any official relationship to:

1. Any person engaged in radio broadcasting;
2. Any person engaged in the distribution of programs over wire;
3. Communications common carriers;
4. Persons a substantial part of whose activities consist of the manufacture or sale of apparatus for wire or radio communication;
5. Mutual funds, holding companies, or other investment companies whose investments are concentrated substantially in the entities included in paragraphs (1), (2), (3), and (4). As an additional safeguard, the amendment also specifically states that nothing herein shall limit the authority of the Commission under Public Law 87-849 (87th Congress, approved October 23, 1962) or other law or Executive Order to restrict further the financial interests or official relations of its employees.

The proposed amendment also contains a provision modeled after 18 U.S.C. 208(b) which would authorize waiver of the provisions of subsection 4(b) in certain cases.

I wish to stress that the Commission is not seeking special treatment in this area. To the contrary, we seek only to amend current subsection 4(b) to eliminate antiquated provisions which, because of changed circumstances, may cause unnecessarily harsh results. Accordingly, I am confident that the proposed amendments will not affect the impartiality with which Commission decisions are rendered. To the contrary, they will provide a more realistic basis for the protection of the public interest.

Turning now to the second bill, S. 2847 would amend section 318 of the Communications Act to enable the Commission to authorize translator broadcast stations to originate limited amounts of local programming and also to authorize FM radio translator stations to operate without a licensed operator as is now permitted for television translator stations.

Translator stations are low-power broadcasting stations which receive signals from either television or FM radio stations and retransmit those signals to communities where, because of terrain or extreme distances, it is not possible to receive the signals directly. They frequently provide small communities with their only source of television or FM radio service.

Section 318 of the Communications Act limits such stations to the rebroadcast of signals of their primary stations. They are not allowed to make any significant alteration of the characteristics of the incoming signals, and while

the Commission has interpreted section 3118 to allow 30 seconds of commercial advertising per hour by television UHF translators, no program origination is allowed. Because of these restrictions, such stations are not self-supporting. Rather, they must rely on public generosity for their support. Furthermore, in many instances, these restrictions deprive those people dependent on translator service of their only possible source of local programming, such as emergency weather alerts and information on local political events. S. 2847 would solve these problems by giving the Commission authority to allow a limited amount of program origination on such stations.

S. 2847 would not set a specific limitation on the amount of local origination that would be permitted. Rather, it would be the responsibility of the Commission to set an appropriate limitation. We contemplate that such a limitation could best be determined in a rulemaking proceeding where the comments of all interested parties could be analyzed and evaluated. I should emphasize, however, that the Commission in deciding on an appropriate limitation would still be bound by the requirement of section 318 that such originations be limited to the extent necessary to ensure that translator stations retain their primary characteristic as rebroadcast stations.

S. 2847 would also allow operation of FM translators without a licensed operator as is now permitted for television translator stations. In 1960, when Congress enacted section 318, the only translator stations in existence were those rebroadcasting television signals. In the last decade, technological advances have made FM translator stations possible. However, in order to make them economically feasible, they need to be covered by the same operating requirements that are now imposed on television translators. S. 2847 would accomplish this simply by deletion of the word "television" from section 318.

Finally, Mr. Chairman, I would like to comment on S. 2343. This bill would amend the Communications Act of 1934 to unify and strengthen the Commission's forfeiture authority. It is extremely important to our regulatory efforts.

Section 503 of the Communications Act now provides for forfeitures in the broadcast services, while section 510 provides separately for forfeitures applicable to non-broadcast radio stations. S. 2343 would repeal section 510 and place all classes of forfeitures under section 503. Additionally, section 503 would be enlarged in scope to cover persons subject to the Communications Act but not now under the forfeiture provisions—such as cable television systems, users of Part 15 or Part 18 devices, persons operating without a valid station or operator's license, and some communications equipment manufacturers.

The proposed amendments would make three additional alterations in the existing forfeiture provisions. First, the limitations period for the issuance of notices of apparent liability would be extended: for nonbroadcast licensees and others not subject to Commission licensing requirements, from ninety days to one year; and for broadcast licensees, from the present one year to one year or the current license term whichever is longer. Second, the maximum forfeiture that could be imposed for a single offense would be raised to \$2,000, while the maximum amount that could be imposed for multiple offenses set forth in any single notice of apparent liability would be \$20,000 in the case of a common carrier, broadcast licensee, or cable system, and \$5,000 in the case of all other persons. Existing section 503 provides maximums of \$1,000 for single offenses and \$10,000 for multiple offenses by a broadcast licensee, while those persons subject to existing section 510 are currently liable for \$100 in the case of single offenses and \$500 for multiple offenses. S. 2343 would make a third material alteration in the Act's forfeiture provisions by authorizing the Commission to mitigate or remit common carrier forfeitures. Since we have such authority with respect to all other forfeitures, it seems reasonable to allow the Commission to exercise its judgment in this area also.

Mr. Chairman, we believe the proposed changes in the Commission's forfeiture authority are necessary to our regulatory efforts. Take, for example, the problems we have experienced in the cable area because of our lack of forfeiture authority. Without such authority, the Commission's enforcement of its rules is limited to the cumbersome and time-consuming procedures of cease and desist proceedings and, if a cable television operator chooses to disregard the Commission's issuance of a cease and desist order, effective enforcement must await civil contempt proceedings which the Department of Justice must agree to prosecute.

Amending the Communications Act to provide specific forfeiture authority to the Commission in cable television matters will enable the Commission to enforce

its rules in an effective and expeditious manner. There are a number of situations which typically involve a violation of our rules for which a speedy remedy is not now available:

a. Violation of network nonduplication rules by failing to protect a local television station's network programming. In the proceeding leading up to the *First Report and Order in Docket 19995*, 52 FCC 2d 519 (1975), many broadcasters complained about the Commission's lack of forfeiture authority in this area. (Section 76.92 of the Rules);

b. Commencement of cable television operations, or continuing cable operations beyond March 31, 1977, without first obtaining the required certificate of compliance. (Section 76.11);

c. Carriage of signals illegally. Some cable television systems have unlawfully added television signals or commenced the carriage of such signals which the rules do not permit. After the passage of a number of years, it may be impractical to order the termination of service, but a forfeiture may surely be warranted. (Sections 76.11, 76.57, 76.59 and 76.61);

d. Failure to conduct the annual performance tests our rules require. The Commission has adopted performance standards to ensure that cable systems provide high quality service and do not interfere with other modes of communications. Assessing forfeitures will put teeth into these requirements. (Sections 76.601 and 76.605);

e. Failure to file annual financial and ownership reports and forms. (Sections 76.401, 76.405, and 76.409);

f. Initiating Cable Television Relay Service (CARS) without a license or even without filing for a construction permit, or failing to adhere to the conditions specified in the construction permit. The Commission issues construction permits and licenses to applicants in the CARS service, but section 510 of the Act authorizes forfeitures only for "off-frequency" operations and failing to respond to official correspondence. (Section 78.11).

Just as in the case of broadcast licensees, it should be emphasized that only a small number of the approximately 8,000 cable systems in the country will ever present occasions for the imposition of forfeitures. The great majority wish to, and do, abide by our rules. With the enactment of necessary legislation, the Commission will possess enforcement authority over cable comparable to that which it exercises over other mediums of communications. This will be especially important since the number of operating cable systems can be expected to increase in the coming years, requiring additional enforcement efforts.

Also important is the extension of forfeiture authority over unlicensed operators.

I am sure you are all aware of the increasing popularity of the Citizens Band Radio Service. However, with this increase in popularity, we have been faced with very difficult problems, including those associated with unlicensed operations. Interference, obscenity, over-power operations or other improper conduct could, if allowed to continue, seriously impair the usefulness of this service to responsible citizens.

Except for the Commission's cease and desist authority, enforcement of the Act or Commission rules or orders against such persons now must be by judicial action under section 401 or criminal prosecution under sections 501 and 502. Forfeiture authority should prove to be a much more effective sanction for reaching these unlicensed operators.

The proposed extension of the present time limitation for the issuance of notices of apparent liability is also necessary to our regulatory efforts. Usually, violations of the Act or of the Commission's rules in the non-broadcast services are detected through field office monitoring. When an apparent violation is found, the field office as a matter of practice issues a notice of violation and offers an opportunity to explain or comment on the alleged misconduct. These notices are routinely sent to Washington, where they are checked against the licensee's records. In those cases where there is a history of repeated misconduct, or where the misconduct appears to be willful and sufficiently serious, a notice of apparent liability is issued.

It has been our experience that, because of the increasing workloads in the non-broadcast services and the limited number of staff personnel to review possible violations, it is often impossible to issue a notice of apparent liability within the ninety-day period. Mr. Chairman, you should keep in mind that there are over 2,000,000 authorizations in the Safety and Special Radio Services alone, not to mention the increasing number of individuals who are operating without required authorizations.

A longer limitation period is also necessary in the broadcast area. While some violations may be found during regular station inspections, present personnel shortages preclude us from making more than one inspection during the three-year license term. Some violations are brought to our attention by complaints sent to the Commission. In these cases, detailed and often time-consuming investigations of the station's operations may be necessary. What is more likely is that violations will be exposed during the Commission's review of the licensee's renewal application, and, in many instances, the one-year period will have elapsed.

Where, for example, the Commission discovers misconduct occurring more than a year earlier, we have only the alternatives of doing nothing or revoking the license, since the statute of limitations for imposing a forfeiture has already run. S. 2343 would obviate this problem by allowing the Commission to impose a forfeiture for any violation during the current license term.

Similarly, we believe the increase in maximum forfeitures would also help us in our regulatory efforts. Quite frankly, the currently available forfeitures are unrealistic and totally inadequate to be an effective deterrent to violations by large communications businesses. The same is equally true in the case of other persons, although we do recognize the need for a lower maximum forfeiture in such cases. Furthermore, I can assure you that the Commission will continue the policy of tailoring forfeitures to the offender and to the nature of the offense.

I would also like to point out a number of procedural protections that have been included in the proposed legislation. To begin with, forfeiture liability would arise only after a person has been served personally or by certified or registered mail with a notice of apparent liability, and has been given an opportunity to show in writing why he should not be held liable. In addition, S. 2343 provides special procedural protection for those persons who may likely be unaware of Commission regulations. For such a person, no forfeiture could attach unless prior to the issuance of any notice of apparent liability the Commission has sent a notice of the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. However, I want to make it clear that this special procedure would not be used if the person is engaged in an activity that requires the holding of a license, permit, certificate, or other authorization from the Commission, or is providing any service by wire subject to the Commission's jurisdiction.

Mr. Chairman, that concludes my statement. I wish to thank you again for holding these hearings, and I will be pleased to answer whatever questions you and members of the Subcommittee may have.

Senator PASTORE. Let me ask you this question: We must necessarily consider the due process rights and interests of persons subject to the Commission's forfeiture authority.

Would you please explain what in your view are the essential procedural safeguards contained in the Commission's proposed bill?

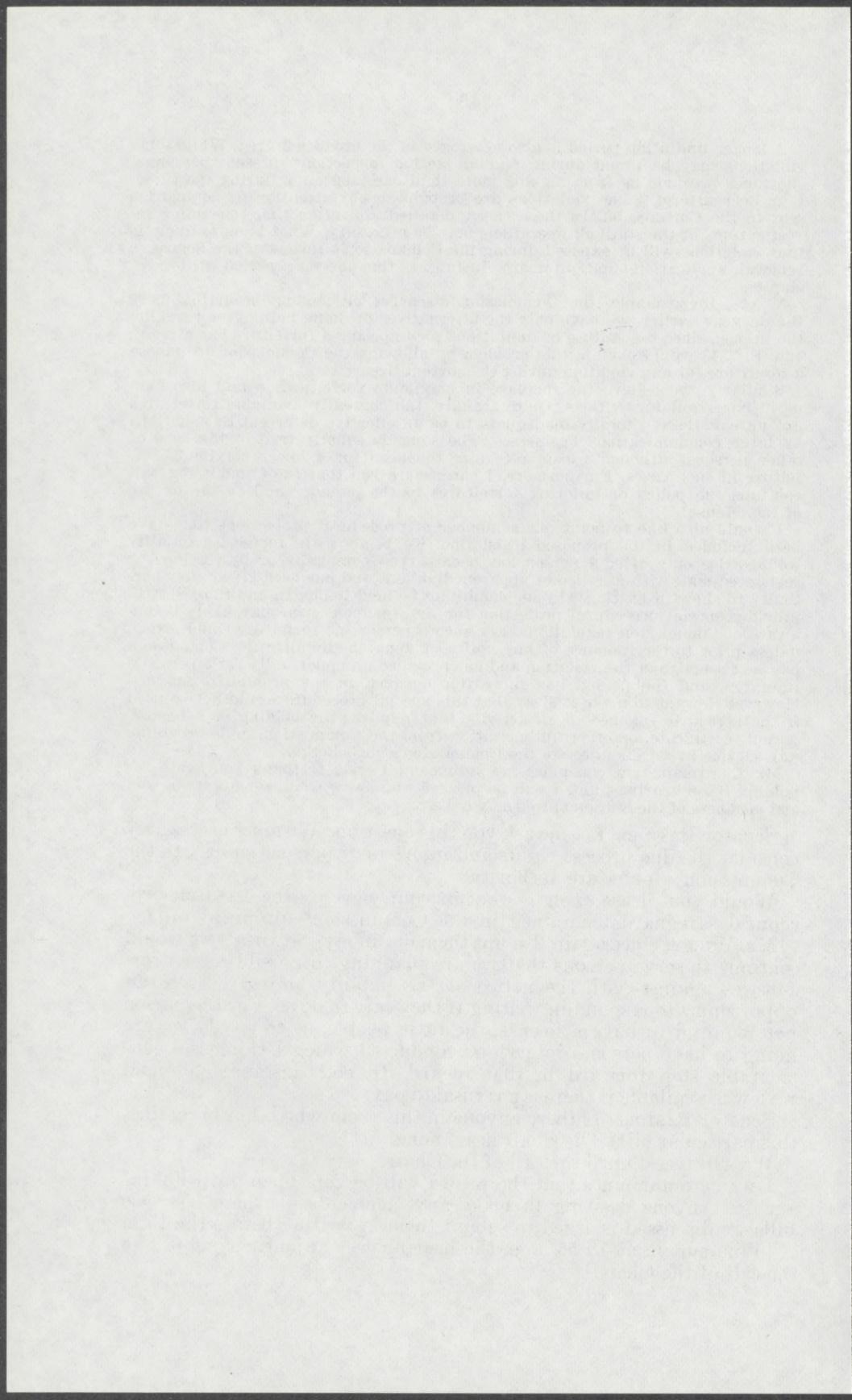
Mr. WILEY. Once again, I point them out in my statement, we would continue to serve persons that we are planning to possibly issue forfeitures against with the notice of the liability and give them an opportunity to respond in writing if they care to do so. For the person not required to have a license, the little people, so to speak, we are going to have personal interviews conducted which I think is a considerable step forward in that regard. In both instances, judicial review is available if there is a refusal to pay.

