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LIST OF CFR SECTIONS AFFECTED

1949-1963

This volume contains a compilation of the "List of Sections Affected" for all titles of the Code of Federal Regulations for the years 1949 through 1963. All sections of the CFR which have been expressly affected by documents published in the daily Federal Register are enumerated.

Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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PROCLAMATION 4117

National Wildlife Week

By the President of the United States of America

A Proclamation

For much of our history, Americans have confronted nature as a hostile force to be reckoned with and overcome. The wild creatures of forest and plains, mountains and swamp, were seen as threats to human life and progress on the edge of the wilderness. They were beaten back or disposed of accordingly.

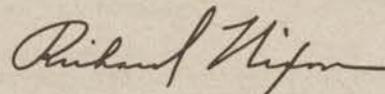
More recently, Americans have come to see wild animals as co-inhabitants of a small planet, fellow creatures who have a rightful place in a healthy natural environment. Ecologist, philosopher, and outdoorsman alike have come to know the truth of Thoreau's words, "In Wilderness is the preservation of the World." Men and animals can and must share the earth. The various forms of wildlife which give life and variety and beauty to the environment can and must be recognized, appreciated, and protected.

But the hour is late, and the time to act is now. Already some species of wildlife have been extinguished forever, and many others have been sharply reduced in numbers. Economically, we can now afford to take humane action to reverse this tragic trend. Morally and esthetically, we cannot afford to do otherwise.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the week beginning March 19, 1972, as National Wildlife Week.

I call upon all our citizens to join during that week in support of the many organizations dedicated to preserving a suitable environment for the greatest possible number of wildlife species. In particular, I urge broad public support for, and prompt congressional action on, my recent proposals for better protection of endangered species.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-sixth.



[FR Doc.72-4428 Filed 3-20-72; 1:31 pm]

Rules and Regulations

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Orange Reg. 69, Amdt. 8]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Navel, Temple, and Murcott Honey oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the Growers Administrative Committee for less restrictive grade limitations on fresh shipments of certain varieties of oranges is consistent with the external appearance and available supply of such fruit in the production area and the current and prospective demand for such fruit by fresh market outlets. The recommended grade regulation is necessary to insure a continuous supply of good quality fruit to consumers and to improve overall returns to producers.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of varieties of oranges grown in Florida.

Order. The provisions of paragraph (a) (7) and paragraph (c) of § 905.536 (Orange Regulation 69; 36 F.R. 20215, 22054, 22666, 23353, 23617, 23575, 25401; 37 F.R. 2660) are amended to read as follows:

§ 905.536 Orange Regulation 69.

(a) * * *

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 Bronze grade for murcotts.

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as given to the respective terms in said amended marketing agreement and order; Florida No. 1 grade for oranges and Florida No. 1 Bronze grade for murcotts shall have the same meanings as provided in section (1) (a) and (1) (b), respectively, of regulation 105-1.02, as amended, effective January 19, 1972, of the regulations of the Florida Citrus Commission, and all other terms relating to grade and diameter, as used herein, shall have the same meanings as given to the respective terms in the U.S. Standards for Florida Oranges and Tangelos (§§ 51.1140-51.1178 of this title).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated March 17, 1972, to become effective March 20, 1972.

PAUL A. NICHOLSON,
Deputy Director, Fruit and
Vegetable Division, Consumer
and Marketing Service.

[FR Doc.72-4350 Filed 3-21-72; 8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 72-WE-6-AD, Amdt. 39-1410]

PART 39—AIRWORTHINESS DIRECTIVES

McCulloch J-2 Gyroplanes

Pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), an airworthiness directive was adopted on March 2, 1972, and made effective immediately as to all known U.S. operators of McCulloch J-2 Gyroplanes. The directive requires measurement of the rotor blade collective pitch angles and inspection of the collective stick assembly for loose rivets in accordance with McCulloch Aircraft Corp. Service Bulletin 8C, dated February 24, 1972, or later FAA approved revisions, or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Since it was found that immediate corrective action was required, notice and

public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately as to all known U.S. operators of McCulloch J-2 Gyroplanes by individual telegram dated March 2, 1972. These conditions still exist and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

Pursuant to the authority of the Federal Aviation Act of 1958, delegated to me by the Administrator, the following airworthiness directive applicable to operators of McCulloch J-2 Gyroplanes certificated in the normal category is effective immediately upon receipt of this telegram because too large a rotor blade pitch angle that may cause a loss of lift has been resulting from loose rivets in the collective stick assembly and/or from improper rigging of the rotor blade.

MCCULLOCH AIRCRAFT CORP. Applies to Model J-2 Gyroplane, compliance, as indicated, required before further flight unless already accomplished.

1. For serial No. 10 and subsequent: By means of a propeller protractor, determine that the angle between the rotor mast and pitch bearing case is not less than 3.9 and not greater than 5.0°. If the angle measured is not within the tolerance indicated, rerig per paragraph 4.4 of McCulloch Aircraft Corp. Service Bulletin 8C dated February 24, 1972, or later FAA-approved revisions.

2. For serials Nos. 10 through 54:
(A) Inspect collective stick, part No. 27133, for loose rivets at the juncture with collective stick shaft, part No. 27104.

(B) If loose rivets are found, replace the collective stick assembly with the new collective stick assembly per paragraph 4.1 quote Rework-Effectivity (A) unquote of McCulloch Aircraft Corp. Service Bulletin 8C or with an equivalent approved by Chief, Aircraft Engineering Division, FAA, Western Region.

(C) If no loose rivets are found and until the rework per paragraph 4.1 of McCulloch Aircraft Corp. Service Bulletin 8C is accomplished, reinspect for loose rivets at intervals not to exceed twenty-five (25) hours of flight time.

This amendment is effective March 22, 1972, for all persons except those to whom it was made effective by telegram dated March 2, 1972, which contained this amendment.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on March 10, 1972.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.72-4318 Filed 3-21-72; 8:45 am]

[Airspace Docket No. 72-EA-20]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES**Alteration of Area High Routes**

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to change the name of Squid, N.Y., waypoint in area high routes J808R and J809R. Changing "Squid" to "Sardine" will eliminate a situation involving similar sounding fix names.

Since this amendment is minor in nature with no substantive change in the regulation, notice and public procedure thereon are unnecessary, and good cause exists for making this amendment effective on less than 30 days' notice.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 30, 1972, as hereinafter set forth.

Section 75.400 (37 F.R. 2400) is amended as follows:

In J808R and J809R delete first waypoint information "Squid, N.Y., 40°31'19" N., 72°47'56" W., Kennedy, N.Y." and substitute "Sardine, N.Y., 40°31'19" N., 72°47'56" W., Kennedy, N.Y." therefor.

(Sec. 307(a), of Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), of Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 14, 1972.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc. 72-4313 Filed 3-21-72; 8:45 am]

Title 20—EMPLOYEES' BENEFITS**Chapter III—Social Security Administration, Department of Health, Education, and Welfare**

[Reg. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965-)**Reconsiderations and Appeals Under the Hospital Insurance Program**

On October 27, 1970, there was published in the FEDERAL REGISTER (35 F.R. 16639) a notice of proposed rule making with new Subpart G of Regulations No. 5 of the Social Security Administration. The proposed new Subpart G (§ 405.701 et seq.) sets forth the principles and guidelines for determining and reviewing the amount of benefits to be paid on behalf of an individual under Part A of title XVIII of the Social Security Act and the procedures for reconsideration and appeals in matters arising under Part A of title XVIII of the Social Security Act insofar as such procedures differ from the procedures set forth in Subpart J of Part 404 (§ 404.901 et seq.) dealing with matters under title II of the Social Security Act. The procedures set forth in Subpart J of Part 404 (§ 404.901 et seq.), to the extent that they are applicable,

are incorporated by reference with the procedures in this Subpart G of Part 405.

All comments submitted with respect to the proposed subpart were considered and the following changes were made as a result of comments received: Section 405.710 has been revised to specify the parties having a right to reconsideration of an initial determination under this Subpart G. Section 405.714 has been revised to permit the filing with the intermediary of a request for withdrawal of a reconsideration request, thus making this section consistent with § 405.711 which permits the filing of a request for reconsideration with the intermediary. Various minor editorial changes have also been made in §§ 405.702, 405.706, 405.715, and 405.740 in the interest of greater clarity and to eliminate ambiguity. Accordingly, the regulations are, with the aforementioned changes, adopted.

Effective date. The regulations as set forth below shall be effective upon publication in the FEDERAL REGISTER (3-22-72).

Dated: December 3, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: March 15, 1972.

ELLIOT L. RICHARDSON,
Secretary of Health,
Education, and Welfare.

Part 405 of Chapter III, Title 20, is amended by adding thereto Subpart G to read as follows:

Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program

Sec.	General.
405.702	Notice of initial determination.
405.704	Actions which are initial determinations.
405.705	Actions which are not initial determinations.
405.706	Decisions of utilization review committees.
405.708	Effect of initial determination.
405.710	Right to reconsideration.
405.711	Time and place of filing request for reconsideration.
405.712	Extension of time to request reconsideration.
405.714	Withdrawal of request for reconsideration.
405.715	Reconsidered determination.
405.716	Notice of reconsidered determination.
405.717	Effect of a reconsidered determination.
405.720	Hearing; right to hearing.
405.722	Time and place of filing request for a hearing.
405.724	Appeals Council review.
405.730	Court review.
405.740	Principles for determining the amount in controversy.
405.741	Hearing examiner determines amount in controversy.
405.745	Amount in controversy ascertained after reconsideration.
405.747	Dismissal of request for hearing; amount in controversy less than \$100.
405.750	Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of a hearing examiner or the Appeals Council; finality of determinations and decisions.