Senator PASTORE. Is there anyone in this room who is for or against this particular bill? The Chair hears none.

We will recess until the call of the Chair.

I want to announce that the record will be kept open until February 15. Anyone desiring to make any comments on these last two bills we discussed is asked to submit them in writing before the 15th.

[Whereupon, at 10:55 a.m., the hearing was adjourned, subject to the call of the Chair.]



ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF BILL SIMS, PRESIDENT, WYCOM CORP.

I cannot believe that the Congress would authorize translators the right to originate broadcasting of their own. I oppose this bill for several reasons.

First, translators are just that, and they should not be put in a situation where they can compete with commercial broadcasting stations. Translators do not need to ascertain the needs of the community. They are not required to present a minimum of public affairs broadcasting. They may soon be able to operate without a licensed operator on duty. Translators do not have to face the harrowing cycle of license renewal that commercial broadcasters do. In short, S. 2847 would allow them to actually become broadcasters without the many obligations that we, in the station business, have to adhere to.

Second, it may prove to be more profitable and less troublesome to operate a group of translators than radio stations. I can foresee the time when a translator may use all of the frequencies it handles—multiple TV channels and radio dial positions—to broadcast a single commercial announcement on all its channels. How could a radio station in a market with a translator hope to compete?

I would welcome competition if it were on equal ground. But, while broadcasters have a number of obligations, translators would be granted all the freedom with none of the responsibilities, hardly a competitive atmosphere.

I preside over three AM stations in Wyoming and one FM station. I believe that this authority for translators would be an unfair granting of competitive advantage with none of the responsibilities.

I find this especially disappointing in view of the fact that the bill contains no specific limits on local origination, deferring instead to the FCC's intent to place the limits on during rulemaking, instead of when the bill becomes law.

I am grateful to the committee for allowing me to present these views.

STATEMENT ON BEHALF OF THE ASSOCIATION OF MAXIMUM SERVICE TELECASTERS, INC., BY LESTER W. LINDOW, EXECUTIVE DIRECTOR

The Association of Maximum Service Telecasters, Inc. ("MST") is an association of more than 160 television stations dedicated to the continuation and expansion of high technical quality, wide-area television service. Translators retransmit the signals of many television stations including many of MST's members to areas in which direct reception is unsatisfactory due to distance or intervening terrain barriers. MST recognizes the valuable contribution that television translators make, strongly supports their further development and wishes to assure that television translators continue to provide high quality rebroadcast service to the many Americans who rely on them.

What the proposed amendment of § 318 seeks to do is to permit translators to engage in a very limited amount of origination without being attended by a properly licensed operator. The Communications Act currently distinguishes between regular broadcast stations, which modulate the signal and require a licensed operator, and translators, which do not ordinarily modulate the signal and do not require a licensed operator. This distinction is important, because unless modulation equipment is properly monitored by a qualified operator, either in person or by remote control, service to the public will suffer.

Modulation takes place while a broadcast station engages in origination. For very limited amounts of origination the unattended operation of a translator does not present a serious problem. The Commission has acted under the present law to permit a very limited amount of unattended origination by UHF translators. Such origination is limited to no more than twenty seconds per hour, and is restricted to solicitation or acknowledgment of financial support for the translator.

The Commission permits such origination in the belief that "such a *de minimis* authorization" is consistent with § 318. *Television Broadcast Translator Station Rules*, 13 FCC 2d 305, 317 (1968). If the Commission acted properly in permitting such limited origination on UHF translators—and no one has objected to its action—then a similar authorization for VHF translators would be both proper and equitable. In addition, use of translators for extraordinary originations of emergency information is certainly *de minimis* and consistent with the spirit of § 318.

If the Congress believes that present section 318 does not permit such limited originations by unattended translators, MST supports an amendment of Section 318 to make it clear that the Commission has the power to permit very limited originations by translators to take place without a licensed operator in attendance.

Any origination in which translators might engage should not be permitted to detract from their essential function, which is rebroadcasting. MST does not understand it to be the purpose of the National Translator Association or the Commission for translators to abandon their rebroadcasting function in order to become low-power standard stations. Rather, MST believes that the intent of the proposed amendment is to permit only very limited origination by unattended translators, of the sort that the Commission has permitted under present law. If the Congress believes that an amendment to Section 318 is needed to permit such origination, it should make clear that unattended operation is permitted for very limited origination only and that no deviation from translators' essential rebroadcasting function will be permitted.

Except for emergency originations, originations by translators should be with the consent of their mother stations—whose relationship with translators has always been and must continue to be close in order to effectively serve the public and to fulfill obligations to networks and advertisers. Of course, any translator, no matter what the extent and nature of its origination, must be licensed and operated only when it causes no interference to the signals of regular television stations, as the Commission's Rules (§ 74.703) require.

In conclusion, MST supports the use of unattended translators to engage in very limited origination, whether accomplished under existing Section 318 as is now the case for UHF translators or pursuant to an amendment to Section 318. If Congress believes that an amendment to Section 318 is necessary, it should assure that translators' essential rebroadcasting function will not be jeopardized.

STATEMENT OF GENERAL TELEPHONE & ELECTRONICS CORP.

General Telephone and Electronics Corporation (GTE), on behalf of its domestic telephone operating and manufacturing subsidiaries, opposes enactment of so much of S. 2343 as would (1) modify the existing forfeiture provisions of the Act applicable to communications common carriers by increasing forfeiture liabilities and (2) provide for an unreasonably high level of forfeitures for electronic equipment manufacturers. GTE supports section 3 of the bill relating to mitigation of forfeitures. GTE takes no position on other provisions of the bill, such as those relating to CATV, broadcasters, and Citizens Band. In any event, however, the bill should make it clear that forfeiture liability will not attach to merely inadvertent violations.

1. LIABILITY FOR VIOLATIONS SHOULD BE MORE CAREFULLY DEFINED

S. 2343, besides greatly increasing the forfeiture penalties, would broaden the application of Section 503(a)(1)(B) to cover many inadvertent violations to which punitive liability should not, in fairness, attach. At the same time, S. 2343 fails to identify with precision the circumstances under which penalties would apply, particularly where there is a question of multiple violations.

The Commission has held under the present statute (where the relevant language is identical to S. 2343) that where violations occurred repeatedly, forfeitures should be applied even where willfulness has not been shown.¹ Because of the large number of Commission rules and regulations and because of the technical nature of many rules and regulations, there is a great potential for

¹ *RCA Communications, Inc.*, 6 F.C.C. 2d 515 (1967); see also *San Juan Radio Corp.*, 9 F.C.C. 2d 163 (1967).

inadvertent violations on the part of regulated entities. In addition, a more precise definition of exactly what conduct constitutes a violation or multiple violations is essential for fair application of any new legislation and would help avoid controversies like that which has surrounded the Commission's field enforcement operations of late.²

To accomplish this objective, GTE submits that proposed Section 503(b)(1)(A) and (B) should be modified to provide that forfeitures will attach only when a rule violation is willful or negligent or is repeated after written notice by the Commission calling the violation to the entity's attention. The following specific language is proposed (new matter is underscored).

(b)(1) Any person who—

(A) Willfully, *negligently*, or after written notice of specific violations, fails to operate a radio station substantially as set forth in a license, permit, or other instrument or authorization;

(B) Willfully, *negligently*, or after written notice by the Commission of specific violations, fails to observe any of the provisions, of this Act or of any certificate, rule, regulation, or order of the Commission prescribed under authority of this Act or under authority of any agreement, treaty, or convention binding on the United States

* * * * *

shall forfeit to the United States a sum not to exceed. . . .

Moreover, GTE supports Section 3 of the bill, since it would permit the Commission, *sua sponte*, to mitigate forfeitures and also would extend the mitigation provisions of the present Section 504 to common carrier forfeitures under Title II of the Act. This change would provide for more equitable administration of the forfeiture provisions.

2. THE INCREASED LIABILITIES FOR FORFEITURES ARE EXCESSIVE

The Commission has submitted no justification for the proposed extraordinary increases in forfeiture liabilities. For example, there has been no showing that serious enforcement problems have arisen involving telephone companies or electronic equipment manufacturers, or that the present enforcement machinery is inadequate to deal with whatever problems may exist.

The proposed legislation would increase by a factor of *forty* the aggregate forfeiture ceiling for common carriers and broadcast licensees—from \$500 now in Section 510 to \$20,000 in proposed Section 503(b)(5)(A)—and would increase the per-violation forfeiture by a factor of *twenty*—from \$100 now in Section 510 to \$2,000 in proposed Section 503(b)(1). For all other persons, the aggregate forfeiture liability would be \$5,000—a sum *ten* times greater than that provided for non-broadcast licensees under present Section 510(a)—and the per-offense forfeiture would be \$2,000—or a sum *twenty* times greater than Section 510(a) now provides.

Absent a showing based on Commission experience that such high monetary penalties are necessary to obtain compliance with Commission regulations, we would urge that the present levels of liability be unchanged and that those new entities which would be brought under the coverage of new Section 503(b) be subject to the forfeiture amounts previously applied to non-broadcast radio stations licensees.

However, if the amounts of forfeiture liability were nonetheless to be increased, we would suggest a limit of no more than \$5,000 for common carriers for multiple offenses and a per-offense amount of no more than \$500 under Title III. For equipment manufacturers and others, we would suggest no more than a doubling of the level of the penalties now required under Section 510(a)—*i.e.*, \$200 per offense with an aggregate limit of \$1,000.

SUMMARY

In summary, GTE submits that S. 2343 should not be reported in its present form. GTE would not oppose the bill's enactment if proposed Section 503 were modified in accordance with above points.

Respectfully submitted,

² See remarks of FCC General Counsel Ashton R. Hardy before FCBA, Feb. 14, 1975, and address of Chairman Wiley before 25th Annual Broadcast Symposium of the IEEE Group on Broadcasting, Sept. 25, 1975. The pertinent portions of these remarks are appended hereto.

ADDRESS BY THE HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION BEFORE THE 25TH ANNUAL BROADCAST SYMPOSIUM IEEE GROUP ON BROADCASTING

As a final point, I would like to discuss with you some aspects of the Commission's enforcement policies. In satisfying our duties under the Communication Act, we monitor you, inspect your facilities and investigate conduct or practices which may raise questions concerning compliance with our rules and regulations. No one enjoys having someone look over his shoulder to make certain he is toeing the mark—and, particularly so, when that someone is the federal government. Consequently, our enforcement activities, which constitute the bulk of the Commission's day-to-day operational contact with licensees, will never win a popularity contest. Nevertheless, consistent with our obligation to protect the public interest, they are necessary.

Too stringent an enforcement policy, however, can be counter productive in terms of insuring compliance with our rules. Many of the violations we encounter are the product of inadvertence or misunderstanding of our rules. Sometimes they are precipitated by engineering problems that we could help to solve. If our enforcement activities lack discretion, they can create a reluctance on the part of licensees to come to the Commission for assistance—either to obtain explanation or clarification of the rules or to solicit engineering advice on how to resolve a technical problem.

Some licensees have complained that they have been subjected to punitive measures because of an honest effort to get the FCC's assistance in complying with our rules. I have been told of one recent incident, for example, where a broadcaster called one of the Commission's field offices to gather information concerning the appropriate time for conducting equipment performance tests. In the course of his conversation with us, it became apparent that he had been late in making the measurements, presumably because of his failure to understand the Commission's rules. Two days later, the broadcaster received a request from the field office for the measurements which had not been made. This request was then followed by a notice of violation and, ultimately, a forfeiture. In another case, a licensee called to check on the authenticity of an operator license posted at his station. Much to his regret, such diligence resulted in a notice of violation because the license was fraudulent.

I do not believe that the Commission's conduct in these cases was exemplary. These licensees were making sincere attempts to determine how to bring their stations into compliance with the Commission's rules. Their candor and conscientiousness should not have been rewarded with notices of violation and forfeitures. In my opinion, the Commission should assist the licensee in such situations and not sanction him. I am not suggesting that the integrity of our regulations should be compromised by too lenient an enforcement policy. To the contrary, I think that you know that our "New Ethic" Commission will not shirk from tough enforcement measures when we encounter a licensee who is either unwilling or incapable of running a broadcast station in the public interest. Instead, what I am suggesting is that a little discretion—a modicum of understanding of the licensee's good faith efforts to bring his operations into compliance with the Commission's regulations—will strengthen rather than weaken the effectiveness of the Commission's overall enforcement activities. A judicious and wisely administered policy is almost always more effective than an unreasonable and inflexible one. And, in the final analysis, we must always remember that the name of the game is public service—and not how many violations we can find or how many forfeitures we can impose.

In my judgment, the individual cases I have cited are far and away the exception and not the rule. More than ever before, I believe that our Field Operations Bureau—under the capable leadership of Phyll Horne and Jim McKinney and staffed throughout the country by some of the most capable, devoted and overworked public servants it has been my privilege to know—is dedicated to a policy of fair and enlightened enforcement. In turn, I hope that you will choose the path of openness and cooperation with us as we both attempt to provide the American people with the very best broadcast service possible.

ADDRESS OF ASHTON R. HARDY, FEDERAL COMMUNICATIONS BAR ASSOCIATION, FEBRUARY 14, 1975

Let me begin by saying: it is a great honor and pleasure to be here this afternoon. I've been General Counsel now for about ten months, and I've been waiting

patiently for Howie Braun to invite me to address you. I must say, Howie, it's about time! But I guess I can't be too offended. He waited a full year before inviting my predecessor, Jack Pettit.

When I mentioned the delay to Howie, he said he was saving me for a special occasion. In case any of your wives haven't been dropping subtle hints the past few days, today is Valentine's Day. As I prepared this address, I was not sure if Howie intended my speech to be a special treat for the Association, or whether he expected it to commemorate the Valentine's Day Massacre.

But, whichever, I really am happy to be here. Compared to participating in Dick Wiley's road shows, this is duck soup (or gumbo, as we might say back home in Bayou country). I doubt that many of you have ever had the pleasure of sitting before 500 to 1,000 citizens, each one mad at you for something or other, and try to answer their mostly rhetorical questions. I kept wishing I were back at Antoine's sipping a mint julip.

Obviously, essential to the fulfillment of our responsibilities are field investigations and often the only means of achieving this goal is by on-the-spot investigations. Yet, even licensees who have nothing to hide often greet our investigators with slightly less relish than the bubonic plague. I think that this attitude stems from a misunderstanding of why the field investigators are there, what they hope to accomplish, and what they can and can't do. Some of your clients seem to feel that the mere presence of the investigators means that the Commission is "out to get them," and that the investigators will search every scrap of paper in the office until some sort of violation is found in order to justify the expense of the trip. This simply is not so, and the statistics will bear me out.

Jack Blume, as president of your association, recently wrote Chairman Wiley to air some general complaints about field investigators' procedures. Bill Ray, Wally Johnson, Paul Putney and I met with Jack and a committee of your association to discuss the complaints. We had what the diplomats call a "Frank exchange of views." Jack told us that one of his broadcast clients had called him when a couple of the staff appeared at his station, and Jack hurried down to the studio just as one of the employees was being questioned. Jack listened at the door for a moment and heard one of the investigators say, "Ve haf vays of making you talk!" Unfortunately, Jack wouldn't give us the names of the people involved. He said the licensee still has relatives in the old country.

But seriously, as I said, I am convinced that there is some misunderstanding on the part of our licensees and the bar about the guidelines under which our investigators operate. Our discussion last Monday reinforced that belief. So perhaps this would be an appropriate time to clarify those guidelines a little.

First of all, the investigators are under strict instructions to explain the purpose of their visit to the licensee when they first arrive. While there have been complaints about the failure of the investigator to follow these guidelines on occasion, we have never been able to identify a single instance, although we have investigated each complaint which identifies the alleged incident. Invariably, the investigators will be there in response to a sufficiently documented complaint to warrant their presence. Even if the complaint is anonymous, if it is sufficiently credible, we are under an obligation to check it out.

Secondly, the investigators will ask to see logs and files that pertain only to that specific complaint. They are not on a fishing expedition. Naturally, if they uncover another possible violation in the course of their inquiry, they will pursue it. But, contrary to popular belief, they are not loathe to leave the station empty-handed. If the complaint proves groundless, the file will be closed and that will be the end of it.

In the course of the investigation, if any of the parties involved request an attorney, the investigation will be suspended until the attorney arrives. Indeed, if it becomes apparent that a criminal violation may be involved, the suspect is advised of his right to an attorney, as well as all his other rights which are even more extensive than under Supreme Court guidelines set forth in *Miranda*.

It has been suggested that all witnesses should routinely be read their rights, irrespective of whether there is an apparent probability of criminal sanctions. I am aware of nothing in the Constitution or judicial precedent that mandates this, and I suggest this might not be a good idea. To give such a warning might scare the pants off an already nervous licensee. Since his cooperation is essential, we do not want to convey the impression that he is in more trouble than the complaint implies.

While on this subject of attorneys, let me digress a moment. Even without being read their rights, the first thing most licensees say when the investiga-

tors walk through the door is "I want to see my lawyer." That may be a natural reaction and we certainly have no objection to the lawyer's presence. But, this brings up the proposition I previously mentioned regarding the bar's duty to assist the Commission where possible. Although a lawyer's first duty is to his client, I do not believe that his professional duty suggests that he should make it as hard as possible for the investigator to accomplish his work. To obstruct for no purpose serves neither client nor the profession. Surely there is a middle course between obstruction and capitulation.

A similar problem arises where a licensee instructs his employees not to talk to Commission investigators until they retain a lawyer, and that he will be happy to provide his lawyer for representation. I would question whether the licensee's lawyer can also represent the employee, especially where that employee may be the cause of the investigation. This is a tough and touchy ethical question, and I would not presume to preach about ethical responsibilities. The liberal view of the Code of Ethics might say that such representation is proper until it appears that an actual conflict of interest between licensee and employee arises. The conservative view would be that such representation is improper *per se*, because of the adherent possibility of a conflict of interest. After careful consideration, I have concluded that I would find it very difficult to represent the employees of a broadcaster client while attempting to protect my principal client's rights. Once an actual conflict became evident, I would consider it my professional duty to withdraw from the representation of both. Additionally, I could never be fully convinced that the employee's selection of me was not a result of coercion.

A much more difficult question is presented when the licensee retains a *different* counsel to represent his employee. The fee is being paid by a potentially antagonistic party in the same proceeding. Can the attorney give full allegiance to his client when his fee is paid by an adversary in the same proceeding? The propriety of such a relationship depends on the individual attorney's answer to that question. It would seem to me that an employee, represented by counsel hired by his boss, might be somewhat intimidated and therefore somewhat more reticent or circumspect in his response to the attorney's as well the investigator's questions. Therefore, unless I were fully convinced that the employee is perfectly comfortable with that arrangement, I would urge the employee to find fully independent counsel.

Since I'm rambling all over the place anyway, let me digress still further by giving you my views on the difference between a liberal and a conservative. A conservative is a fellow who throws a rope 25 yards long to a man who is drowning 50 yards away, and shouts encouragement for him to swim the other half for the good of his character. A liberal throws a rope 50 yards long to a man only 25 yards from shore, and after throwing it, lets go of the other end and walks away to do another good deed.

If you're waiting for me to tie in those words of wit and wisdom to what I've been talking about, you're in for a long wait. So let's get directly back to the subject at hand.

I've already mentioned that it is standard procedure for our investigators to inform your clients of the complaint being pursued, that they don't go on fishing expeditions, and that they respect the parties' right to counsel. There's just one more popular myth that I would like to dispel, and that deals with the relationship between the amount of forfeiture and the degree of cooperation. The story seems to be that if a licensee exercises his right to counsel or refuses to turn over his files without a subpoena, any subsequent forfeiture will be greater than if the licensee had meekly succumbed to the requests of the investigators. I can categorically state that this is false. I have attended Commission meetings where the amount of forfeiture to be levied has been discussed, and never once has the licensee's demeanor been a consideration. The only exception to this occurs where the licensee voluntarily divulges some rule violation prior to a complaint or investigation. In that case, his initiative may be deemed a mitigating factor. But, a licensee is never penalized for exercising his rights.

Let me close this discussion on the Commission's investigative procedures by saying that I am firmly convinced that our investigators, on the whole, are conscientious, dedicated professionals. I believe that the Commission is truly fortunate to have Bill Ray as Chief of its Complaints and Compliance Division of the Broadcast Bureau. We at the Commission lovingly refer to him as "vinegar Bill", our super cop. In my experience with government, as a Naval Officer, private practitioner and now entrenched bureaucrat, I have never met, or heard of, a more dedicated, loyal honest and compassionate public servant.

This is not to say that there never has been an instance of some Commission investigator overstepping the bounds of proper decorum, but I can assure you that Bill Ray would be more receptive to such complaints than anyone else in the Commission. If you hear of any wrongdoing, please give Bill the specifics, and I can assure you he will put a stop to it. Any notion that Bill, or anyone else in the Broadcast Bureau, would be vindictive against the complainant simply has no basis in fact.

Let me turn briefly to another facet of this "new Ethic" that we've been talking about. When I practiced law in New Orleans, I tried a lot of complex tort cases. If a case were exceptionally complex, it might take as long as two years to conclude. You can imagine my amazement when I arrived in Washington and discovered that some Commission adjudicatory cases have taken 10 years or more to get from the designation order to a final decision. Being reasonably bright, I concluded, as I am sure some of you have, that something is wrong with our adjudicatory process. Of course, trying to get any two people to agree on just *what* is wrong is another matter. But the point is, the present system is intolerable. There's a lot of truth in the charge that being put into a Commission hearing is tantamount to losing, since only the very wealthy can survive.

WASHINGTON, D.C., *January 23, 1976.*

Senator JOHN O. PASTORE,
*Chairman, Senate Commerce Committee, Subcommittee on Communications,
 Senate Office Building, Washington, D.C.*

DEAR SENATOR PASTORE: This letter is a supplement to my testimony before you on January 21, 1976 regarding S. 2846.

You asked for my comments on S. 2343, the bill expanding the FCC's forfeiture authority. Because I was advised neither that this bill was coming up for hearing that morning, nor that my views were desired on the subject, I was unprepared to testify at that time.

Upon studying the legislation, and listening to Chairman Wiley's testimony, however, I wanted you to know of my support of the bill.

In fact, my only criticism is that it does not go far enough. The limit on multiple offenses is now \$10,000. The bill raises it to \$20,000. In view of the fact that the \$10,000 limit was first imposed in 1960 and hasn't been raised since, an increase to \$20,000 scarcely keeps up with inflation.

Whether \$10,000 or \$20,000, however, what differences can such an amount make to a corporate official whose company is earning millions of dollars a year—especially when he won't have to pay one dime of it himself?

When I was serving on the Commission there was substantial support (although I cannot be certain of my recollection that it was a majority) for raising the limit to \$100,000. In fact, the only argument for holding down the Commission's forfeiture authority is that large forfeitures give the Commissioners an easy way out when confronted with an inevitable license revocation case: they can merely assess a heavy forfeiture, send a nasty letter—and renew the license. Presumably this is not the reason the current FCC does not want the \$100,000 limit. Thus, it is a mystery why, in these times of growing corporate size, broadcaster profits, and rising costs the figure has suddenly been cut to \$20,000.

I would urge the Committee to substitute \$100,000 for \$20,000 in the bill—or, at the very least, to ask the FCC to justify why such a substitution should not be made.

A note of clarification about Chairman Wiley's reference to my teaching at Georgetown University Law School should also be made. Certainly he intended no misrepresentation, and my own recollection of the facts may not be perfect. But the suggestion seemed to me to flow from what he said that the issue involved was whether a Commissioner could receive money, as an employee, from a licensee (because Georgetown University held a broadcast license for WGTB-FM).

Of this I have no doubt. There was never an issue of my receiving money from Georgetown. The receipt of money for any purpose from anyone—whether a licensee or not—was precluded. All my writing, lecturing, TV and radio appearances, and teaching were done for free for that reason.

The issue, as near as I can recall it, was a full-efforts clause notion. Because I was (1) not receiving compensation, (2) teaching outside of regular working hours, (3) producing a seminar work product directly relevant to the work of

the FCC (see seminar product "Broadcasting in America," 42 FCC 2d 1 (1973)), and (4) doing work not unlike the occasional lecturing (for free) to student groups which is accepted behavior for Commissioners, it was ruled that I might be permitted to do this volunteer teaching.

It may be a small point, but I didn't want to leave any confusion on the record. Chairman Wiley's example was, at best, a far cry from the issue at hand, namely, the expansion of the allowable investment for profit by FCC employees is regulated licensees.

Finally, I am enclosing copies of the record inserts to which I referred during my testimony: (1) the Washington Star story, (2) the *access* report on Commissioner Wells, (3) the *access* report on the conglomerate inquiry and on Commissioner Quello's conflict, and (4) the Cap Cities letter to Commissioner Quello regarding what appears to be his continuing substantial financial interest in the company while sitting on the Commission, (5) Chairman Wiley's daily logs.

Thank you again for the invitation to appear. I was, of course, heartened at your response to the inappropriateness of loosening the FCC's conflict of interest standards at this time without a prior inquiry into their enforcement and needs for strengthening.

Respectfully,

NICHOLAS JOHNSON.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., January 28, 1976.

HON. JOHN O. PASTORE,
U.S. Senate,
Washington, D.C.

Dear Senator PASTORE: I wish to correct for the record the inaccurate statements and questionable inferences made by Mr. Nicholas Johnson in his testimony before your Committee on January 21, 1976.

First, Mr. Johnson implied that I had improperly participated in an FCC vote to withhold conglomerate study data from public scrutiny. Secondly, he stated that I was receiving benefit compensation while on the Commission from my former employer, Capital Cities Communications. The implications and statements are incorrect.