AUTHORITY: The provisions of this Subpart G issued under secs. 1102, 1811-1817, 1869, 1871, 1872, 42 Stat. 647, as amended; 79 Stat. 291-301, 79 Stat. 330-332; 42 U.S.C. 1302, 1395 et seq.

Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program**§ 405.701 General.**

This Subpart G establishes the procedures for reconsideration, hearing, and appeal which are applicable only in matters arising under Part A of title XVIII of the Act. Subpart J of Part 404 of this chapter (dealing with procedures, payment of benefits, finality of decisions, and representation of parties under title II of the Act) is, except to the extent that specific provisions are contained in this Subpart G, also applicable to matters arising under Part A of title XVIII of the Act.

§ 405.702 Notice of initial determination.

After a request for payment under Part A of title XVIII of the Act is filed with the intermediary by or on behalf of the individual who received inpatient hospital services, extended care services, or home health services (see §§ 405.1660-405.1674), and the intermediary has ascertained whether the items and services furnished are covered under Part A of title XVIII, and where appropriate, ascertained and made payment of amounts due or has ascertained that no payments were due (see § 405.401(c)), the individual will be notified in writing of the initial determination in his case. This notice shall be mailed to the individual and to his representative at their last known addresses and shall state in detail the basis for the determination. Such written notice shall also inform the individual of his right to a reconsideration of the determination if he is dissatisfied with the determination.

§ 405.704 Actions which are initial determinations.

For purposes of this Subpart G, an initial determination includes any determination made with respect to a request for payment by or on behalf of an individual under Part A of title XVIII of the Act, including a determination with respect to:

- The coverage of items and services furnished;
- The amount of an applicable deductible;
- The application of the coinsurance feature;
- The number of days of inpatient hospital benefits utilized during a spell of illness or for purposes of the inpatient psychiatric hospital 190-day lifetime maximum;
- The number of days of the 60-day lifetime reserve utilized for inpatient hospital coverage;
- The number of days of posthospital extended care benefits utilized;
- The number of home health visits utilized;
- The physician certification requirement;

(i) The request for payment requirement;

(j) The beginning and ending of a spell of illness;

(k) The medical necessity of services; and

(l) Any other issues having a present or potential effect on the amount of benefits to be paid under Part A of title XVIII of the Act including a determination as to whether there has been an overpayment or underpayment of benefits paid under Part A, and if so, the amount thereof.

§ 405.705 Actions which are not initial determinations.

For the purposes of this Subpart G an initial determination under Part A of title XVIII does not include determinations relating to:

(a) The entitlement of an individual under section 226 of the Act (42 U.S.C. 426) or section 103 of Public Law 89-97 (79 Stat. 333) to coverage under the hospital insurance program (this is an initial determination under Subpart J of Part 404—see § 404.905 of this chapter);

(b) Enrollment under the supplementary medical insurance program (Part B of title XVIII of the Act) (this is an initial determination under Subpart J of Part 404—see § 404.905 of this chapter);

(c) The reasonable cost of items or services furnished under Part A of title XVIII of the Act; or

(d) Whether an institution or agency meets the conditions for participation in the program (see Subpart O of this Part 405).

§ 405.706 Decisions of utilization review committees.

A decision of a utilization review committee is a medical determination by a staff committee of the provider or a group similarly composed and does not constitute a determination by the Secretary within the meaning of section 1869 of the Act. The decision of a utilization review committee may be considered by the Administration along with other pertinent medical evidence in determining whether or not an individual has the right to have payment made under Part A of title XVIII.

§ 405.708 Effect of initial determination.

The initial determination shall be final and binding upon the individual on whose behalf payment under Part A has been requested or, if such individual is deceased, upon the representative of such individual's estate, unless it is reconsidered in accordance with §§ 405.710-405.717 or revised in accordance with § 405.750.

§ 405.710 Right to reconsideration.

An individual on whose behalf payment under Part A has been requested (or, if such individual is deceased, the representative of such individual's estate) who is dissatisfied with the initial determination with respect to his rights under Part A of title XVIII

may request a reconsideration of such determination in accordance with § 405.711, regardless of the amount in controversy.

§ 405.711 Time and place of filing request for reconsideration.

The request for reconsideration shall be made in writing and filed at an office of the Administration or, in the case of a qualified railroad retirement beneficiary (see § 404.368 of this chapter) filed at an office of the Railroad Retirement Board, within 6 months from the date of the mailing of the notice of initial determination, unless such time is extended as provided in § 405.712. A request for reconsideration which is filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the Administration as of the date it is filed with the intermediary.

§ 405.712 Extension of time to request reconsideration.

If a party to an initial determination desires to file a request for reconsideration after the time for filing such request in accordance with § 405.711 has passed, such party may file a petition with the Administration or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board, for an extension of time for the filing of such request. Such petition shall be in writing and shall state the reasons why the request for reconsideration was not filed within the required time. For good cause shown, the Administration may extend the time for filing the request for reconsideration.

§ 405.714 Withdrawal of request for reconsideration.

A request for reconsideration may be withdrawn by the individual who filed the request or by his representative provided that the withdrawal is made in writing and filed at an office of the Administration or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board prior to the date of the mailing of the notice of reconsidered determination. A withdrawal filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the Administration as of the date it is filed with the intermediary.

§ 405.715 Reconsidered determination.

In reconsidering an initial determination, the Administration shall review such initial determination made with respect to the request for payment under Part A of title XVIII of the Act, the evidence and findings upon which such determination was based, and any additional evidence submitted to the Administration or otherwise obtained by the intermediary or the Administration; and shall make a determination affirming or revising, in whole or in part, such initial determination.

§ 405.716 Notice of reconsidered determination.

Written notice of the reconsidered determination will be mailed by the Admin-

istration to the individual and his representative at their last known addresses. Such notice shall state in detail the basis for the reconsidered determination and shall advise the beneficiary of his right to a hearing if the amount in controversy is \$100 or more.

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon the individual unless a request for a hearing is filed with the Administration within 6 months after the date of mailing notice of the reconsidered determination to such individual, or unless the reconsidered determination is revised in accordance with the provisions of § 405.750.

§ 405.720 Hearing; right to hearing.

An individual has a right to a hearing regarding any initial determination with respect to his rights under Part A of title XVIII made under § 405.704 if:

(a) Such initial determination has been reconsidered by the Administration;

(b) The individual was a party (see § 405.708) to the initial or reconsidered determination;

(c) The individual or his representative has filed a written request for a hearing in accordance with the procedure described in § 405.722; and

(d) The amount in controversy is \$100 or more.

§ 405.722 Time and place of filing request for a hearing.

The request for a hearing shall be made in writing and filed at an office of the Administration or with a hearing examiner, or, in the case of a qualified railroad retirement beneficiary, filed at an office of the Railroad Retirement Board. Such request must be filed within 6 months after the date of mailing notice of the reconsidered determination to such individual, except where the time is extended as provided in § 404.954(a) of Part 404 of this chapter.

§ 405.724 Appeals Council review.

Appeals Council review is provided by § 404.942ff of Subpart J of Part 404 of this chapter.

§ 405.730 Court review.

To the extent authorized by section 1869 of the Act, a party to a decision of the Appeals Council (see § 404.950 of Part 404 of this chapter), or the decision of a hearing examiner where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is \$1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see § 422.210 of Part 422 of this chapter for filing procedure).

§ 405.740 Principles for determining the amount in controversy.

The following principles shall be applicable for purposes of determining the amount in controversy:

(a) The amount in controversy should be computed as the actual amount charged the individual for the items and services in question less deductible and coinsurance amounts applicable in the particular case.

(b) Where direct payment is made to an individual in accordance with § 405.1672(a), the amount in controversy should be computed as 60 percent and 80 percent respectively, of the hospital's reasonable charges for routine and ancillary services furnished after the applicable deductible and coinsurance amounts have been applied.

(c) Where the issues in dispute relate to services furnished to a patient of a provider of services, all items or services in dispute arising from a single continuous period of treatment shall be considered in determining the amount in controversy.

(d) The principle set forth in paragraph (c) of this section shall be applicable even when more than one request for payment is submitted, and notice of utilization issued, because of the provider's billing practices.

(e) Any series of posthospital home health visits shall be considered collectively in determining the amount in controversy.

(f) Appeals from determinations pertaining to inpatient hospital services, extended care services or posthospital home health services shall not ordinarily be additive for purposes of determining the amount in controversy except, where:

(1) The denial of payment for inpatient hospital services prevents the individual from meeting a condition precedent for payment for extended care or home health services; or

(2) The same factor is at issue in more than one claim for benefits by such individual (e.g., an individual, during June, is hospitalized twice; in each case the claim for payment is denied on the basis that the hospitalization occurred during an ongoing spell of illness which began prior to June and in which the individual had already utilized all available benefit days; the individual appeals claiming that he was in a new spell of illness and had the full number of benefit days available).

(g) Notwithstanding the provisions of paragraphs (b) through (f) of this section a hearing examiner may hear several issues in a single hearing but only where the requirement of § 405.720(d) is satisfied with respect to each such issue.

§ 405.741 Hearing examiner determines amount in controversy.

The determination as to whether the amount of benefits in controversy is \$100 or more in order to qualify the issue for a hearing shall be made by the hearing examiner.

§ 405.745 Amount in controversy ascertained after reconsideration.

For the purpose of determining whether an individual is entitled to a hearing, the amount in controversy after the reconsideration action rather than

the amount in controversy initially at issue shall be controlling.

§ 405.747 Dismissal of request for hearing; amount in controversy less than \$100.

The hearing examiner shall, without holding a hearing, dismiss the request for hearing if the request for hearing plainly shows that less than \$100 is in controversy. If a hearing is held and the hearing examiner finds that the amount in controversy is less than \$100, the hearing examiner shall dismiss the request for hearing and will not rule on the substantive issues involved in the appeal.