On page 10 of the transcript, Mr. Johnson implied that my participation in the vote to withhold certain documents from a Freedom of Information request was somehow unethical since information regarding Capital Cities was included in those documents. I want to state for the record that I was unaware that any data from Capital Cities appeared in the conglomerate study. The study was initiated in 1969, five years before I joined the Commission. I had never seen it. I had a relatively minor role in the 1968 transaction appearing in the study and the transaction complied with FCC rules and regulations. Then, too, my vote, like all other Commissioners, was based solely on maintaining good faith of those who provided us confidential information. I was informed the Commission had given assurances that the material requested would be treated in a confidential manner. I joined in the unanimous vote to withhold documents in the sincere belief that the Commission was ethically committed to confidentiality. In fact, I had initially advocated prompt release of documents for public scrutiny and so stated in the Commission meeting. I changed my mind when the "breach of faith" question was called to my attention. I had nothing to gain or lose by my decision and I believe I acted responsibly and ethically.

Also, Mr. Johnson is misinformed or misinterpreting the record regarding his allegations on page 10—that I continue to benefit from a financial arrangement with Capital Cities.

I do not receive compensation in any form from Capital Cities or any other licensee of the Commission. I stated in the 1974 confirmation hearing record that I would promptly sell all communications-related stocks upon confirmation and I did. I also terminated both my retirement arrangement and my Capital Cities profit sharing fund by taking a lump sum payment. The only remaining fund is a static pension fund established by the Goodwill Stations, Inc., which is not affected by the profitability or operations of Capital Cities. The Goodwill Stations ceased operations in 1964 when they were acquired by Capital Cities. Retention of this fund was cleared prior to my confirmation with the General Counsel of the FCC, a legal counsel for the Justice Department and the legal counsel for the Communications Subcommittee. Checks from this static pension

fund are received annually from the trustee, National Bank of Detroit, not from Capital Cities.

Retention of a list of non-communications related stocks was also approved at time of confirmation. I wish to state for the record that should a company in which I hold stock suddenly or surprisingly become a party to any Commission deliberation, I will abstain from voting and promptly sell the stock.

I regret that Mr. Johnson has again cluttered the record with inaccurate information and innuendo under the guise of protecting public interest. I believe public interest would be better served by a more responsible, reasoned approach.

In the interest of fairness and accuracy, I would appreciate having this letter included in the hearing record of January 21, 1976.

Sincerely,

JAMES H. QUELLO.

WASHINGTON, D.C., February 12, 1976.

Senator JOHN O. PASTORE,
Senate Commerce Committee, Subcommittee on Communications, Washington, D.C.

DEAR SENATOR PASTORE: Thank you for asking for my comments regarding Commissioner James H. Quello's letter to you of January 28, 1976.

It is a revealing letter, I believe, which essentially endorses both of the points which I raise.

Although Commissioner Quello asserts that he was not familiar with the contents of the Commission item on which he voted, he clearly confirms that (1) he was an employee of Capital Cities before coming on the Commission, (2) that information filed by Capital Cities was covered by the Commission item, (3) that he did indeed, fail to abstain from voting on the item, and (4) that he voted to withhold the information filed by Capital Cities from public scrutiny. That was really all I had alleged and he has confirmed it.

Commissioner Quello has also essentially confirmed the facts with regard to his receipt of financial benefits from Capital Cities while serving on the Commission. Since he acknowledges that the Goodwill Stations were acquired by Capital Cities in 1964, presumably he does not wish to stand on the distinction of which broadcaster is providing income to him. Frankly, I still do not see a meaningful distinction between periodic payments of cash from a broadcaster to a Commissioner in lieu of a contractual commitment to make periodic payments. Commissioner Quello is now enjoying the economic fruits of a contract between him and a former broadcasting employer to pay him cash during the time he was serving on the Commission. That contract was not breached or terminated, it was fulfilled.

It is not my intention to "clutter the record with inaccurate information and innuendo" as Commissioner Quello has charged. Nor, for that matter, is it my intention necessarily to criticize Commissioner Quello. My point is simply that there are inherent conflicts of interest whenever the President of the United States nominates and the United States Senate approves the appointment of persons to high government office who come out of the industries they are going to be called upon to regulate. The problem is not that they are evil persons. They may or may not be. The problem is that they are placed in untenable positions, a fact which has only been dramatized and highlighted by Commissioner Quello's letter of January 28th.

Sincerely,

NICHOLAS JOHNSON.

COMMUNITY ANTENNA TELEVISION ASSOCIATION,
Washington, D.C., January 29, 1976.

Hon. Senator JOHN PASTORE,
Chairman, Subcommittee on Communications of the Senate Committee on Commerce, Room 5202, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Community Antenna Television Association (CATA) represents the interests of approximately 800 CATV systems serving hundreds of thousands of television viewers throughout the United States. Most of the CATV systems represented by CATA are independently owned and relatively small in size, averaging approximately one thousand subscribers each. In his testimony, the Chairman of the Federal Communications Commission, Richard E. Wiley,

stated that "the great majority (of cable systems) wish to . . . abide by (the Commission's) Rules." With all due respect, Chairman Wiley's statement is totally erroneous. In fact, CATA's membership disapproves of almost all of the regulations of the Federal Communications Commission that are steeped in economic protection of the broadcast television industry. The Subcommittee on Communications in the House of Representatives has just issued a staff report attesting to the nature of FCC regulation and calling for a drastic overhaul in the Commission's authority to regulate CATV. Proposals announced therein call for virtually unlimited signal carriage except in rare instances where it can be demonstrated, in evidentiary hearing, that CATV's activity would specifically be detrimental in a particular case.

Additionally, there are many in the CATV industry who now openly question whether the Federal Communications Commission has the authority to impose many of the Rules it recently has. Congress never gave the Commission the sweeping authority it now asserts; no basic regulatory scheme has ever been delineated by Congress for the cable television industry. While we do not necessarily agree with all that is in the House staff Report, we believe that, at least, it is a correct first step: the process of national assessment of the CATV phenomenon.

It is particularly disturbing that the Commission, with its limited authority over CATV, an authority which both the legislative branch and the executive branch are openly questioning, is asking Congress to give the agency carte blanche to impose forfeitures for CATV policies which are either beyond the Commission's jurisdiction or not in the public interest, or both. CATA opposes such a quantum jump in the Commission's assumed authority. Before the Congress gives authority to the Commission to fine cable operators for noncompliance with its Rules, Congress should establish clearly which Rules the Commission may or may not adopt. It is only logical if the Congress intends to investigate legislative possibilities for cable, that it do so prior to giving the Commission forfeiture powers over rules that may be invalid.

It should be noted that the forfeiture power requested by the Commission could result in a death sentence to many small cable operators. The CATV business has been so precarious in recent years, largely because of the Rules of the Federal Communications Commission, that a \$20,000.00 fine could, in CATA's estimation, bankrupt one third of the existing cable systems in the United States with a net result of loss of service to millions of CATV viewers.

It is ironic that of the six examples for which fines could be levied, two are purely protectionist measures for broadcasters (nonduplication and signal carriage rules); and two others are FCC housekeeping rules ((1) the certificate of compliance—which one Commissioner has already reportedly argued is unnecessary and which the staff Committee Report of the House Subcommittee on Communications also argues is necessary; and (2) the myriad of FCC reporting forms).

With the FCC's policies on cable television being questioned in the legislative branch and with Congress already looking into the paper work blizzard being imposed by the Federal Government, we suggest the completion of those investigations by Congress before the Commission is given forfeiture powers over matters that are squarely within the purview of these Congressional investigations.

The Commission presently has cease and desist authority and can order hearings on alleged violations. If those remedies are cumbersome, we submit that it is in the public interest to keep in check the Commission's zeal to adopt and enforce even more onerous rules on the cable television industry. What the Commission is really demanding is blind compliance with its Rule and Regulations and theories, many of which have not yet been reviewed by the Congress or tested in the court. We urge your Committee to consider first things first; review what the Commission is doing with respect to cable and approve or disapprove of their actions through legislation, specifically directed to the point. Adoption of the forfeiture powers now is to give the Commission back door jurisdiction over matters which have seriously hurt a struggling cable television industry and curtail CATV's ability to provide television and other services to the American public.

Respectfully submitted,

RICHARD L. BROWN, *General Counsel.*

WASHINGTON, D.C., February 10, 1976.

HON. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, U.S. Senate,
 Washington, D.C.*

DEAR SENATOR PASTORE: We represent the mobile radio interests of the American Trucking Associations, Inc., the American Automobile Association and the Central Station Electrical Protection Association before the Federal Communications Commission. We also represent a great number of individual licensees in the Safety and Special Radio Services.

As you know, the motor carrier industry employs mobile radio in dispatching and controlling the movement of pick-up and delivery and over-the-road truck fleets; the automobile clubs employ mobile radio in the provision of their emergency road services to the public; and the central station industry in providing safety services to protected premises. Other users of radio communications in the Safety and Special Radio Services employ mobile radio facilities licensed by the FCC to control the disposition of personnel and facilities in their various businesses and activities.

These associations of users are concerned with the proposed changes in the FCC's forfeiture authority now contained in § 510 of the Communications Act because the bill before your Subcommittee would:

1. Increase 20-fold (from \$100.00 to \$2,000.00) the amount of the forfeiture the FCC would be authorized to impose on Safety and Special Radio Services licensees;
2. Extend the statute of limitations on the issuance of notices of apparent liability to a forfeiture from three months to one year;
3. Authorize the FCC to impose forfeitures for any violation rather than the 12 specified violations now contained in § 510;
4. Eliminate the right of the person against whom notice of apparent liability has been issued to request a personal interview at the field office of the Commission nearest to the person's residence.

Based on my testimony on the original "small fines" bills which resulted in enactment of § 510 of the Act in 1962, I believe that the limitations contained in Item 3 and the right described in Item 4 were considered by your Subcommittee as necessary to insuring favorable recommendation for the bill then before you.

I am not sure but that the comparatively small size of the fine authorized in the 1962 legislation and the three-month limitation on the issuance of a notice of apparent liability were not also deemed by your Subcommittee as indispensable to favorable legislation recommendation. In other words, the entire thrust of the "small fines" legislation your Subcommittee approved only after several years of hearings is now to be radically altered against the hundreds of thousands of public safety, industrial and commercial licensees using mobile radio controls to increase the safety and efficiency of their operations.

The American Trucking Associations, Inc. has requested us to convey to you its interest in the pending bill. The American Automobile Association, on behalf of its nation-wide associated clubs and divisions using radio, and the Central Station Electrical Protection Association have authorized us to oppose this bill.

If any further action is to be taken on S. 2343, we would appreciate an opportunity to testify and to submit written comments on this proposed legislation which we believe would have a very adverse effect on literally hundreds of thousands of businessmen, large and small.

Very truly yours,

JEREMIAH COURTNEY.

OFFICE OF TELECOMMUNICATIONS POLICY,
 Washington, D.C., February 13, 1976.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This is in response to your request of January 15, 1976, for the views of the Office of Telecommunications Policy on S. 2343; a bill to amend sections 503 and 504, and to repeal section 510 of the Communications Act of 1934, as amended (47 U.S.C. §§ 503, 504, 510).

The purpose of this bill is to simplify the forfeiture provisions of the Communications Act of 1934, as amended, and to expand the scope of these pro-

visions to include persons, such as community antenna television systems, subject to the Act but not presently subject to forfeitures. In addition, the limitation periods for issuance of a notice of apparent liability of the Commission would be extended, and the maximum amount of forfeiture that could be imposed for single or multiple offenses would be increased.

We have reviewed this legislation and have no objection to its enactment. The OMB advises that it has no objection to the submission of these comments.

Sincerely,

JOHN EGER, *Acting Director.*

NATIONAL CABLE TELEVISION ASSOCIATION,
Washington, D.C., February 13, 1976.

HON. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I am filing this statement in my capacity as President of the National Cable Television Association (NCTA herein). NCTA is the major trade association representing the cable television industry. Our membership includes both multiple system operators and independent CATV operators, as well as manufacturers and other suppliers of cable television equipment and services. NCTA's 1,320 member systems currently serve over six million subscribers, which is about 60% of the nation's 10.5 million cable television households.

NCTA is vitally interested in matters affecting the CATV industry and its subscribers and we, therefore, thank you for the opportunity to submit this statement for the record so as to assist you in your deliberations.

The principal effect of S. 2343 would be to place the cable television industry within the FCC's forfeiture powers. Chairman Richard Wiley of the Federal Communications Commission testified before this subcommittee on January 21, 1976, as to the need for forfeiture authority over cable television. NCTA does not quarrel with Chairman Wiley's characterization of the need for such authority. Forfeiture is a legitimate weapon in the arsenal of a regulatory agency which seeks to fairly enforce its rules. NCTA does, however, question the timing of this legislation.

The FCC has been regulating cable television to some degree since the early 1960's. This regulation has become increasingly comprehensive and complicated. The cable television industry has objected to the bulk of it. There has been much litigation and controversy. This situation continues today without much abatement. All of this regulation has been accomplished without aid of legislative guidance. The Communications Act of 1934 does not directly deal with cable television. Within the last year the national debate over the appropriate role of cable television in the national communications scheme has been joined. Many parties have been heard from in many ways. For example, the President's Office of Telecommunications Policy has been drafting legislation. The Antitrust Division of the Department of Justice has contributed ideas of its own on the subject. The President's Domestic Council has targeted the FCC's cable regulation as a prime area for deregulatory attention and the FCC itself is engaged in a large scale reexamination of its own regulations over cable television. And last, but not least, Congress has begun to take a keen interest in addressing this issue. Most recently, a report prepared by the staff of the Subcommittee on Communications of the House Interstate and Foreign Commerce Committee has addressed itself comprehensively to the regulation of cable television and suggested the need for legislation. Hearings have been promised in the House and it has been stated that this subcommittee will address itself to the issue as well.

Because of this fundamental questioning of the very foundations of the FCC's regulatory framework, it would seem premature to provide that agency with forfeiture authority over cable television. In other words, the issue is whether the agency should presently be given an enforcement tool for rules which are being seriously drawn into question, not only in their specifics but more importantly in their basic policy underpinnings. It would seem more reasonable to us to include forfeiture authority over cable television in the larger legislative package which NCTA hopes that Congress will formulate.

Should the view expressed above not prevail, however, NCTA has several questions and suggestions regarding S. 2343 as drafted. We feel that certain improvements and clarifications would have to be made before this legislation would be deemed satisfactory.

1. Subsection (b) (1) utilized the word "substantially" to describe the conduct of a radio station permittee in defining actionable conduct. This qualifying word is not found as it applies to cable operators and others involved in cable television. It would seem that the criterion of "substantial operation" should be applicable to cable systems as well.

2. The terminology used in Subsection (b) (1) is "willfully or repeatedly." Our quarrel is with the use of the conjunction "or." In cable television, under the present FCC rules, it is quite possible to violate a rule "repeatedly" without any element of willfulness being present. We do not believe that this is the intent of the legislation. Inadvertent violations have not normally been subject to Commission forfeiture actions. The element of intent is normally present. Therefore, we would suggest that the word "or" be changed to "and."

3. Subsection (b) (2) addresses itself to the contents of the required "Notice of Apparent Liability." NCTA suggests that one further element be added to this list, namely, the source of the Commission's ascertainment of the suspected violation. This is requested in order that the cable operator or other person charged with a violation will be apprised of how the Commission came to the conclusion that such a Notice should be issued. This is not unlike the requirement that witness lists be provided in civil and criminal trial proceedings. In fact, the FCC itself has such a provision in its discovery rules for hearing proceedings. It would add another element to the due process which the legislation seeks to ensure.

4. Subsection (b) (2) permits the FCC to set a "reasonable period" for the recipient of a Notice of Apparent Liability to respond. NCTA submits that a specific 60-day minimum should be inserted in the bill. This is the amount of time which the government is permitted in civil suits. This is because information must be sought and people located all over the country have to put things together in order to prepare a defense. The same is true for cable television operators. The subject CATV system may be located far from Washington, the FCC issues its Notice from Washington and the cable system's counsel may well be located here as well. Sufficient time must be provided for an adequate response.

5. Subsection (b) (3) adds a laudable step to the due process required before a forfeiture may be imposed. Thus it gives the person who is not licensed by the FCC two additional steps before he receives a Notice of Apparent Liability. However, lines 24 and 25 in the first provision are vague in their applicability. Under the terms of this legislation the certified cable operator is not the only person involved in cable television operation who is subject to forfeiture. Channel lessees, government access channel users, and citizens using cable access services are some of the others who could be subject to forfeiture. It would seem that these are the types of people who should enjoy the extra steps provided in subsection (b) (3) since they are not FCC permittees. Lines 24 and 25 can be read to exclude these persons from the operation of subsection (b) (3). This point should be clarified.

6. The second proviso to subsection (b) (3) states that a person suspected of "the same conduct" will get no further notices but will be subject to continued forfeiture liability. The words "same conduct" are too broad and vague. What is being addressed here is a situation where a person is continuing to do the same thing which has subjected him to the first Notice of Apparent Liability. For example, a broadcaster who continues to keep his logs improperly or a cable operator who has still not conducted the required performance tests. This is perhaps as it should be. However, take the example of a channel lessee who is adjudged to have presented obscene material, is subject to a Notice of Apparent Liability, and then displays a different program which is also suspected of being obscene. This person is attempting to make good faith judgments on a very difficult area of the law. This could be interpreted as being "same conduct" but it clearly should be the subject of a new Notice of Apparent Liability. NCTA does not believe this and other such examples are the types of actions which this proviso is attempting to address. The language should be accordingly tightened.

7. Subsection (b) (4) is a statute of limitations provision. This brings up the question of grandfathering for cable television. In addition to the legal question of imposing forfeitures for conduct prior to the enactment of forfeiture legislation, an equitable case exists for making this legislation prospective in nature since cable television has never been subject to this kind of penalty.

8. Subsection (b) (5) (A) (iii) is vague with respect to whether the legislation intends to reach others besides the actual cable television operator. In other words, do the persons which subsection (b) (3) attempts to treat kindly become

subject to the maximum \$20,000 forfeiture or is the intent to include them in the section allowing only a \$5,000 forfeiture maximum. NCTA hopes that the latter is the case.

In conclusion, NCTA continues to express its reservation about the timeliness of this legislation in view of the upcoming Congressional examination of the FCC's regulation of cable television and the necessity for comprehensive legislation. In any event, as can be seen from the points made above, S. 2343 needs several revisions before it can be reported out of this subcommittee. May we again thank this subcommittee for the opportunity to submit this statement for the record.

Sincerely,

ROBERT L. SCHMIDT,
President.

NATIONAL CABLE TELEVISION ASSOCIATION,
Washington, D.C., February 13, 1976.

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

DEAR MR. CHAIRMAN: The National Cable Television Association, Inc., is a national trade association representing the cable television (or CATV) industry. Our membership consists of small, independently operated CATV systems as well as larger multiple system operator corporations. NCTA has approximately 1350 CATV systems in membership. These systems serve over 6,000,000 subscribers, about 60% of the nation's 10,000,000 CATV households.

NCTA's interest in S. 2847 has been stated informally in recent years to sponsors of similar legislation and we thank you for the opportunity to re-state our concerns, and to comment on statements made before this subcommittee by FCC Chairman Wiley and Leon Knauer, Esq., Counsel to the National Translator Association.

In the beginning days of television broadcasting, it was quickly apparent that homes in many areas remote from TV transmitters were not able to receive satisfactory signals—if any at all. Two solutions were soon introduced which proved to be highly competitive in some areas—translators and CATV systems.

Although the low cost of translator operation pre-empted introduction of CATV in some areas and the success of CATV mooted interest in translators in other places, we do not propose to relash the old economic arguments.

Our concern is a totally appropriate one for the Congress and the FCC to hear and consider in the interest of that part of the public which relies on one or the other—or both—services for reception of broadcast signals.

At the outset, let us make clear that both CATV and translators are technically capable of providing satisfactory service to viewers. There are, however, complicating factors that may occur when the two co-exist in an area. The area may be much larger than the community served.

The complications arise both from the technical and human failures.

First, the home television receiver is a primary source of problems. Manufacturers did not and still do not build a TV set capable of rejecting a strong local signal even if no antenna is connected to the set. As a result, the assignment of VHF translators to a community served by CATV results in unuseable channels on the CATV system.

Historically the FCC has ignored the presence of CATV when allocating translator frequencies. As an example, Cumberland, Maryland, a city of approximately 30,000 population is located in a mountainous region where no television stations are receivable. One of the largest of the early CATV systems was built to serve Cumberland. A five-channel system was, at that time, state-of-the-art. It delivered signals to subscribers on channels 2 through 6.

As the system was becoming established, the FCC received applications for translators to serve Cumberland. Over protests from the CATV system, the FCC granted authority for translators to operate in the center of the CATV system on channels, 2, 4 and 6. The result was chaotic for people who preferred the consistent service of the CATV system to the uneven performance of the translators. The translators' signals carried different stations than those delivered by the CATV system, and the inability of the TV sets to reject the translator signals resulted in two different pictures and two different sound channels coming in simultaneously.

Appeals to the FCC for relief were unsuccessful. Efforts to minimize the problem cost the CATV system over \$60,000. They used shielded coaxial cable to replace the internal antenna lead in each set and even built metal boxes to protect the sets from the unwanted signals. Interference was still visible.

Another problem arises from an FCC attitude that seems to be based on the assumption that TV station signals do not reach beyond what is known as the Grade B contour. In fact, most CATV systems receive at least one signal from greater distance. In the early days of CATV, distant signals were the ones CATV systems delivered, leaving off local signals that could easily be received on small antennas. As channel capacity increased, local signals were added.

When the FCC assumes incorrectly that a broadcast signal does not extend beyond Grade B, and grants VHF translators authority to transmit on the same or an adjacent channel, it becomes impossible to receive a good picture from the station in areas where reception has been satisfactory. This causes problems not only for CATV systems but also for television broadcasters and for master antenna installations in apartment buildings and hotels.

Additional problems result from the fact that translators are unattended. Typically they are remotely located on hilltops. Usually the only time they are inspected is when failure occurs. Extreme temperature shifts, condensation and winds all conspire to cause deteriorating performance. Even shifts of frequency sometimes occur. These factors significantly affect the viewing of those people who rely on translators for TV reception.

The interference potential of existing unattended translators is well recognized—even if not documented to the satisfaction of the FCC. At present only UHF translators are authorized to originate 30-seconds per hour by use of automated equipment. Additional functions by VHF-TV and FM radio translators have no track record at this time.

We know that a considerable investment in origination and interface equipment will be required but have no experience on which to base predictions of reliability or additional interference potential. Bear in mind that the legislation proposed contemplates that the newly authorized services may be performed without an operator in attendance. At the very least, experimentation in these new areas should be required.

In response to questions by Mr. Pastore, both Mr. Wiley and Mr. Knauer minimized the problems that exist.

There is ample reason for Mr. Wiley's belief. CATV operators have tried for years to gain recognition at the FCC of the interference problem. They have been discouraged repeatedly by statements from the FCC to the effect that CATV has no right to protection from a licensed broadcasting facility. This hostile attitude has continued even after CATV was brought under FCC regulatory jurisdiction.

Mr. Knauer's submission for the record of "all the complaints" presented to the FCC contains repeated examples of statements by the FCC that could only discourage any further expenditure of time and money seeking relief, e.g.:

"In any event, a translator is not required to protect a CATV system against interference to subscribers' reception."

"A 12 channel capacity CATV must make adjustments to accommodate translator operations."

"The CATV system is not entitled to protection for its own off-the-air pickup in the absence of any indication that the translator site was deliberately located to cause interference to the CATV system."

"Grant of a VHF translator station will not be denied on the grounds of interference to reception by CATV subscribers. The CATV has remedies available to it. It may, for example, relocate its headend or use microwave relay stations to import signals."

The attached letter from Wally Briscoe of NCTA (attachments A & B) to Congressman Richard Shoup, following introduction of H.R. 14914 in 1972 contains the results of an admittedly hurried survey conducted in an effort to demonstrate to Mr. Shoup that problems did, in fact, exist. Mr. Shoup sent the letter and survey to the FCC for comments, prompting the attached response signed by then Chairman, Mr. Burch, containing statements similar to those referred to above. (attachment C)

This compilation of evidence that a problem exists did not prompt the FCC to investigate. They could have used their field inspectors to gather data sufficient to confirm that a problem did exist. Instead the Burch letter rejected the information on the basis of no engineering data having been presented.

Subjective the comments may be, but they are comments of cable engineers who live with an interference problem ignored and rejected by the only agency charged with responsibility to prevent radio interference.

NCTA, in this statement, does not oppose the concept of S. 2847. Our argument is not a competitive one. Rather, we are concerned that this bill is the only apparent vehicle for directing the FCC to recognize and deal with the problems of translator interference with CATV system operation.

There is one obvious solution. Conversion of translator operation to UHF frequencies would take them off the frequencies used by CATV to distribute signals to subscribers sets. More attention to choice of channels could even eliminate the co-channel and other off-air reception problems. But our proposed further amendment of Section 318 is not that specific. We will be satisfied initially with a Congressional directive to the FCC to recognize the problems and take steps to mitigate them.

We ask that clause (4) of the first proviso of Section 318 of the Communications Act of 1934 (47 U.S.C. 318) be amended by inserting following "Provided further, that the Commission": *shall take remedial action to eliminate and hereafter prevent electronic interference by re-broadcasting facilities with other authorized communications facilities, and.*

Other language accomplishing this would be acceptable.

We are now beginning a re-survey of those responding to our 1972 survey and others. The results will be made available to the committee as soon as possible.

The problem that underlies this whole discussion is one of national significance. It should be resolved at a policy level—not in an adversary proceeding. Simply stated, the United States is running out of frequencies needed for all manner of communications.

Two possible solutions are apparent. One is allocation of more frequencies to the United States—a prospect less likely to offer a long range solution as others in the world increase their demands. The other is more efficient utilization of existing frequencies.

About half of all U.S. frequencies are allocated for television broadcasting. Where there is inferior reception combined with a population too small to support television stations, low power transmitters known as translators are permitted to operate on allocated TV channels.

Typically, translators authorized for this purpose are oriented to serve small communities. More sparsely settled rural areas are the last to be considered, and there are vast thinly populated areas with less than adequate service, if any at all. Conceivably translator orientation could be shifted from "downtown" in those communities with other reception options and re-positioned to serve rural areas. Although this would result in higher cost to people now relying on translators, but there simply is not enough frequency space available to do the whole job with translators.

The frequency space allocated to a single translator, intended for service to a small community, is the same 6MHz required by a broadcast television station serving a major city. 6MHz is almost six times more space than the AM radio service occupies. It could accommodate thousands of voice and data channels.

Proliferation of translators, absent a clear national policy regarding their allocation; can result in practical pre-emption in perpetuity of those frequencies or sacrifice of a very substantial investment by translator operators when those frequencies are pre-empted for priority use.

It is therefore important to take a careful look now at this service and its implications for future telecommunications operations in the United States.

While consideration of this seemingly innocuous piece of legislation may appear an odd forum in which to raise these questions, it must be done somewhere. And since one effect of this bill might be to increase the number of translator applications, it is not inappropriate. We urge those responsible for national policy in telecommunications to take note.

Sincerely,

ROBERT L. SCHMIDT.

Attachments.