§ 405.750 Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of a hearing examiner or the Appeals Council; finality of determinations and decisions.

An initial, revised, or reconsidered determination of the Administration, or a decision or revised decision of a hearing examiner or of the Appeals Council, with respect to an individual's rights under Part A of title XVIII of the Act which is otherwise final under §§ 404.940, 404.951 of this chapter, 405.708, or 405.717 may be reopened:

(a) Within 12 months from the date of the notice of the initial or reconsidered determination to the party to such determination, or

(b) After such 12-month period but within 4 years after the date of the notice of the initial determination to the individual upon establishment of good cause for reopening such determination or decision (see § 404.958 of Part 404 of this chapter), or

(c) At any time, when:

(1) Such initial, revised, or reconsidered determination or such decision or revised decision is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting clerical error or error on the face of the evidence on which such determination or decision was based; or

(2) Such initial, revised, or reconsidered determination or such decision or revised decision was procured by fraud or similar fault of the beneficiary or some other person.

[FR Doc.72-4354 Filed 3-21-72; 8:49 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in the Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

FORMIC ACID

The Commissioner of Food and Drugs, having evaluated the data in a petition

(MF 3466V) filed by the U.S. Department of Agriculture, Agricultural Research Service, Animal Science Division, Beltsville, Md. 20705, and other relevant material concludes that the food additive regulations should be amended to provide for the safe use of formic acid as a preservative in hay crop silage.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended in Subpart C by adding the following new section:

§ 121.219 Formic acid.

Formic acid may be safely used as a preservative in hay crop silage in an amount not to exceed 2.25 percent of the silage on a dry weight basis or 0.45 percent when direct-cut. The top foot of silage stored should not contain formic acid and silage should not be fed to livestock within 4 weeks of treatment.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3-22-72).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: March 14, 1972.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.72-4356 Filed 3-21-72; 8:49 am]

SUBCHAPTER C—DRUGS

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Revocation

In the FEDERAL REGISTER of May 2, 1970 (35 F.R. 7032), the Commissioner of Food and Drugs announced the conclusion of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Estro-Biotic marketed by Alexander-Shaw

Corp., 192 Worcester Street, Wellesley Hills, Mass. 02181.

The announcement invited the manufacturer of said drug and any other interested persons to submit pertinent data on the drug's effectiveness. Alexander-Shaw Corp. did not furnish any data to support the effectiveness of the above-named product. No other data have been submitted to support the efficacy of the above-named certifiable antibiotic-containing drug for its recommended use for the treatment of low grade intrauterine bacterial infections in cows and certain preputial bacterial infections in bulls.

Accordingly, the Commissioner concludes that the antibiotic drug regulations should be amended to revoke provisions for certification of this drug due to a lack of substantial evidence that it will have the effectiveness it purports or is represented to have.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-51; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), Part 146a is amended by revoking § 146a.54 *Penicillin-streptomycin ointment, veterinary (penicillin-streptomycin mineral oil suspension, veterinary); penicillin dihydrostreptomycin ointment, veterinary (penicillin - dihydrostreptomycin mineral oil suspension, veterinary)*.

Any person who would be adversely affected by the removal of any such drug from the market may file, within 30 days after publication hereof in the FEDERAL REGISTER, objections to this order stating reasonable grounds and requesting a hearing on such objections. A statement of reasonable grounds for a hearing must identify the claimed errors in the NAS/NRC evaluation and identify any adequate and well controlled investigation on the basis of which it could reasonably be concluded that this drug would have the effectiveness claimed and would be safe for its intended use.

Objections and requests for a hearing should be filed (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852. Objections and requests for a hearing which are received in response to this order may be seen in the above office during business hours, Monday through Friday.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER. If objections are filed, the effective date will be extended for ruling thereon.

(Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-51; 21 U.S.C. 357, 360b)

Dated: March 14, 1972.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.72-4357 Filed 3-21-72; 8:49 am]

PART 148e—ERYTHROMYCIN
Erythromycin Estolate Chewable
Tablets

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), § 148e.30 *Erythromycin estolate chewable tablets* is amended in paragraph (a) (1) by changing the second sentence to read "Each tablet contains erythromycin estolate equivalent to either 125 or 250 milligrams of erythromycin."

Since the matter is noncontroversial, notice and public procedure and delayed effective date are not prerequisite to promulgation of this amendment.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (3-22-72).

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: March 15, 1972.

H. E. SIMMONS,
Director, Bureau of Drugs.

[FR Doc.72-4358 Filed 3-21-72; 8:49 am]

Title 43—PUBLIC LANDS:
INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5189]

[ES 9781]

MICHIGAN

Addition to National Forest

By virtue of the authority vested in the President by section 24 of the Act of March 3, 1891, 26 Stat. 1103, 16 U.S.C. section 471 (1970), and section 1 of the Act of June 4, 1897, 30 Stat. 34, 36, 16 U.S.C. section 473 (1970), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Subject to valid existing rights, the boundaries of the Manistee National Forest are hereby extended to include the following described nonpublic land, which shall be subject to all laws and regulations applicable to said national forest upon acquisition of the title to the land or interests therein by the United States under applicable law:

MICHIGAN MERIDIAN

- T. 20 N., R. 12 W.,
- Sec. 2;
- Sec. 3;
- Sec. 4, E½;
- Sec. 11, NE¼;
- Sec. 12, N½.

The areas described aggregate 2,438.60 acres in Lake County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MARCH 15, 1972.

[FR Doc.72-4320 Filed 3-21-72; 8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 76—CABLE TELEVISION SERVICE

List of Significantly Viewed Stations for Cable Television Carriage; Correction

FEBRUARY 23, 1972.

Appendix B of the Cable Television Report and Order, FCC 72-108, released February 3, 1972 (37 F.R. 3253), consists of a table listing by county all those television stations significantly viewed for purposes of cable television carriage, in accordance with § 76.54(a) of the Commission's rules. For those counties with between 10 percent and 90 percent cable penetration the information was derived from a special study of non-CATV circulation and share of viewing hours tabulated for the Commission by the American Research Bureau. It now appears that for some counties with substantial cable penetration, ARB did not in fact separate cable and noncable viewing, with the result that viewing data for such counties in Exhibit B includes cable as well as noncable homes. ARB is re-evaluating its calculations for these counties, and corrections to Appendix B will be published as soon as the information is available from ARB.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-4344 Filed 3-21-72; 8:47 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Hagerman National Wildlife Refuge, Tex.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (3-22-72).

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

TEXAS

HAGERMAN NATIONAL WILDLIFE REFUGE

The public hunting of rabbits and squirrels on the Hagerman National Wildlife Refuge, Tex., is permitted only on the area designated by signs as open to hunting. This open area, comprising

2,644 acres, is delineated on maps available at refuge headquarters, 15 miles northwest of Sherman, Tex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of rabbits and squirrels subject to the following special conditions:

- (1) The open season for hunting rabbits and squirrels on the refuge extends from May 1 through July 31, 1972, inclusive.
- (2) Hunting with rifles or handguns is not permitted. The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth

in Title 50, Code of Federal Regulations, Part 32, and are effective through July 31, 1972.

BERT M. ANDUSS,
Refuge Manager, Hagerman National Wildlife Refuge, Sherman, Texas.

MARCH 7, 1972.

[FR Doc.72-4321 Filed 3-21-72;8:45 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration, Department of Housing and Urban Development

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Eligible Communities

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of eligible communities.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
California	Los Angeles	Sierra Madre	I 06 037 3620 01 I 06 037 3620 02	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802, California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	City Hall, 55 West Sierra Madre Blvd., Sierra Madre, CA 91024.	Mar. 24, 1972.
Do.	San Joaquin	Lodi				Do.
Connecticut	New London	New London				Do.
Kansas	Sedgwick	Wichita				Do.
Maryland	Baltimore	Unincorporated areas.				Do.
Massachusetts	Middlesex	Acton				Do.
Do.	Norfolk	Brookline				Do.
New Jersey	Morris	Dover Township	I 34 027 0750 05 through I 34 027 0750 08	Division of Water Resources, Department of Environmental Protection, Post Office Box 1390, Trenton, NJ 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Township Clerk's Office, Town Hall, 33 Washington St., Toms River, NJ 08753.	Do.
Do.	Burlington	Delran Township				Do.
Do.	do.	Eastampton				Do.
New York	Westchester	Mamaroneck Village				Do.
Ohio	Wayne	Wooster				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (sec. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: March 15, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-4294 Filed 3-21-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
California	Los Angeles	Sierra Madre	H 06 037 3620 01 H 06 037 3620 02	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	City Hall, 55 West Sierra Madre Blvd., Sierra Madre, CA 91024.	Oct. 30, 1970.
Do	San Joaquin	Lodi				Mar. 24, 1972.
Connecticut	New London	New London				Do.
Kansas	Sedgwick	Wichita				Do.
Maryland	Baltimore	Unincorporated areas.				Do.
Massachusetts	Middlesex	Acton				Do.
Do	Norfolk	Brookline				Do.
New Jersey	Morris	Dover Township	H 34 027 0750 05 through H 34 027 0750 08	Division of Water Resources, Department of Environmental Protection, Post Office Box 1390, Trenton, NJ 08625. New Jersey Department of Insurance, State House Annex, Trenton, NJ 08625.	Township Clerk's Office, Town Hall, 33 Washington St., Toms River, NJ 08763.	Oct. 23, 1970.
Do	Burlington	Deiran Township				Mar. 24, 1972.
Do	do	Eastampton				Do.
New York	Westchester	Mamaroneck Village.				Do.
Ohio	Wayne	Wooster				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (38 F.R. 17804, Nov. 28, 1968), as amended (sec. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: March 15, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-4295 Filed 3-21-72;8:45 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 111]

CUSTOMHOUSE BROKERS

Proposed Limitation of Liability to Importers

It has come to the attention of the Bureau of Customs that some customhouse brokers have attempted to limit their potential liability to importers arising out of the broker's wrongful or negligent action. The use of or reliance upon any contractual language which purports to limit the liability of brokers is inconsistent with the obligations which a broker owes his clients by reason of the regulations governing licensed customhouse brokers. Obligations imposed upon a broker as a condition of his license may not be set aside by such contractual language. It is essential in the public interest to make this explicit.