NATIONAL CABLE TELEVISION ASSOCIATION,

HON. RICHARD G. SHOUP,
House of Representatives, Longworth Office Building,
Washington, D.C.

September 15, 1972.

DEAR CONGRESSMAN SHOUP: As I promised, we have surveyed our industry to determine whether and to what extent the problems we described still exist. The nature of the survey and the time we have been able to devote to it limited us in the amount of detail we can provide.

Nevertheless, over 100 CATV systems with translators in or near their communities responded. 57% of them reported problems caused by translators.

To understand our concern you must know first that signals delivered on CATV systems are delivered on Channels 2 through 13. To attempt to use other frequencies requires currently an additional expense of roughly \$50 per home plus significant additional expense in system equipment, possibly involving complete reconstruction.

Most of the problems reported are the result of translators operating on the same frequencies used for cable distribution.

To summarize the types of problems:

1. Strong translator signal is picked up by subscriber television receiver components (not the antenna). Whether the program broadcast by the translator is the same as that carried by the CATV system makes no difference. The picture is affected on the subscriber's receiver.

2. Strong translator signal interferes with ability of CATV antenna to receive signals from a television broadcast station when the translator and the station operate on the same or adjacent channels. Again, it makes no difference if the programs are identical. Interference is still produced.

3. Unacceptable quality from translators where CATV systems much carry them.

4. Similar problems with FM radio translators.

5. General inefficiency of translators and lack of maintenance.

In the enclosed compilation of our responses, we have used some of the language of the responders in order to convey a sense of the feelings of frustration created by the problems. In addition, we have classified numerically to correspond to 1-5 above.

Aside from the conflicting interests involved in operation of translators, CATV systems and television and FM radio broadcasting stations, the victims of the above problems are the public. Their investment in television receivers is probably greater than the aggregate investment of the parties to this dispute, and it is their ability to receive good pictures that is being unnecessarily affected.

The least expensive modification to correct the entire problem involves the translator. In some cases a change of frequency could be accomplished by substitution of a new crystal. Even if total replacement were required, the expense would probably not exceed \$10,000. It doesn't take many homes with an average investment of \$300.00 to put the problem in a new light. We have been trying for years to make this point with the FCC.

To my knowledge there have been only two formal proceedings involving translator/CATV problems—one at the FCC, one in the courts. As a result, this may well be the first effort to document the scope of the problem.

Historically, the FCC has ignored it—even, as in Cumberland, Maryland, granting VHF translators permission to operate in the center of an existing system (see enclosure from Cumberland).

Now, let's assume passage of your bill and subsequent rulemaking by the FCC to authorize substitution of commercials by translators. In order to develop this capability, and expenditure at least equal to the original cost of the translator would be required and a whole new set of maintenance nightmares would ensue for the translators. Helical-scan video tape recorders are notorious for their current unreliability. Since many, if not most, translators are located in the hills, it is not clear how the local originations inserted by translators can be conveniently or economically handled.

It is particularly noteworthy that only 18% of those responding indicated good performance by translators. Admittedly, these are subjective observations and probably not without some bias, but it does not bode well for results to be expected from expanded operations requiring more sophistication.

What we have sought to demonstrate is not our total opposition to translators, but our very real and justifiable concern about equitable treatment for CATV vis-a-vis other regulated communications media. It is apparent from our limited survey that of those indicating no problems from translators, almost all are referring to UHF translators. That supports our contention that assignment to UHF would not only preserve translator service where it is needed, but would relieve the CATV and broadcast industries of intolerable problems.

For that reason, we would urge modification of your bill and FCC procedures to deal adequately with the interference problems.

Sincerely,

WALLY BRISCOE.

Enclosures.

TRANSLATOR STUDY—JULY 1972

City/State	Number of trans- lators, V=VHF, U= UHF	Translator performance	Financial support	Problems to CATV systems	Additional comments
Alabama: Mountain Brook.....	1 U	Fair.....	Station owned.....	None.....	System not activated.
Arizona:					
Flagstaff.....	1 V, 2 U	Poor.....	Contributions.....	do.....	UHF translators are no problem interfe- rence as their headend is 3 mi. from cable headend.
Globe-Miami.....	6 U	Fair.....	do.....	do.....	
Pima, Ariz.....	3 V	Fair to poor.....	do.....	Co-channel interference (see survey for extensive com- ment) (1, 2, 5).	
Prescott.....	5 V	Fair.....	do.....	Set interference, headend reception (1, 2, 5).....	
Williams.....	6 V, 3 U	Fair to poor.....	do.....	Much interference and beat caused by VHF translators, headend interference, translator skip (1, 2, 5).	Maintenance-geography cause varying prob- lems.
Arkansas: El Dorado.....	1 U	Fair.....	None.....	do.....	
California:					
Chico.....	1 V	Poor.....	TV station.....	Cochannel (see extensive comment).....	(1, 2, 5).
Lake County.....	5 U	do.....	Contributions.....	None.....	channel out of 5 viewable most of time.
Monterey.....	1 V, 3 U	do.....	TV station, School district.....	Poor reception at headend, no reception at headend (2, 5).	Translator channels received poorly at headend site due to mountains. All stations have 100W output across water. Translators aware of problems.
Santa Cruz.....	4 U	do.....	?	None.....	
South Lake Tahoe.....	2 V	do.....	?	Headend noise (GN, and 60 cycle) (2, 5).....	
Twenty-Nine Palms.....	3 U	Fair.....	Contributions.....	None.....	
Ukiah.....	6 U	do.....	do.....	Interference, beat—see survey (2, 5).....	
Simi.....	8 V, 6 U	Good to poor.....	do.....	Snow, ghosting, spotty reception.....	
Colorado:					
Alamosa.....	1 V, 4 U	Fair to poor.....	do.....	Headend interference (2, 5).....	
Glenwood Springs.....	3 V	Fair.....	Local tax.....	Subscriber set interference (see comment) (1, 5).....	
Leadville.....	5 V, 1 U	Poor.....	Contributions.....	Cochannel (1, 2, 5).....	
Montrose.....	2 V	Fair.....	do.....	Interference with cable signals (1, 5).....	
Salida.....	4 V, U	Fair to poor.....	do.....	Cochannel (1, 2, 5).....	
Florida: Plantation.....	1 U	Fair.....	?	None.....	
Iaho:					
Burley.....	1 V	Poor.....	Contributions.....	do.....	Cable system cannot use any signals above channel 7 and there are 2 channels (8 and 11) which they could pick up. Translator on 7, 8, 9.
Montpelier.....	6 V	Fair to poor.....	do.....	Headend reception, cochannel (2, 5).....	
Indiana:					
Lewiston.....	4 U	Good.....	do.....	None.....	CATV system not yet in operation.
Indiana: Gary.....	1 U	Fair.....	do.....	do.....	Dubuque CATV programs translator K82AL for nonduplication protection against local ABC outlet.
Iowa:					
Dubuque.....	3 U	Good.....	TV station.....	do.....	

Eagle Grove.....	1 U	Fair.....	?	Contributions.....	do.....	Translator unreliable, antenna servicing poor.
Ottumwa.....	2 U	Good to fair.....	do.....	do.....	do.....	
Spencer.....	4 U	Fair.....	do.....	do.....	do.....	
Kansas:						
Arkansas City.....	1 U	Fair.....	?	TV station.....	do.....	Translator may be off many days, viewer acceptance not a factor.
Hays.....	1 U	Poor.....		Must use on CATV system—but technical performance very bad (3, 5).		
Independence.....	2 V	do.....	do.....	Direct pick-up (1, 5).....		
Russell.....	1 U	do.....	?	Nonduplication protection (3, 5).....		No necessity for translators—station signals better. Probably maintained to extend legal coverage on paper only. Translator supposedly 100W, but does not cover town and has frequent technical problems.
Kentucky: Middlesboro.....	2 V	Fair.....		Contributions.....	Co-channel, adjacent channel, headend reception, set interference (1, 2, 5).	
Maine:						
Auburn.....	1 V	do.....		TV station.....	Local interference on Ch. 3 on cable (translator ch. 3 also) (1, 2).	
Caribou.....	1 V	Good.....		Canadian government.	Strong rabbit ear (1).....	
Madawaska.....	1 V	Poor.....		Contributions.....	Poor equipment and signal distortion (3, 5).....	
Maryland: Cumberland.....	14 V, 3 U	do.....	do.....	do.....	Interference, cochannel, adjacent channel (see survey) (1, 2, 5).	
Massachusetts: Pittsfield/Dalton.....	1 V, 1 U	Good.....	?	?	Cochannel, subscriber set interference (1).....	
Michigan:						
Calamet.....	1 V	Poor.....	?	?	Cochannel, back of set pickup. We are unable to transmit on cable channel 5 (translator ch. 5 also) (1, 2, 5).	
Escanaba.....	2 U	Fair.....		Contributions.....	No problem.....	
Iron Mountain.....	1 V, 3 U	do.....	do.....	do.....	Adjacent channel, channel 8 unusable, as are channels 9 and 7, due to translator (2, 5).	
Ironwood.....	1 V	do.....	do.....	do.....	Cochannel prevents CATV from receiving Wausau channels 7 and 9—translator carries Duluth on these channels (1, 2, 5).	
Minnesota:						
Brainerd.....	1 U	do.....		TV station.....	Sync poor, varying reception (3, 5).....	
New Ulm.....	1 U	do.....		Contributions.....	None.....	
Rushford.....	1 U	Poor.....		do.....	Customers complain about poor translator reception (3, 5).	
Mississippi:						
Brookhaven.....	1 U	Fair.....		ETV.....	None.....	
Laurel.....	1 V	do.....	?	?	Adjacent channel, direct pickup translator ch. causing co-channel beat. Can no longer carry Mobile Ch. 10 due to interference from translator ch. 9. (1, 2, 5).	
Montana:						
Anaconda.....	1 V	do.....	?	Contributions.....	None (translators poor, causing many cable customers) (3).	
Big Timber.....	2 V	Poor.....				

Off air for long periods.

TRANSLATOR STUDY—JULY 1972—Continued

City/State	Number of trans- lators, V=VHF, U= UHF	Translator performance	Financial support	Problems to CATV systems	Additional comments
Montana—Continued					
Cut Bank.....	1 V	Fair.....	Contributions.....	None.....	
Deer Lodge.....	1 V	do.....	CATV system.....	do.....	
Flathead Valley.....	6 V, 5 U	do.....	Contributions.....	Cochannel, most problems with VHF (1, 2, 5).	
Glendive.....	1 V	do.....	Station owned.....	Adjacent channel (2, 5).....	CATV uses mother signal rather than very poor translator signal.
Helena.....	2 V	do.....	do.....	Very poor reception, snow (3, 5).....	
Miles City.....	2 V	Fair to poor.....	do.....	Beat (1, 2, 5).....	
Lewistown.....	1 V, 2 U	Good to poor.....	do.....	Cochannel and direct pickup on cable (1, 2, 5).....	
Livingston.....	4 V	Fair.....	do.....	Cochannel interference on system (1, 2, 5).....	
New Hampshire: Claremont.....	4 V, 1 U	Good to poor.....	Contributions.....	Cochannel, back of set. (1, 5).....	Claremont TV cable was the only objector against issue of construction permit, based on projected interference. CP granted anyway.
New Mexico:					
Gallup.....	4 U	Good.....	Local tax.....	Being UHF they cause no problem.....	
Portales.....	1 V	Poor.....	Contributions.....	None.....	
New Jersey: Newark.....	2 U	Good.....	None.....	do.....	
New York:					
Hunter.....	1 U	Fair.....	Local tax.....	Cochannel, adjacent channel (1, 2, 5).....	Much interference-sloppy transmission on their part.
Arcade.....	1 U	do.....	do.....	None.....	
Oneonta.....	1 U	do.....	TV station.....	Beats, snow (2, 5).....	
North Carolina: Waynesville.....	3 V	do.....	do.....	Cochannel (caused CATV system to have to drop carriage of channel 11—translator signal also on 11. (1, 2, 5).)	Translators intended for one community—cause interference in surrounding communities.
Nevada:					
Carson City.....	2 V, 1 U	Good.....	Station owned.....	Unable to use cable channels 10 and 10 due to translator carriage on those channels (1, 2).	
Elko.....	2 U	Poor.....	Contributions and local taxes.....	Translators are 25 W—not enough power to reach area, snowy pictures unstable—customers do not support tax due to "underhanded way local law was passed by State legislature" (3, 5).	
Ohio:					
Coshocton.....	1 U	Fair to poor.....	TV station.....	None.....	
Marietta.....	2 U	?	?	Translator not well maintained—CATV system carries parent station (5).	
Oregon:					
Coquille.....	3 V	Poor.....	Contributions.....	Blanking bars on cable channel 13 (translator also on 13) making use of cable 13 impossible (1, 2, 5).	Translators should be required to go to UHF due to problem caused to CATV.
Eugene.....	2 V	Fair.....	?	Subscriber set interference, cochannel (1, 2, 5).	