Accordingly, pursuant to authority contained in section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), it is proposed to amend Part III of the Customs regulations (19 CFR Part 111) by adding a new § 111.44 set forth in tentative form as follows:

§ 111.44 Limitation of liability.

A broker may not limit his liability to a client with respect to any claim by the client arising out of the wrongful or negligent action of the broker in connection with any matter handled by him as a broker. Further, no broker shall enter into any contract which purports to so limit his liability.

Consideration will be given to relevant data, views, or arguments pertaining to the proposed amendment which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226. To assure consideration of such submissions they must be received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs Regulations (19 CFR 103.3(b)) at the Bureau of Customs, Washington, D.C., during regular business hours.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: March 10, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary
of the Treasury.

[FR Doc.72-4367 Filed 3-21-72;8:48 am]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

RURAL ELECTRIFICATION AND TELEPHONE LOANS

Extensions of Payments of Interest and Principal

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue a revision of REA Bulletin 20-5:320-2 to incorporate the provisions of section 236(a) of Public Law 91-606 "Disaster Relief Act of 1970." On issuance of this revised bulletin, Appendix A to Part 1701, will be modified accordingly.

Persons interested in this revision relating to the extensions of payment of principal and interest may submit written data, views, or comments to the Director, Power Supply Management and Engineering Standards Division, Room 3313, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250 not later than 30 days from the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Power Supply, Management and Engineering Standards Division during regular business hours.

The text of the proposed revision of REA Bulletin 20-5:320-2 is as follows:

REA BULLETIN 20-5:320-2

SUBJECT: Extensions of Payments of Principal and Interest.

I. Purpose. To set forth the conditions under which time of payment of principal and interest may be extended and to outline the procedure for borrowers to use in applying for such extensions.

II. General. A. Section 12 of the Rural Electrification Act, as amended, provides that: "The Administrator is authorized and empowered to extend the time of payment of interest or principal of any loans made by the Administrator pursuant to this Act: Provided, however, That with respect to any loan made under section 4 or section 201, the payment of interest or principal shall not be extended more than 5 years after such payment shall have become due, and with respect to any loan made under section 5, the payment of principal or interest shall not be extended more than two years after such payment shall have become due * * *"

B. Section 236 of the "Disaster Relief Act of 1970" (Public Law 91-606) provides that: "In addition to the loan extension authority provided in section 12 of the Rural Electrification Act, the Secretary of Agriculture is authorized to adjust and readjust the schedules for payment of principal and interest on loans to borrowers under programs administered by the Rural Electrification Administration, and to extend the maturity date of any such loan to a date not beyond

40 years from the date of such loan where he determines such action is necessary because of the impairment of the economic feasibility of the system, or the loss, destruction, or damage of the property of such borrowers as a result of a major disaster."

C. Public Law 91-606 authorizes longer deferments of scheduled principal and interest payments than are possible under section 12 of the Rural Electrification Act. That act contains a maximum 5-year deferment on any particular scheduled payment while Public Law 91-606 permits the Secretary of Agriculture to defer any payment as long as necessary in disaster situations so long as the final maturity date is not later than 40 years after the date of the loan.

III. Policy. A. In reviewing requests for extension of payment of principal and interest, consideration shall be given to the effect of such extensions on the security of the Government's loans, and on the ability of the borrower to achieve program objectives. It is the policy of the REA to extend the time of payment of interest or principal only on the basis of findings that such extension:

1. Does not reduce the security of the Government's loans; and

2. Is essential to the effectiveness of the borrower's operations in achieving specified program objectives; and

3. Is necessary to help a borrower place its operations on a more stable financial basis and thereby provide assurance of repayment of loans within the time when payments of such loans are due under the terms of the note or notes as extended; and

4. Is otherwise in the best interest of both the Government and the borrower.

B. Extensions will be given in the minimum amount and for the minimum period of time necessary to achieve the purpose of the extension.

C. Interest will not be charged on interest accruing during the period of any extension, but will be charged on all unpaid principal.

D. Ordinarily, any extension made should not postpone the final due date of the original amortization period.

IV. Procedure for borrowers to follow in applying for extension of time of payment of principal and interest. A. Borrowers which deem an extension of time of payment necessary and justified within the provisions of this bulletin should submit to the area office a letter requesting such an extension. This letter should state the length of extension desired, the notes involved, cite the conditions which make such a request necessary, and include analyses supporting the required findings. It should be signed by the president or vice president on the basis of prior approval for the request by the Board of Directors. The borrower will be advised of any determinations made by REA or of additional information needed for consideration of the request.

B. If the purpose of the borrower's request is to enable it to make investments in a supplemental financing institution, its application must meet the requirements set forth in REA Bulletin 20-20, Deferment of Principal Repayments for Investment in Supplemental Lending Institutions.

Dated: March 16, 1972.

DAVID A. HAMIL,
Administrator.

[FR Doc.72-4351 Filed 3-21-72;8:49 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[41 CFR Part 3-3]

TYPES OF CONTRACTS

Proposed Cost-Sharing in Research Contracts

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to the Federal Property and Administrative Services Act of 1949, as amended, the Office of the Secretary is considering an amendment to 41 CFR, Chapter 3, by adding a new Subpart 3-3.4, Types of Contracts. The purpose of this amendment is to prescribe policy relative cost sharing in research contracts supported by HEW programs in accordance with Office of Management and Budget Circular A-100.

Any person who wishes to submit written data, views, or objections pertaining to the proposed amendment may do so by filing them in duplicate with the Director of Procurement and Materiel Management, OASAM, Room 3340, HEW North Building, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, within 30 days following publication of this notice in the FEDERAL REGISTER. All comments submitted pursuant to this notice will be available for public inspection during regular business hours in the Office of Procurement and Materiel Management.

Dated: March 15, 1972.

N. B. HOUSTON,
Deputy Assistant Secretary
for Administration.

As proposed, Subpart 3-3.4 would read as follows:

Subpart 3-3.4—Types of Contracts

§ 3-3.405 Cost-reimbursement type contracts.

§ 3-3.405-3 Cost-sharing contract.

(a) *Purpose.* This regulation prescribes policy relative to cost sharing in research contracts supported by HEW programs in accordance with Office of Management and Budget (OMB) Circular A-100.

(b) *Background.* OMB Circular No. A-100 was issued to provide guidance for determining:

(1) The amount of cost sharing to be obtained when cost sharing is required by statute; and

(2) Whether contractors should be requested to participate in the cost of the research even though cost sharing is not required by statute and, if so, in what amount.

(c) *Policy.* (1) In addition to utilizing cost-sharing type contracts when required by statute, the desirability of utilizing this type of contract should also

be considered under certain circumstances when not required by statute. Contractors should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from such participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost sharing is intended to serve the mutual interest of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. If cost sharing is not required by statute, encouragement should be given to organizations to contribute to the cost of performing research under research contracts unless the contracting officer determines that a request for cost sharing would not be appropriate because of any of the following circumstances.

(i) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government requests for proposals for a specific project.

(ii) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(iii) The organization has little or no non-Federal sources of funds through some other means (such as fees) to enable organizations to cost share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(2) Each research contract file should show whether the contracting officer considered cost sharing appropriate for that particular contract and, if so, in what amount. If cost sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., "Because the contractor will derive no benefits from this award that can be applied to his commercial activities, cost sharing is not considered appropriate." The contracting officer may wish to coordinate with the project officer before documenting his decision.

(3) If the contracting officer considers cost sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost sharing, except when cost sharing is required by statute, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

(d) *Amount of cost sharing.* When cost sharing is required by statute or

determined to be appropriate, the contracting officer shall utilize the following guidelines in determining the amount of cost participation by the contractor:

(1) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least one percent of total project cost. In many cases cost sharing of less than five percent of total project cost would be appropriate in view of the organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities. These percentages listed above are not intended as a substitution for those set forth in any legislation and are not to be used in lieu of those contained in such legislation.

(2) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise or competitive position, and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as one percent or less of the total project cost, to more than 50 percent of total project cost.

(3) If the performing organization will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project it would generally be appropriate to obtain less cost sharing than in cases in which the performer acquires such rights.

(4) When cost sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute and: (i) A formal request for proposal is issued; (ii) the contractor proposes to perform the research primarily as a service to the Government; (iii) the contractor has little or no non-Federal sources of funds from which to make a cost contribution.

(5) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the

performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

(6) The organization's participation over the total term of the project may be considered so that a relatively high contribution in 1 year may be offset by a relatively low contribution in another. If the amount of cost sharing is to be determined for the aggregate of all or some of the agency's projects at an organization, the Federal agency and the performer may agree that relatively high contributions on some projects may be offset by relatively low contributions on others.

(7) A relatively low degree of cost sharing may be appropriate if, in the view of the operating agency, an area of research requires special stimulus in the national interest.

(8) In the final analysis, the amount of cost participation should reflect the mutual agreement of the parties: *Provided*, That it is consistent with any statutory requirements.

(e) *Method of cost sharing.* Cost sharing may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of any independent research and development program).

(f) *Contract clause.* The clause set forth below shall be inserted in each contract in which costs are shared by the contractor pursuant to the foregoing:

COST SHARING

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (indicate percent of total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(g) *Contract award.* In consonance with the Department's objectives of competition in procurement and support of the Small Business Program, award of contracts should not be made solely on the basis of ability or willingness to cost share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

[FR Doc. 72-4355 Filed 3-21-72; 8:48 am]

Public Health Service

[42 CFR Part 51]

GRANTS TO STATES FOR COMPREHENSIVE HEALTH PLANNING

Implementation of Simplified State Plan Review System

Notice is hereby given that the Administrator, Health Services and Mental Health Administration, with the approval of the Secretary of Health, Education, and Welfare, proposes to revise Subpart A of Part 51 of Title 42, CFR, governing grants to States for comprehensive health planning under section 314(a) of the Public Health Service Act (42 U.S.C. 246(a)), as set out below.

The principal purpose of the revision is to implement, with respect to this program, the Health Services and Mental Health Administration simplified State plan review system. Under that system, documents which are required to be included in State plans and which currently must be submitted to Health Services and Mental Health Administration headquarters for review will instead be incorporated by reference in the State plans, retained in the States, and there reviewed by staff of the Regional Offices.

In addition, the revised regulations would implement the amendments made to section 314(a) of the Public Health Service Act by section 220 of Public Law 91-515 (84 Stat. 1304), including the requirement that representatives of the Veterans Administration (or of other Federal agencies where there are no Veterans Administration health care facilities in a State) and of regional medical programs be included as members of State health planning councils.

A number of technical and conforming changes are also included.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed revision of 42 CFR Part 51, Subpart A, to the Community Health Service, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20852, within 30 days after the date of publication of this notice in the FEDERAL REGISTER. Comments received will be available for public inspection at Room 7-05, Parklawn Building, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

It is proposed to revise Subpart A of Part 51 to read as follows:

Subpart A—Grants to States for Comprehensive Health Planning

- Sec.
- 51.1 Applicability.
 - 51.2 Definitions.
 - 51.3 Submission of State programs.
 - 51.4 State program requirements.
 - 51.5 State allotments.
 - 51.6 Payments to States.
 - 51.7 Equipment, supplies or personnel in lieu of cash.
 - 51.8 Nondiscrimination on account of race, color, or national origin.

AUTHORITY: The provisions of this Subpart A issued under secs. 215, 314 of the Public Health Service Act as amended; 58 Stat. 690, 80 Stat. 1180; 42 U.S.C. 216, 246.

§ 51.1 Applicability.

The regulations of this subpart apply to grants to assist the States, including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands, in comprehensive and continuing planning for their current and future health needs in terms of health services, health manpower and health facilities, as authorized by section 314(a) of the Public Health Service Act, as amended.

§ 51.2 Definitions.

All terms not defined herein shall have the same meanings as given them in the Act. As used in this subpart:

(a) "Act" means section 314 of the Public Health Service Act, as amended (42 U.S.C. 246).

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

(c) "State program" refers to the State plan for comprehensive health planning which contains the information, proposals, and assurances submitted by the State agency pursuant to section 314(a) of the Act and the regulations of this subpart.

(d) "State agency" means the single State agency (which may be an interdepartmental agency) designated in the State program for administering or supervising the administration of the State's health planning functions under the State program.

§ 51.3 Submission of State programs.

In order to receive funds from an allotment under this subpart, a State must submit to and have approved by the Secretary a State program which incorporates by reference the information and meets the requirements specified in the Act and in the regulations of this subpart. Such program shall be submitted by the State agency officially designated and authorized to administer it and carry out the functions prescribed hereunder, after reasonable opportunity has been provided to the Governor of the State for his review and comment. Documents incorporated by reference become a part of the State program as though fully set forth therein. Such documents must be (a) clearly identified as to subject, date, and location, (b) officially adopted and disseminated in accordance with applicable procedures, and (c) made available to the Secretary and to the public for inspection.

§ 51.4 State program requirements.

(a) *Responsibility of State agency.* The State program must provide that the State agency will either administer or supervise the administration of the activities to be carried out under it. In order to assure adequate supervision by the State agency of the administration of activities under the State program carried out by other agencies, institutions, organizations, or individuals, the

State program must incorporate by reference documents showing that the State agency (1) is able to obtain from such other agencies, institutions, organizations, or individuals the data needed for formulation and evaluation of, and accountability for, planning activities; (2) has established methods for performing continuing professional and administrative evaluations of such activities; and (3) is in a position to take such steps as may be necessary to assure that such activities meet Federal and State requirements.

(b) *State health planning council.* The State program must incorporate by reference documents showing that a State health planning council has been established to advise the State agency in carrying out its functions under the approved State program. Council membership shall include representatives of State agencies (other than the designated State agency) and local agencies and of nongovernmental organizations and groups concerned with health (including representation of the regional medical programs established under Title IX of the Act which are included in whole or in part within the State), and one or more representatives of Federal agencies concerned with health: *Provided*, That, if there is located in the State one or more hospitals or other health care facilities of the Veterans' Administration, the membership of the council shall include as an ex officio member the individual whom the Administration of Veterans' Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities or such Administration which are located in the State; and the requirement of representation of Federal agencies concerned with health shall be satisfied by the inclusion of such Veterans' Administration representative. A majority of the council members must be consumer representatives whose major career or occupation is neither the organization, financing, or delivery of health services, nor research in or the teaching of health sciences. Membership of the council shall generally reflect the various socioeconomic groups and geographic areas of the State. The council shall meet as often as necessary and not less often than twice a year for the purposes of consulting with and advising the State agency with respect to:

(1) The scope of planning activities to be undertaken by the State agency;

(2) The recommendations to be made by the State agency as a result of such activities; and

(3) Necessary review and modifications of the State program.

(c) *Expenditure of grant funds.* The State program must incorporate by reference written policies and procedures for the expenditure of funds under the program, which shall provide that:

(1) The scope of comprehensive health planning will encompass the need for services (including home health services), facilities, and manpower to meet the physical, mental, and environmental health needs of the people of the State,

and the financial and organizational resources through which these needs may be met;

(2) Such planning will be concerned with both publicly and privately supported health services and activities;

(3) A method for determining priorities of planning activity will be established to insure that the most critical planning problems are scheduled for early attention;

(4) Methods will be established for obtaining and utilizing, in the formulation of planning priorities and recommendations, effective and appropriate informational support, including statistical data and, where feasible, social, economic, demographic, and similar base data consistent with those to be utilized for other comprehensive planning activities in the State;

(5) To administer or supervise the administration of the planning functions under the State program and to provide staff assistance to the State health planning council, the State agency will establish positions, including the full-time position of comprehensive health planning director, to be filled by persons with appropriate qualifications: *Provided*, That the Secretary may, in particular cases, approve arrangements for administering or supervising the administration of the State agency's planning activities through other than a full-time director where he finds that such other arrangements will result in the effective administration of such activities;

(6) The State agency will cooperate with and assist in the development of needed regional, metropolitan area, and other local area health planning agencies and be prepared to act upon, and to inform the Secretary of its actions with respect to, grant applications under section 314(b) of the Act.

(d) *Encouraging cooperative efforts.* The State programs must incorporate by reference written policies and procedures for encouraging cooperative efforts among governmental and nongovernmental agencies, organizations, and groups concerned with health and related services, facilities, and manpower. As a minimum, such policies and procedures must provide methods for:

(1) Coordinating the State agency's planning activities with specialized health planning and other related planning activities, such as the development of mental retardation plans, construction plans for health and medical facilities, community mental health plans, regional medical programs, environmental quality plans, and State physical and economic planning;

(2) Considering the most effective and efficient manner of meeting health needs in the fields of welfare, education, and rehabilitation; and

(3) Considering the special needs of high-risk population groups for preventive and health care services.

(e) *Federal funds to supplement State funds otherwise available.* The State program must contain satisfactory assurances that Federal funds will not sup-

plant funds that would otherwise be made available by the State for the purpose of comprehensive health planning and that Federal funds will, to the extent practicable, be used to increase the level of non-Federal funds available for such purpose. Substantial compliance with such assurance will be deemed to have been met if the level of non-Federal funds made available to and spent by the State for comprehensive health planning is at least no lower for any fiscal year than it was in the immediately preceding fiscal year, except that the Secretary may also take into consideration the extent to which the level of such funds for any fiscal year may have included funds for an activity of a nonrecurring nature.

(f) *Methods of administration.* The State program shall:

(1) Provide for the establishment and maintenance of personnel standards on a merit basis for persons employed by the State in carrying out the State program. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Health, Education, and Welfare, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Public Law 91-648; 84 Stat. 1915) modifying or superseding such Standards, will be deemed to meet this requirement as determined by said Commission. Laws, rules, regulations, and policy statements, and amendments thereto, effectuating such methods of personnel administration shall be incorporated by reference in the State plan;

(2) Incorporate by reference written policies and procedures for informing interested parties and organizations and the general public about the agency's activities and recommendations;

(3) Contain an assurance that no more than 50 percent of the funds available to the State agency under the State program will be used for contracting with other agencies and organizations to conduct planning functions under the State program without specific approval from the Secretary; and

(4) Incorporate by reference written policies and procedures by which criteria will be developed as a basis for approval or disapproval of applications for area-wide health planning project grants under section 314(b) of the Act.

(g) *Reports and records.* (1) The State program must contain an assurance that, in addition to any other reports or records required by the regulations of this subpart or which may reasonably be required by the Secretary under the Act:

(i) The State agency will maintain adequate records to show the disposition of all funds (Federal and non-Federal) expended for activities under the approved State program;

(ii) The Secretary will be provided copies of each recommendation, plan or portion of a plan adopted by the State agency;

(iii) An annual narrative summary of the planning activities undertaken during the preceding year will be submitted to the Secretary; and

(iv) Cumulative expenditure reports on forms prescribed by the Secretary will be submitted within 30 days after the end of the second quarter of any Federal fiscal year and within 60 days after the close of the Federal fiscal year.