Gold Beach.....	4 U	Fair to poor.....	Contributions.....	None noted.....	Translators should be required to adhere to same rules placed on CATV and pay same fees.
La Grande.....	7 U	Fair.....	do.....	None.....	2 translator sites carrying same stations. No problems. Translator is good service.
Madras.....	3U	Good.....	do.....	do.....	
Tillamook.....	5U	Fair.....	do.....	do.....	
Pennsylvania:					
Pottsville.....	3U	Good.....	TV station.....	do.....	
State College, Pa.....	3U	Poor.....	Local apartment house.....	do.....	Translators do not serve entire area—translators too small for special treatment by FCC. If signals were good, we would like to carry on cable.
South Carolina:					
Barnwell.....	2U	Fair.....	Local tax.....	do.....	
Greenville.....	2V	do.....	do.....	Adjacent channe (1, 2, 5).....	
Tennessee: Kingsport.....	1U	do.....	TV station.....	None.....	
Texas:					
Palestine.....	1V	Poor.....	Contributions.....	do.....	
Matador.....	3U	Fair.....	do.....	Built OFF Frequency—No equipment will stabilize (3, 5).....	Translator is in poor condition with low output—no problem. Most people do not understand how to tune UHF.
Uvalde.....	3V	do.....	do.....	None.....	Translators owned by CATV system.
Yoakum.....	1U	Poor.....	do.....	Low power, poor headend reception (2, 5).....	Translator signal used on CATV—but very poor and inconsistent.
Utah:					
Logan.....	2 V, 1 U	Fair.....	Local tax and contributions.....	Cochannel—see survey (1, 2, 5).....	
Vernal.....	1 V	do.....	Local tax.....	None noted.....	
Vermont:					
Poultney.....	1V	do.....	ETV.....	Cochannelling is hot and heavy.....	(1, 2, 5). The 3 translator channels have been left vacant on CATV as interference would be intolerable.
Windsor.....	3V	Poor.....	Contributions.....	None (2, 5).....	
Wyoming:					
Casper.....	1 V	Fair.....	do.....	Much skip in translator, but no problem to CATV system.	No severe interference but cable put music or weather scan on translator channels due to problems.
Cody.....	3 V	Fair, poor.....	do.....	Subscriber set interference and some headend reception (1, 2, 5).....	
Lander.....	1 V	Poor.....	do.....	None (reception is so poor that there is no problem)---FM transmitted by translator interferes with FM pickup by cable (2, 4).....	
Laramie.....	3 V, 2 U	Good.....	do.....	None.....	
Worland.....	1 V	Fair.....	do.....	Set interference (1, 5).....	Must carry weather scan on translator channel to minimize interference.
Powell.....	3 V	Fair, good, poor.....	do.....		

TRANSLATOR STUDY—JULY 1972—Continued

City/State	Number of translators, V=VHF, U=UHF	Translator performance	Financial support	Problems to CATV systems	Additional comments
Washington: Ephrata	2 V, 2 U	Good-poor	Contributions.	Cochannel at headened (2, 5).	"If the FCC authorizes to import signal, will it allow translator to operator on that signals frequency?"
Seattle (crystal cablevision)	1 V	Fair	TV station	Cochannel (2, 5)	
Seattle (TPT)	2 V	Good	Broadcasters	Cochannel on distant signals (2)	
Tacoma	1 V	Fair	ETV	Cochannel (2, 5)	
Walla Walla	5 U	Good	Contributions	No technical problems, translator very good and affects sales.	
Wenatchee	3 V, 3 U	Good to poor	do	Cochannel, herring bone, beats (2, 5)	

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 2, 1973.

Hon. RICHARD G. SHOUP,
House of Representatives,
Washington, D.C.

DEAR MR. SHOUP: This refers to your communication of April 6, 1973, in connection with a letter which you received from Mr. Wally Briscoe of the National Cable Television Association, Inc., concerning interference by television translator stations to cable television systems.

As you are aware, the bill which you introduced in the House of Representatives to amend section 318 of the Communications Act of 1934, as amended, would not affect the frequencies on which translator stations operate and there is, therefore, no connection between the bill and any problems which may exist with respect to interference between translators and cable television systems.

It is not possible to provide helpful comments on the alleged interference problems between translators and cable television systems because the NCTA "translator study" is subjective and provides no engineering basis for the conclusions which have been reached. For example, it is not possible to ascertain the basis for the evaluation of translator performance; e.g., "fair", "poor", "good", etc. Obviously, individual judgments will differ and I would expect that the translator licensees would differ substantially from NCTA's evaluations. It is general Commission policy that where a specific complaint is made by a cable television system, supported by an adequate engineering showing that interference is being caused, the Commission will first look to the translator applicant or operator for necessary adjustments. If a persuasive showing is made that no adjustments can be made in the translator operations or that such adjustments as can be made would not remedy the problem, the Commission will then look to the cable television system for adjustments in the system. The Commission has made it clear that it expects flexibility and cooperation from both parties.

The question of whether all translators should be required to operate on UHF frequencies is one which has been given serious consideration by the Commission. The problem is principally economic. UHF translators are far more expensive to purchase and to operate than VHF translators and translator licensees are, for the most part, nonprofit community-supported organizations which are dependent upon voluntary public financial support for their existence. There is also a serious question as to whether UHF frequencies could be found for the more than 2,000 translators now operating on VHF frequencies.

To the best of my knowledge, few of the instances of alleged interference by translators to cable television systems listed in the study have been brought to the Commission's attention. Where valid complaints of interference have been submitted, appropriate action has been initiated by the Commission's staff.

The Commission is convinced that both systems provide a valuable public service and that they can and must co-exist. The expectation that cable television systems must be prepared to make necessary adjustments in their systems to accommodate translators is based on the fact that, almost invariably, translators are the result of a popular demand for television service. Cable television systems frequently cannot reach all of the people who can be served by translators.

From time to time, where translator-cable conflicts have been brought to the Commission, it often develops that the cable television system is poorly constructed, inadequately insulated, or not properly maintained. The fact that many communities enjoy both cable television and translator service indicates that where there is the will and the effort, the systems can supplement one another and together, contribute to the public welfare. The Commission will continue to expect cooperation from its translator licensees and will make every effort to require such adjustments as may be necessary to enable the two types of systems to co-exist harmoniously.

If I can provide further information to you in this matter, please let me know. In accordance with your request, your enclosure is returned herewith for your files.

Sincerely,

DEAN BURCH,
Chairman.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, D.C., March 4, 1976.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Senate Commerce Committee, New
Senate Office Building, Washington, D.C.

Dear Mr. Chairman: We appreciate the opportunity to comment on S. 2847 to amend Section 318 of the Communications Act.

Among other provisions, the bill would permit unattended operation of FM translators and appears to authorize the FCC to institute rulemaking procedures to permit FM translators to originate commercial messages.

At the outset, we wish to emphasize our strong support for translator stations. They provide low-density population areas with diverse broadcast service at very low cost. We believe, as a matter of public policy, that the Federal Government should continue to support the development of translators as a means of serving areas deprived of adequate broadcast service.

To this end, we support the proposal to permit unattended operation of FM translator stations. However, we are deeply concerned about the adverse effect upon existing local radio broadcast service that would result from the loss of advertising revenues, should FM translators be authorized to originate commercial messages. To permit FM translators to insert local commercials in the attractive programming of distant stations, many of which are originating in large markets, would seriously injure the financial health of small local stations who can ill-afford to lose any revenue. The ultimate result would be impairment of the local station's ability to serve the public interest.

We wish to reemphasize that, in principle, we believe translators serve an important and useful function and therefore should be supported.

Thank you for the opportunity to provide our comments on this legislative proposal.

Sincerely,

VINCENT T. WASILEWSKI, *President.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 29, 1976.

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

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's comments on the statement submitted by the National Cable Television Association on S. 2343.

S. 2343 was introduced at the request of the Commission. It is the most important item in the Commission's legislative recommendations to the 94th Congress. Essentially, this bill would amend the Communications Act of 1934 to unify and strengthen the Commission's forfeiture authority.

Section 503 of the Communications Act now provides for forfeitures in the broadcast services, while section 510 provides separately for forfeitures applicable to non-broadcast radio stations. S. 2343 would repeal section 510 and place all classes of forfeitures under section 503. Additionally, section 503 would be enlarged in scope to cover persons subject to the Communications Act but not now under the forfeiture provisions—such as cable television systems, users of Part 15 or Part 18 devices, persons operating without a valid station or operator's license, and some communications equipment manufacturers.

We appreciate NCTA's agreement with the Commission that "[F]orfeiture is a legitimate weapon in the arsenal of a regulatory agency which seeks to fairly enforce its rules." However, we must strongly disagree with NCTA's position that such forfeiture authority is "premature" in light of the possibility of Congressional action on comprehensive cable legislation.

Cable legislation has been pending before the Congress since 1960 and we have no firm idea as to when such legislation may ever receive Congressional approval. Moreover, it is our belief that any legislation which may pass Congress will include some federal role in the regulation of the cable industry. Furthermore, the Supreme Court has clearly upheld federal jurisdiction over cable, and the fact that questions may be raised about the scope of that jurisdiction in no way validates violation of Commission rules today. We

therefore believe that any delay in providing forfeiture authority to the Commission is unwarranted.

We should emphasize that, as is the case with broadcast licensees, only a small number of cable systems will ever present occasions for the imposition of forfeitures. The great majority wish to, and do, abide by our rules. However, we believe that forfeiture authority is absolutely necessary to our regulatory efforts to deter violations of our rules by this small number of systems. Without this authority, the Commission is limited to the cumbersome and time-consuming procedures of cease and desist proceedings and, if a cable television operator chooses to disregard a cease and desist order, enforcement must be through civil contempt proceedings by the Department of Justice. Such a procedure has not been an effective deterrent to violation of the Commission's rules.

While we disagree with this general position taken by NCTA, they have provided the Subcommittee with a number of suggested changes to improve S. 2343. Some of these suggestions are helpful and constructive and, we believe, an item-by-item analysis of NCTA's substantive comments on S. 2343 will be of value to the Subcommittee.

1. Subsection (b)(1) of S. 2343 concerns both violations of authorizations ((b)(1)(A)) and violations of rules ((b)(1)(B)). The standard for violation of authorizations under both the present and proposed statutes is "fails . . . substantially". There is presently no "substantially" element where violation of a rule is concerned. NCTA has noted that the only cable reference (the word "certificate") in Subsection (b)(1) is in the rule violation subpart. They have asked why the "substantially" test should not apply, since violation of an authorization (the cable certificate) is involved.

Since the certificate of compliance contains only perfunctory language about the obligations of a certificate holder, enforcement action would usually be directed against violation of a specific cable rule, not the general terms of a certificate. However, we agree that violation of an authorization, regardless of whether it is in the broadcast or cable services, should be dealt with under the same standard. Therefore, we suggest that, to avoid confusion, the word "certificate" should be deleted from subsection (b)(1)(B), and subsection (b)(1)(A) should be amended to read as follows:

(A) willfully or repeatedly fails to comply substantially with the terms and requirements set forth in a license, permit, *certificate*, or other instrument or authorization issued by the Commission.

The effect of such change in language will be to make clear that, as an authorization, a *certificate* violation is subject to a "substantially" test, just like a broadcast license violation, but a *rule* violation, whether by a cable operator or a broadcaster, is not subject to such a test.

2. NCTA questions use of the standard of "willfully or repeatedly" in subsection (b)(1) and suggests that this standard should be changed to "willfully and repeatedly". The suggested purpose of this change is the deletion of possible forfeiture liability for repeated though non-willful violations.

"Willfully or repeatedly" is part of the present statutory language. The change suggested would therefore lessen the Commission's existing forfeiture authority. Furthermore, even though the stated purpose of the proposed change is the elimination of possible forfeiture liability for repeated though non-willful violations, that would not be its only effect. Rather, adoption of the language suggested by NCTA would deny forfeiture authority for single though willful violations. We must strongly oppose such a change.

NCTA has also stated that "Inadvertent violations have not normally been subject to Commission forfeiture actions" and that the proposed change in language should be made on this basis. This statement is inaccurate. In administering the present statute as to broadcast licensees and permittees, the Commission's present practice is to impose forfeitures for willful violations, with but few exceptions, only where the officers, directors or management-level employees had knowledge of the facts constituting the violation. Since the typical forfeiture proceeding does not involve a hearing, there is usually little evidence as to who had knowledge of the facts, other than the lower-level employee making log entries. Thus, most broadcast forfeiture orders rest on a finding of repeated violations. It is believed that this is appropriate. For example, if a standard (AM) broadcast station operates overpower, the listening public receives degraded service and/or the other stations receive interference because of the offending station's ignorance, carelessness or lack of adequate supervision. The

forfeiture proceeding is an effective tool to discourage such ignorance, carelessness or lack of supervision. As the Commission stated in one of its earliest forfeiture proceedings:

Forfeitures were authorized to obtain greater compliance by licensees with the terms of their licenses and the Commission's rules, and to deter non-compliance. If serious, repeated violations are excused without sanction, the sanction of forfeiture will not be the effective tool it was intended to be. Rather than being deterred, licensees would be encouraged to continue violating rules and to depend upon excuses and promises to avoid liability. We intend to use the forfeiture proceeding, as we believe it was intended to be used, to impel broadcast licensees to become familiar with the terms of their licenses and the applicable rules, and to adopt procedures, including periodic review of operations, which will insure that stations will be operated in substantial compliance with their licenses and the Commission's rules. (Crowell-Collier Broadcasting Corp. 44 FCC 2444, 2449-50 (1961)).

The Commission urges, therefore, that the phrase "willfully or repeatedly" be retained.

3. NCTA has suggested that the proposed statute be amended to require that the source of the information as to the suspected violation be included in the notice of apparent liability.

Although the identity of a complainant is often known or made available to a Commission regulatee, the Commission strongly urges that such disclosure not be required, as suggested by NCTA. The Commission does not have the staff or resources to closely monitor day-to-day operation of all of the activities it regulates. Consequently, it relies heavily on information from the public or competing enterprises to uncover possible violations of the Communications Act, or applicable Commission policies and rules. Many complainants, rightly or wrongly, fear that if their identity is disclosed, they will be retaliated against. It should be noted in this regard that the Freedom of Information Act recognizes this concern by classifying documents from confidential sources as not routinely available for public inspection. See 5 U.S.C. 552(b)(7). Furthermore, we believe that due process is adequately met by providing date, facts, nature of act or omission, and specific rules or authorization involved. Analogies to discovery rules for hearing proceedings and witness lists in civil and criminal trials are inapposite, since it is clear that the proposed legislation does not envision a forfeiture proceeding as requiring that high level of due process (e.g., there is no provision for any oral presentations or cross-examination of witnesses). Of course, the Commission might elect, on a case-by-case basis, to provide more information (waiving an FOI exemption for good cause shown), but the Commission should not be obligated to do so.