(2) All records shall be retained for 3 years after the close of the fiscal year in which the grant was made. Such records may be destroyed at the end of such 3-year period if the State agency has been notified of the completion of the Federal audit by such time. If the State authority has not been so notified by the end of such 3-year period, such records shall be retained (i) for 5 years after the close of the fiscal year in which the grant was made or (ii) until the State agency is notified of the completion of the Federal audit, whichever comes first. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions.

(3) The State agency must afford access to the records maintained by it to the Comptroller General of the United States and the Secretary of Health, Education, and Welfare, or their authorized representatives, for purposes of audit and examination.

(h) *Review and modification.* The State program must contain an assurance that the State agency will review and evaluate its approved program at least once annually and submit appropriate modifications to the Secretary. As a minimum, the State agency shall submit annual modifications of the State program which will (1) reflect budgetary and expenditure requirements for the next fiscal year, (2) set forth priorities established for planning activity to be undertaken in the next fiscal year, and (3) update any assurances or other informational requirements included in the State program.

(i) *Program for capital expenditures.* The State program must incorporate by reference written policies and procedures for assisting, through consultation, provision of information, and advice, each health care facility in the State to develop a program of capital expenditures for replacement, modernization, and expansion which is consistent with such overall State plan as has been developed in accordance with criteria established as provided in section 314(a)(2)(I) of the Act, and shall provide that the State agency furnishing such assistance will periodically review such capital expenditures program of each health care facility in the State and recommend appropriate modification thereof. The assistance and review required under this paragraph may be provided either by the State comprehensive health planning agency itself, or, under such State agency's control and supervision, by a local public or a private nonprofit agency, or by another State agency qualified and authorized to provide such assistance and designated in the State pro-

gram as the agency with the primary responsibility therefor. For the purposes of this section the term "health care facility" includes all hospitals, sanatoriums, nursing homes, and other facilities for the inpatient care of the sick, injured, or disabled, which are licensed or formally approved for such purposes by an officially designated State standards-setting authority, and all public or private nonprofit clinics, health centers, and other facilities a major purpose of which is to provide diagnostic, preventive or therapeutic outpatient health care by or under the supervision of doctors of medicine, osteopathy, or dentistry: *Provided*, That such term shall not include facilities operated by religious groups relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

(j) *Accounting procedures.* The State program shall incorporate by reference such written fiscal control and fund accounting procedures as are necessary to assure the proper disbursement of and accounting for funds paid to the State under this subpart. Such procedures shall provide for an accurate and timely recording of receipts of funds from State and Federal sources, of expenditures made from such funds for comprehensive health planning purposes under the State program, and of any unearned balances of Federal funds paid to the State, and for the determination of allowability and the allocation of costs in accordance with Chapter 5-60 of the Department of Health, Education, and Welfare Grants Administration Manual.¹ Controls shall be established by the State agency to insure that expenditures charged to comprehensive State health planning funds are for allowable purposes and that documentation is readily available to verify the accuracy of such charges.

§ 51.5 State allotments.

(a) *Determination.* The allotment of funds for any year to each State shall be the product of

(1) The percentage which the State's weighted population bears to the total of the weighted populations of all States, multiplied by

(2) The amount of appropriated funds available for allotment for the fiscal year; except that the allotment for any State which, as a result of such computation, is less than one percent of the amount available for allotment shall be increased to one percent of such amount and the allotments to other States shall be proportionately reduced as necessary but not below an amount equal to one percent. For the purposes of this section, the term "weighted population" means (i) the population of the State (as determined from the latest available esti-

mate from the Department of Commerce) multiplied by (ii) the per capita income of the United States divided by the per capita income of the State (as determined from the latest available estimates from the Department of Commerce).

(b) *Availability.* The funds allotted to any State for a fiscal year shall remain available to the State for obligation in accordance with its approved State program during the fiscal year for which the allotment was made and the succeeding fiscal year. If the Secretary determines that a State will not utilize all of its allotment during the period for which it is available, such balances shall be available for reallocation to other States in accordance with the provisions of subsection 314(a)(3)(B) of the Act. The Secretary will make a determination as to the balances of funds available for reallocation during the last quarter of each fiscal year for which such allotments are available for expenditures by the States and will reallocate such balances as soon as possible after such a determination is made.

§ 51.6 Payments to States.

Each State for which a State program has been approved shall from time to time be paid from its allotment for the fiscal year amounts which equal the Federal share, as determined pursuant to section 314(a)(4) of the Act, of expenditures incurred during the period for which such allotment is available. The "Federal share" for any State shall be all or such part of the expenditures for comprehensive State health planning made by or under the supervision of the State agency as the Secretary may determine at the time of his approval of the State program. Payments to a State under this section will be made where practicable through a letter of credit system or, when such a system is not practicable, on the basis of payment requests from the State to meet its current needs. The Secretary will make such adjustments in amounts of payments as may be necessary to correct under or over payments previously made (including expenditures which are disallowed on the basis of audit findings).

§ 51.7 Equipment, supplies or personnel in lieu of cash.

At the request of and for the convenience of the State agency, the Secretary may, in lieu of cash payments, furnish to the State agency equipment or supplies or detail to the State agency officers or employees of the Public Health Service when he finds such equipment, supplies, or personnel would be used in carrying out the approved State program. In such case, the Secretary will reduce the payments to which the State agency would otherwise be entitled from its allotment for the fiscal year by an amount which equals the fair market value of the equipment or supplies furnished, and by the amount of the pay, allowances, traveling expenses, and other costs in connection with such detail of officers or employees. For purposes of determining the amount of the expenditures for any fiscal year made in carrying out the approved State

¹The Department Grants Administration Manual is available for inspection at the Public Information Office of the several Department Regional Offices and available for purchase at the Government Printing Office, GPO document no. 894-523.

program and the Federal share of such expenditures, the costs incurred by the Secretary in furnishing such equipment or supplies and in detailing such personnel to the State agency during the fiscal year shall be considered as expenditures made by and funds paid to the State.

§ 51.8 Nondiscrimination on account of race, color, or national origin.

Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252) which provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). Such regulation is applicable to comprehensive State health planning activities which receive Federal financial assistance and requires receipt and acceptance by the Secretary of the applicable documentation set forth therein.

Dated: November 24, 1971.

VERNON E. WILSON,
Administrator, Health Services
and Mental Health Administration.

Approved: March 13, 1972.

ELLIOT L. RICHARDSON,
Secretary of Health,
Education, and Welfare.

[FR Doc.72-4349 Filed 3-21-72;8:48 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 93]

[Docket No. 11800; Notice 72-8]

PEARSON AIRPARK TRAFFIC AREA

Proposed Establishment of Separate Traffic Pattern for Helicopters

The Federal Aviation Administration (FAA) is considering amending Part 93 of the Federal Aviation Regulations to establish a separate traffic pattern for helicopters at Pearson Airpark, Vancouver, Wash.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel: Attention Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before April 21, 1972, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

At the present time, helicopter traffic at Pearson Airport follows the general pattern prescribed for aircraft, north of the airport, but at a lower altitude.

In the near future, an addition to the helicopter complement of the Army Reserve Aviation Section at Vancouver Barracks is expected to result in a marked increase in helicopter activity at Pearson Airpark. This in turn will effect a greater mix of fixed wing and helicopter traffic.

To eliminate this undesirable mix of fixed wing and helicopter traffic in the pattern, the FAA proposes the establishment of a separate helicopter traffic pattern on the south side of the airport.

In consideration of the foregoing, it is proposed that § 93.105 of the Federal Aviation Regulations be amended to read as follows:

§ 93.105 Pearson Airpark traffic.

(a) *Arriving fixed wing aircraft.* Except when the VFR clearance-from-clouds rules of Part 91 of this chapter require otherwise each person piloting a fixed wing aircraft landing at the Pearson Airpark shall enter the traffic pattern north of the airport at or above 1,000 feet MSL and execute a left traffic pattern for a landing to the east or a right traffic pattern for a landing to the west.

(b) *Departing fixed wing aircraft.* Each person piloting a fixed wing aircraft departing from Pearson Airpark shall leave the airport traffic pattern to the north.

(c) *Helicopter arrivals and departures.* Except when the VFR clearance-from-cloud rules of Part 91 of this chapter require otherwise, each person piloting a helicopter landing at Pearson Airpark shall enter the traffic pattern south of the airport at 300 feet MSL and execute a right traffic pattern for a landing to the east or a left traffic pattern for a landing to the west. Each person piloting a helicopter shall on departure leave the traffic pattern to the south.

This amendment is proposed under the authority of section 307 of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 14, 1972.

RAYMOND G. BELANGER,
Acting Director,
Air Traffic Service.

[FR Doc.72-4316 Filed 3-21-72;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 71-13; Notice 2]

MOTOR VEHICLE BRAKE FLUIDS Proposed Motor Vehicle Safety Standards

The purpose of this notice is to propose labeling requirements for motor vehicle

brake fluids not regulated by Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, published June 24, 1971 (36 F.R. 11987).

An advance notice of proposed rule making was published on June 24, 1971 (36 F.R. 12032), requesting substantive data on the performance levels of types of fluid, other than polyglycol and similar synthetic fluids, for use in central hydraulic systems and conventional brake systems. Many of the comments submitted stated that it was premature to specify comprehensive regulations for fluids to be used in systems that are still under development and that may require fluid characteristics not yet defined. The National Highway Traffic Safety Administration concurs with these opinions and is not issuing definitive proposals at this time. The industry and other interested persons are urged to continue submitting to Docket 71-13 relevant data pertinent to the issues raised in the advance notice.

The Administration, however, is still concerned with the incompatibilities which will exist once other types of fluid are either marketed or supplied to dealers for servicing certain types of systems. The NHTSA has tentatively determined that petroleum-based fluids, and other types of fluids that are not compatible with conventional brake systems and their rubber components, should not be called "brake fluids." Therefore, the proposed requirements refer to these fluids as "central hydraulic system oil," and define them as fluids developed for use in hydraulic power systems and their braking components, and that are not compatible with the rubber components of conventional hydraulic brake systems. This nomenclature will also be reflected in any subsequent rule making specifying performance requirements.

The majority of the comments endorsed reservoir and container labeling, and color coding of both fluid and replacement parts. The NHTSA, at this time, is proposing container labeling requirements for silicone-based brake fluid and central hydraulic system oil similar to those currently specified in Standard No. 116, and deferring consideration of color coding until performance requirements are proposed for the other types of fluids.

In consideration of the foregoing, it is proposed that 49 CFR 571.116a, Motor Vehicle Safety Standard No. 116a, *Motor Vehicle Brake Fluids*, be amended as follows:

1. Paragraph S3 would be amended to read:

S3. *Application.* This standard applies to all fluid for use in hydraulic brake systems of motor vehicles except for silicone-based fluid, to which only S5.2.2.3 applies, and central hydraulic system oil, to which only S5.2.2.4 applies. In addition, S5.2 applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles.

2. Paragraph S4 would be amended by adding the following definition in alphabetical sequence:

"Central hydraulic system oil" means a fluid that is designed specifically for use in hydraulic power systems and their braking components, and that is not

compatible with the rubber components of conventional hydraulic brake systems.

3. A new S5.2.2.3 would be added to read:

S5.2.2.3 Each packager of silicone-based brake fluid shall furnish the following information clearly and indelibly marked on each brake fluid container.

(a) The name of the packager of the brake fluid. The information may be in code form, and if coded, shall be placed beneath the distributor's name and mailing address or on the bottom of the container.

(b) The name and complete mailing address of the distributor.

(c) A serial number identifying the packaged lot and date of packaging that shall be legible and stamped on the bottom of the container.

(d) Designation of the contents as "SILICONE-BASED BRAKE FLUID," in capital letters at least one-eighth of an inch high.

(e) The following safety warnings in capital and lower case letters as indicated:

1. FOLLOW VEHICLE MANUFACTURER'S RECOMMENDATIONS WHEN ADDING BRAKE FLUID.

2. Silicone-based brake fluid IS COMPATIBLE with brake systems designed for use with DOT brake fluids.

3. KEEP BRAKE FLUID CLEAN. Contamination with dirt or other materials may result in brake failure or costly repairs.

4. CAUTION: KEEP CONTAINER CLEAN. DO NOT REFILL CONTAINER OR USE FOR OTHER LIQUIDS.

4. A new S5.2.2.4 would be added to read:

S5.2.2.4 Each packager of central hydraulic system oil shall furnish the following information clearly and indelibly marked on each container.

(a) The name of the packager of the oil. The information may be in code form, and if coded, shall be placed beneath the distributor's name and mailing address or on the bottom of the container.

(b) The name and complete mailing address of the distributor.

(c) A serial number identifying the packaged lot and date of packaging that shall be legible and stamped on the bottom of the container.

(d) Designation of the contents as "CENTRAL HYDRAULIC SYSTEM OIL" in capital letters at least one-eighth of an inch high.

(e) The following safety warnings in capital and lower case letters as indicated:

1. FOLLOW VEHICLE MANUFACTURER'S RECOMMENDATIONS WHEN ADDING CENTRAL HYDRAULIC SYSTEM OIL.

2. Central hydraulic system oil IS NOT COMPATIBLE with the rubber components of brake systems designed for use with DOT brake fluids.

3. KEEP OIL CLEAN. Contamination with dirt or other materials may result in brake failure or costly repairs.

4. CAUTION: KEEP CONTAINER CLEAN. DO NOT REFILL CONTAINER OR USE FOR OTHER LIQUIDS.

5. Paragraph S5.3 would be amended to read:

S5.3 *Motor vehicle requirement.* Each passenger car, multipurpose passenger vehicle, truck, bus, trailer, and motorcycle that has a conventional hydraulic service brake system shall be equipped either with brake fluid that has been manufactured and packaged in conformity with the requirements of this standard, or with silicone-based brake fluid.

Proposed effective date. Six months after issuance of final rule. Interested persons are invited to submit written data, views, or arguments on this proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted. All comments received before the close of business on May 22, 1972, will be considered, and will be available in the docket at the above address for examination both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rule making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rule making. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

This notice of proposed rule making is issued under the authority of section 103, 112, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1401, and 1407), and the delegations of authority at 49 CFR 1.51 and 501.8.

Issued on March 17, 1972.

ROBERT L. CARTER,
Acting Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-4346 Filed 3-17-72; 3:53 pm]

CIVIL AERONAUTICS BOARD

[Docket No. 24329; EDR-223]

[14 CFR Parts 207, 208, 212, 214,
249]

CHARTER AIR TRAVEL

Proposed Terms, Conditions, and Limitations

MARCH 17, 1972.

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments to Parts 207, 208, 212, 214, and 249 of its Economic Regulations (14 CFR Parts 207, 208, 212, 214, and 249), which would: (1) Require that an air carrier or foreign air carrier which has been engaged to provide only one-way transportation from the United

States in connection with a pro rata charter trip originating in the United States shall, before providing such transportation, ascertain that the carrier which is to perform the return flight has received full payment of its charges therefor; (2) facilitate enforcement of the Board's existing pro rata charter regulations, in general, and with particular reference to foreign air carriers; and (3) clarify certain of the Board's charter regulations.

The background and principal features of the proposed amendments are described in the attached explanatory statement, and the proposed amendments are set forth in the proposed rule. The amendments are proposed under the authority of sections 204(a), 401, 402, and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 (as amended by 76 Stat. 143, 82 Stat. 867), 757 and 766 (as amended by 83 Stat. 103); 49 U.S.C. 1324, 1371, 1372, and 1377.

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in communications received on or before April 21, 1972, will be considered by the Board before taking final action upon the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, DC upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

EXPLANATORY STATEMENT

With the increase in the number of persons traveling abroad on charter trips, there have been instances in which persons participating in U.S.-originating pro rata charter trips have found, after their arrival in a foreign country, that no provision has been made for the return flight to the United States for which the participants had already paid. This has resulted in great inconvenience and distress on the part of the stranded persons, particularly since many of them are students who have relatively limited funds available.

Additionally, the Board's experience with its charter rules generally has revealed certain difficulties in the area of enforcement, not necessarily related to the aforementioned stranding problem.¹ In this notice of proposed rule making, we are proposing amendments to deal with both problems. The two areas of concern will be dealt with separately below.

Stranding. The Board's present rules are such as to guard against the possibility of stranding where a round trip is

¹ However, it is significant that most recent stranding cases have involved participants in unlawful charters.

to be performed by a single carrier. This is because the rules require that a carrier, before performing a charter flight, must require full payment of the total price or the posting of a satisfactory bond for full payment.² Thus, where the carrier is to perform a round-trip charter flight, the total flight cost, including the return portion, must be received by the carrier before the departing flight is performed. Recognizing that the present rules are not entirely explicit on this point, our proposed amendments to the existing rules will accomplish the necessary clarification.

However, the existing rules clearly do not require payment of the return flight to be made prior to departure, where the departing flight is to be performed by one carrier and the return flight is to be performed by another carrier. Therefore, we are proposing to require that, prior to performing a one-way charter flight from the United States for a pro rata charter trip originating in the United States, the carrier must receive confirmation that the price of a return flight to the United States has been received by the carrier to perform such return flight for the same chartering group. In order to avoid last-minute problems before departure, we are proposing that this confirmation be obtained at least 15 days prior to the performance of the departing flight, in the case of a planeload charter, and 45 days in advance of departure of a split charter.

Moreover, in order to facilitate our enforcement of this requirement, we are proposing that both the request for confirmation of payment and the confirmation shall be in writing. Additionally, both the request by the departing carrier for confirmation, and the confirmation supplied by the returning carrier, would be required to include identifying particulars such as the date and point of origin of the departing flight, the date and point of origin of the return flight, and the name of the chartering group, along with each carrier's passenger list for its respective flight. In its confirmation of payment the returning carrier would also be required to state that it had not previously furnished any confirmation, with regard to the same flight and the same chartering group, to any other carrier. The departing carrier would be required to retain the confirmation, together with a copy of its request for the confirmation, for a period of two years.

In most cases, the departing carrier could determine the identity of the returning carrier from the solicitation material which the chartering organization is required to furnish under existing pro rata charter regulations.³ Where such information is not contained in the so-

licitation material, the departing carrier will have to obtain it from the charterer.

In those rare cases where a pro rata charter trip originating in the United States does not contemplate a return flight to the United States at a definite future date, so that no return flight arrangements can be made prior to departure, the carrier performing the one-way departure flight could apply for a waiver from the proposed requirements, accompanying such request with appropriate supportive information, including a list of the passengers' names, addresses and telephone numbers.⁴

We are of the tentative view that adoption of this proposal would greatly ameliorate the problem of stranding abroad, while imposing only a minimal burden upon the originating and returning carriers.

Enforcement generally. As previously indicated, the Board's experience with enforcement of the pro rata charter rules has led it to the tentative conclusion that certain amendments are appropriate. None of these amendments would result in significant changes in the substance of the rules. Rather, they are intended to facilitate the day-to-day task of policing pro rata charters.