4. NCTA has requested that the minimum time to respond to a notice of apparent liability be specified in the statute as 60 days. The present and proposed statute specify a "reasonable period" for response as prescribed by Commission rule or regulation.

The Commission is opposed to any change in this language, since it provides the flexibility that is needed to insure sufficient, but not excessive, time for an adequate response. A statutory 60-day period would serve only to delay unnecessarily the processing of forfeitures.

The Subcommittee might wish to note that the present time for broadcast forfeiture proceedings is set at 30 days. (47 C.F.R. 1.621). The Commission and its staff routinely grant extensions of this period if needed by a station to prepare a full response. It is not believed that the present system presents any hardships or that cable operators will require more time than others to respond to Notices of Apparent Liability.

5. Subsection (b)(3) essentially provides a special procedural protection for those persons who may likely be unaware of Commission regulations. For such persons no forfeiture could attach unless prior to the issuance of a Notice of Apparent Liability the Commission has sent a notice of the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct. This procedural protection would not be available to any person engaged in an activity that requires the holding of a "license, permit, certificate, or other authorization from the Commission, or is providing any service by wire subject to the Commission's jurisdiction". NCTA has criticized this last phrase "or is providing any service by wire subject to the Commission's jurisdiction" as vague and open to a construction which would exclude channel lessees or access channel users from the procedural protection provided

by the subsection. That was not our intent. We are therefore amenable to clarification of this point either by inclusion of a statement to this effect in the Subcommittee's report or by deletion of the phrase "or is providing any service by wire subject to the Commissions' jurisdiction" from subsection (b) (3).

6. NCTA has also criticized the second proviso of subsection (b) (3) which states that a person who is subject to the special procedural protection and has received a "notice of violation" will not receive another "notice of violation" if he thereafter engages in the "same conduct" for which the first notice was issued. Specifically, NCTA has suggested that the words "same conduct" are too broad and vague. As evidence of this they pose a hypothetical situation where "a channel lessee is adjudged to have presented obscene material, is subject to a Notice of Apparent Liability [sic—Notice of violation], and then displays a different program which is also suspected of being obscene". NCTA suggests that such a person should not be subject to a new Notice of Apparent Liability.

We believe that NCTA has misconstrued the purpose of the special procedural protection in subsection (b) (3). The special procedural protective device of an initial "notice of violation" is meant only to inform those persons who may likely be unaware of Commission regulations that those regulations exist and that their conduct is apparently in violation of them. Clearly, the Commission agrees with NCTA that obscenity is a particularly difficult area of law. However, once a cable lessee has been notified of Commission rules on this subject, he would be in a position no different from that of any broadcaster or cable operator. This is, we believe, appropriate, and we would oppose any change in the language of the second proviso of subsection (b) (3).

7. NCTA has suggested that subsection (b) (4), the statute of limitations provision, raises a legal question as to the imposition of a forfeiture for conduct prior to the enactment of forfeiture legislation, and that an equitable argument can be made that the legislation should be prospective in nature since cable television has never been subject to forfeiture.

We think this position is unfounded. Further, we are not aware of any case law which raises a legal question as to this issue. When the original forfeiture statute was enacted in 1960, there was no "grandfathering" for conduct occurring prior to enactment of the legislation, and we do not believe that the result should differ in this instance. This legislation does not declare certain conduct to be illegal for the first time and no new rules are being imposed for which a penalty is being prescribed for prior conduct. The only point at issue is the penalty for illegal acts, which, we should add, have been illegal for many years.

8. NCTA's final criticism of S. 2343 is that subsection (b) (5) (A) (iii) is vague with respect to whether the legislation intends to reach others in addition to the actual cable operator.

Subsection (b) (5) (A) provides for a maximum forfeiture of \$20,000 for multiple violations by a common carrier, broadcast license or permittee or "(iii) a person engaged in distribution to the public of broadcast signals by wire or engaged in distributing to the public other program services by wire if such activity is the subject of Commission regulation" and (b) (5) (B) provides a \$5,000 maximum penalty for all other persons. The language in subpart (iii) was not meant to apply the \$20,000 limit to persons such as channel lessees, or public access users. Therefore, we would have no objection to inclusion of appropriate statements to this effect in the Subcommittee's report. Also, if it is the Subcommittee's wish, we would have no objection to the deletion of subpart (iii) if it is replaced with a new subpart (iii) with such language as "(iii) a cable television operator" or "(iii) a person engaged in cable television operations subject to the Commission's jurisdiction".

Additionally, I would like to point out that the Administrative Law Section of the American Bar Association has suggested that subsection (b) (4) (A), which extends the current statute of limitations for broadcast licensees to one year or the current license term, whichever is longer, may be unfair to those licensees whose terms may be extended beyond the regular three-year period because of pending adjudicatory proceedings.

It was never our intent to allow forfeiture liability to be imposed indefinitely in situations where a licensee's term is extended. Therefore, we would recommend that subsection (b) (4) (A) be amended to read

(4) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation—(A) by any person holding a broadcast station license under title III of this Act if the violation occurred (i) more than one year prior to the date of the issuance of the notice of apparent liability or (ii) prior to

the date of the issuance of the notice of apparent liability or (ii) prior to the date beginning the current license term, whichever is earlier, *but in no event more than three years prior to the date of the issuance of the notice of apparent liability.*

Finally, let me close with the brief reiteration that this legislation is, in our opinion, vitally important to the Commission's regulatory efforts and, let me emphasize our hope that it will receive the Subcommittee's attention as soon as is possible.

Sincerely yours,

RICHARD E. WILEY,
Chairman.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 29, 1976.

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

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's comments on the statement submitted by the National Cable Television Association on S. 2847.

S. 2847 would amend § 318 of the Communications Act to enable the Commission to authorize translator broadcast stations to originate limited amounts of local programming and also to authorize FM radio translator stations to operate without a licensed operator as is now permitted for television translator stations. I must emphasize immediately that this is all that S. 2847 would do.

Section 318 of the Communications Act limits translator stations to the rebroadcast of signals of their primary stations. They are not allowed to make any significant alteration of the characteristics of the incoming signals and, while the Commission has interpreted § 318 to allow 30 seconds of commercial advertising per hour by television UHF translators, no program origination is allowed. Because of these restrictions, such stations are not self-supporting. Rather, they must rely on public generosity for their support. Furthermore, in many instances, these restrictions deprive those people dependent on translator service of their only possible source of local programming, such as emergency weather alerts and information on local political events. S. 2847 would solve these problems by giving the Commission authority to allow a limited amount of program origination on such stations.

S. 2847 would not set a specific limitation on the amount of local origination that would be permitted. Rather, it would be the responsibility of the Commission to set an appropriate limitation. We contemplate that such a limitation could best be determined in a rulemaking proceeding where the comments of all interested parties could be analyzed and evaluated. I should emphasize, as I did in testifying before your Subcommittee, that the Commission in deciding on an appropriate limitation would still be bound by the requirement of § 318 that such originations be limited to the extent necessary to ensure that translator stations retain their primary characteristic as rebroadcast stations.

NCTA has stated that they do not oppose the concept of S. 2847 and that their "argument" is not a competitive one. Rather, they are "concerned that this bill is the only apparent vehicle for directing the FCC to recognize and deal with the problems of translator interference with CATV system operation." To accomplish this purpose, NCTA has proposed an amendment to S. 2847 which would require that the Commission "take remedial action to eliminate and hereafter prevent electronic interference by rebroadcasting facilities with other authorized communications facilities."

We agree with NCTA that this is "an odd forum in which to raise these questions." S. 2847's basic purpose is, to authorize the Commission to look at the possibility of allowing a limited amount of program origination by translators. As we have stated before, we cannot perceive how this proposal would have any effect on the matter of electronic interference since it would have no effect the frequencies on which translators operate. Furthermore, we disagree with NCTA's belief that this legislation would lead to a significant increase in the number of translators. In any event, if the bill is enacted, cable operators would have ample opportunity to present their views at the rulemaking proceeding the Commission would institute before adopting any rules to effectuate

the statute. I might add that such a proceeding is, in our belief, a far more appropriate forum for these views.

However, since a number of misimpressions may have been raised by NCTA's statement, we believe it would be of value to the Subcommittee if we "set the record straight." For example, NCTA has pointed to a situation in Cumberland, Maryland, as evidence that the "FCC has ignored the presence of CATV when allocating translator frequencies." That is not the case. The Cumberland, Maryland situation to which NCTA refers is, we believe, the *Tri-State Television Translators, Inc.* case, which involved seven applications for new VHF translators filed by Tri-State Television Translators, Inc. in 1964. These applications were opposed by Potomac Valley TV Co., operator of a cable television system in Cumberland. On October 6, 1965, the Commission designated the applications for hearing, specifying a number of issues including one as to the effect of grants on the cable system. (*Tri-State Television Translators, Inc.*, 2 FCC 2d 1041) The cable television system was made a party respondent but, prior to the commencement of the hearing, withdrew from the proceeding. Five of the seven applications were subsequently granted by the Hearing Examiner. Subsequently, Mountain Television, Inc., successor in interest to Potomac Valley, in an application for a new UHF television station to serve Cumberland (opposed by Tri-State), filed a petition requesting an order to show cause against Tri-State to require it to show why its translator authorizations should not be modified to UHF frequencies. The Commission refused to issue the order because it had recently afforded the UHF-TV applicant a full opportunity to support its arguments in the evidentiary hearing.

Mountain Television made another effort in July, 1966, when it filed another request for a show cause order against Tri-State. The Commission issued a show cause order to Tri-State. (*Tri-State Translators, Inc.*, 9 FCC 2d 764). However, after a full hearing, but before the Hearing Examiner issued his decision, Tri-State, in November, 1968, voluntarily discontinued operation of its VHF translators and dismantled them, forfeiting the authorizations.

NCTA has also suggested that cable operators have tried for years to gain recognition at the FCC of the interference problems caused by translators. As evidence of these problems, NCTA notes a survey it conducted in 1972.

We believe that the letter from Chairman Dean Burch to Congressman Richard G. Shoup of May 2, 1973, a copy of which is attached to NCTA's statement, adequately explains why that survey was of little use to the Commission. Its subjective nature and lack of engineering data did not give the Commission a basis to evaluate translator performance. Furthermore, we have made a detailed search of our files in an effort to confirm the contention of NCTA that translators are a continuing source of interference to CATV systems. That search has revealed only 18 complaints concerning co-channel or adjacent channel interference on CATV systems in fiscal year 1975 and most of those complaints concerned interference caused not by translators but rather by nearby broadcast stations which were apparently "overloading" the cable customer's television receiver. While it is possible that, if true, the "hostile attitude" of the FCC might deter some from engaging in costly or protracted litigation seeking relief, it is patently unbelievable that this supposed attitude would deter the simple mailing of complaints to the FCC. In any event, I must reiterate that cable operators will be given ample opportunity to present and document their views at any rulemaking proceeding which might follow enactment of this legislation.

Finally, the Commission is opposed to the amendment of S. 2847 suggested by NCTA. That opposition is based on our belief that the purpose of the amendment is not appropriate since there is no connection between this bill and any of the problems which may exist with respect to interference between translators and cable television systems. More specifically, our opposition is also based on two flaws inherent in the amendment itself. First, to the extent that the proposed amendment would legislatively require that the FCC "weigh the gains and losses" to the public of off-the-air and cable television service, it is superfluous since such a determination is already made by the Commission when it processes any application for translator service. Second, it is not appropriate, in our belief, for cable television service to be legislatively placed in a preeminent position to translator service. We are convinced that both systems provide a valuable public service and that they can and must co-exist. The Commission has made it clear in the past that we expect flexibility and cooperation from both parties. We will continue to expect this flexibility and cooperation because we are firmly committed to the belief which Chairman Burch pointed out in 1973 that "where

there is the will and the effort, the systems can supplement one another and together, contribute to the public welfare."

Sincerely yours,

RICHARD E. WILEY,
Chairman.

WILKINSON, CRAGUN & BARKER,
Washington, D.C., April 2, 1976.

HON. JOHN O. PASTORE,
Subcommittee on Communications,
Senate Commerce Committee, Washington, D.C.

DEAR SENATOR PASTORE: This is to amplify the position of National Translator Association on that portion of S-2847 which would permit television and FM translator stations to originate programming. This amplification is attributable to our understanding that some segments of the broadcast and cable industries are opposed to origination by translators.

The Association supports S-2847 because its enactment will empower the Federal Communications Commission to authorize translators to originate for the purposes of (i) soliciting and acknowledging financial assistance, (ii) broadcasting emergency messages when other means are not available and (iii) any other purposes the Commission determines are in the public interest.

It is not the intention of the Association, through this proposed legislation, to elevate translators to a position of parity with radio and television stations. Rather, the Association is determined to continue to cooperate and work closely with the broadcast industry.

Moreover, Chairman Wiley, in his testimony before the Committee, emphasized that enactment of S-2847 would empower the Commission "to allow a limited amount of program origination on [translator] stations" and "such origination [would] be limited to the extent necessary to ensure that translator stations retain their primary characteristic as rebroadcast stations." (emphasis supplied).

We submit that passage of S-2847 would permit the Commission to achieve these limited goals. Certainly, the Commission and not the Congress should be charged with the responsibility of adopting rules so as to assure that this legislation is properly implemented.

Please let me know if we can be of any additional assistance.

Sincerely,

LEON T. KNAUER.