The regulations presently require that the charterer submit a passenger list to the carrier prior to the departure of a flight.⁵ We are proposing to amend this requirement so as to provide that the passenger lists must also include the passengers' telephone numbers.⁶

Additionally, the attached proposed rule would require that carriers verify the identity of all boarding passengers on a pro rata charter flight.⁷

Moreover, we are proposing amendments to remedy an enforcement problem which is peculiar to charter flights performed by foreign air carriers. As previously noted, the regulations presently require passenger lists to be submitted by the charterer to the carrier; additionally, statements of supporting information must be submitted to the carrier at least 30 days in advance.⁸ In the case of a U.S. carrier, the Director of the Board's Bureau of Enforcement can obtain access to these documents without difficulty.⁹ However, in the case of a foreign carrier, although these documents are required to be made available, upon request, to an authorized representative of the Board at a point in the United States,¹⁰ experience has shown that it is often difficult for the

Board's enforcement officials to actually obtain and inspect the documents sufficiently in advance of a flight's departure.

We are therefore proposing that, in the case of charter flights from the United States, the foreign air carriers be required to file all Statements of Supporting Information and passenger lists with the Board's Bureau of Enforcement no later than 20 days prior to the charter flight departure date.¹¹ In order to enable the foreign air carriers to meet this filing deadline, we are also proposing to require that the Statement of Supporting Information and passenger list required to be submitted by the charterer to the carrier, and the Statement of Supporting Information required to be submitted by the travel agent to the carrier, shall be so submitted no later than 30 days prior to the departure date of the flight.¹² The passenger lists, like passenger lists generally, supra, would include the participants' telephone numbers.

Finally, in the case of a charter flight which is the return leg of a charter trip originating in a foreign country, the proposed rule would require the foreign air carrier to file, no later than 20 days prior to the departure of the outbound flight, the names, U.S. addresses, and U.S. telephone contacts of the passengers whom it carried on the inbound flight. This would enable the Board's enforcement officials to contact the passengers while they are in the United States, in order to make relevant inquiries.

We are of the tentative view that a final rule aimed at preventing strandings should be promulgated in time to accomplish its purpose in this year's summer charter season. Nor do we believe that our inclusion of the above described general enforcement proposals in this proceeding should impede adoption of a rule on stranding. The enforcement proposals are largely technical, imposing only minimal burdens on affected carriers, and we do not anticipate substantial opposition to their adoption. Indeed, it is our tentative view that only the proposal to require foreign carriers to file U.S. addresses and telephone numbers of passengers whom they have transported from abroad might warrant separate consideration in light of comments received thereon.

It is proposed to amend Parts 207, 208, 212, 214, and 249 of the Board's economic regulations (14 CFR Parts 207, 208, 212, 214, and 249), as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

1. Amend the Table of Contents of Part 207 by adding new §§ 207.25 and

¹¹ The requirement would apply only to on-route charters in the case of foreign route air carriers.

¹² In view of this proposal, the attached proposed rule would delete the existing requirements that foreign air carriers retain the aforementioned passenger lists and Statements of Supporting Information.

² 14 CFR 207.13(b), 208.32(e), 212.10(b), and 214.14(b). The amount of time in advance of the flight by which payment must be required is not specified, except in the case of a split charter where payment must be required at least 30 days in advance.

³ 14 CFR 207.40(d), 208.210(d), 212.40(d), and 214.30(d).

⁴ As will be discussed, infra, we are also proposing to require that all passenger lists under existing regulations include telephone numbers of the passengers.

⁵ Sections 207.45, 208.215, 212.45, and 214.35.

⁶ A similar requirement has been proposed in EDR-218/SPDR-22A (Travel Group Charters) 37 F.R. 222.

⁷ Again, a similar requirement has been proposed in the Travel Group Charter proceeding.

⁸ Secs. 207.22(a), 208.201(a), 212.22(a), and 214.12(a).

⁹ Sec. 385.22(c).

¹⁰ Secs. 212.7(b) and 214.6(d).

207.26 under Subpart B—Provisions Relating to Pro Rata Charters, the table as amended to read as follows:

Sec.
207.25 Charter trips originating in the United States.
207.26 Air carrier to identify enplanements.

2. Amend § 207.9 by revising paragraph (a) and adding a new paragraph (d), the section as amended to read as follows:

§ 207.9 Records and record retention.

(a) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip.

(d) The written confirmation, and accompanying passenger list, received from another carrier pursuant to § 207.25; and a copy of its written request, and accompanying passenger list, to such other carrier for such confirmation.

3. Amend § 207.13(b) to read as follows:

§ 207.13 Terms of service.

(b) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment prior to the commencement of any portion of the air transportation: *Provided however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 207.11(c), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 30 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded.

4. Amend § 207.16 by numbering the existing section as paragraph (a), and adding a new paragraph (b), the section as amended to read as follows:

§ 207.16 Waiver.

(a) * * *

(b) A request for a waiver of any of the provisions of § 207.25 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

5. Add a new § 207.25, to read as follows:

§ 207.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the

United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 207.13(b), shall be not less than 15 days prior to the departing flight, for a planeload charter, or not less than 45 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 207.11(c).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and obtain from such other carrier, not later than 15 days prior to departure of a planeload charter or not later than 45 days prior to departure of a less-than-planeload charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

6. Add a new § 207.26, to read as follows:

§ 207.26 Air carrier to identify enplanements.

The air carrier shall make reasonable efforts to verify the identity of all enplaning charter participants, and the documentary source of such verification shall be noted on the passenger manifest: *Provided, however*, That in the case of international flights the identity of each enplaning charter participant shall be verified by means of his passport and the passport number shall be entered on the passenger manifest.

7. Amend § 207.45(a) to read as follows:

§ 207.45 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended

if passengers are added or dropped before flight.

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

8. Amend the table of contents of Part 208 by changing the title of § 208.4 under Subpart A—General Provisions, and adding new §§ 208.202b and 208.202c under Subpart C—Provisions Relating to Pro Rata Charters, the table as amended to read as follows:

Sec.
208.4 Particular records.
208.202b Charter trips originating in the United States.
208.202c Air carrier to identify enplanements.

9. Amend § 208.3a by numbering the existing section as paragraph (a) and adding a new paragraph (b), the section as amended to read as follows:

§ 208.3a Waiver.

(a) * * *

(b) A request for a waiver of any of the provisions of § 208.202b shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

10. Amend § 208.4 by changing its title to "Particular records," and amending the section to read as follows:

§ 208.4 Particular records.

Each supplemental air carrier shall maintain the following records in accordance with Part 249 of this chapter, except that they may be maintained at either the principal office of the principal operations base of the carrier:

(a) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip.

(b) The written confirmation, and accompanying passenger list, received from another carrier pursuant to § 208.202b; and a copy of its written request, and accompanying passenger list, to such other carrier for such confirmation.

11. Amend § 208.32(e) to read as follows:

§ 208.32 Tariffs and terms of service.

(e) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment prior to the commencement of any portion of the air transportation: *Provided, however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 208.6(c), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 30 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the

charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded.

12. Add a new § 208.202b, to read as follows:

§ 208.202b Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 208.32(e), shall be not less than 15 days prior to the departing flight, for a planeload charter, or not less than 45 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 208.6(c).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and obtain from such other carrier, not later than 15 days prior to departure of a planeload charter or not later than 45 days prior to departure of a less-than-planeload charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

13. Add a new § 208.202c, to read as follows:

§ 208.202c Air carrier to identify enplanements.

The air carrier shall make reasonable efforts to verify the identity of all enplaning charter participants, and the documentary source of such verification shall be noted on the passenger manifest: *Provided, however,* That in the case of international flights the identity of each enplaning charter participant shall be verified by means of his passport and the passport number shall be entered on the passenger manifest.

14. Amend § 208.215(a) to read as follows:

§ 208.215 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

15. Amend the table of contents of Part 212 by adding new §§ 212.25, 212.26, and 212.27 under Subpart B—Provisions Relating to Pro Rata Charters, the table as amended to read as follows:

Sec.	
212.25	Charter trips originating in the United States.
212.26	Filing of passenger lists and statements of supporting information.
212.27	Foreign air carrier to identify enplanements.

16. Amend § 212.7(a) by revising subparagraphs (3) and (4) and adding a new subparagraph (5), the section as amended to read as follows:

§ 212.7 Records and record retention.

- (a) * * *
- (3) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip originating outside of the United States.
- (4) Every statement of supporting information for each pro rata charter trip originating outside of the United States, and every proof of the commission paid to any travel agency by the carrier for each pro rata charter trip originating or terminating in the United States.
- (5) The written confirmation, and accompanying passenger list received from another carrier pursuant to § 212.25 (b); and a copy of its written request, and accompanying passenger list, to such other carrier for such confirmation.

17. Amend § 212.10(b) to read as follows:

§ 212.10 Terms of service.

(b) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment prior to the commencement of any portion of the air transportation: *Provided, however,* That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 212.8(b), the carrier shall require full payment of the total charter price,

including payment for the return portion of a round trip, not less than 30 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded.

18. Amend § 212.13 by numbering the existing section as paragraph (a), and adding a new paragraph (b), the section as amended to read as follows:

§ 212.13 Waiver.

(a) * * *

(b) A request for a waiver of any of the provisions of § 212.25 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

19. Add a new § 212.25, to read as follows:

§ 212.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 212.10(b) shall be not less than 15 days prior to the departing flight, for a planeload charter, or not less than 45 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 212.8(b).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and obtain from such other carrier, not later than 15 days prior to departure of a planeload charter, or not later than 45 days prior to departure of a less-than-planeload charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

20. Add a new § 212.26, to read as follows:

§ 212.26 Filing of passenger lists and statements of supporting information.

(a) Not later than 20 days prior to the departure date of each on-route charter trip originating in the United States, the carrier shall file with the Board each of the following documents, marked for the attention of the Bureau of Enforcement:

(1) Its statement of supporting information pursuant to § 212.24, together with the statements of supporting information furnished to the carrier by the travel agent and the chartering organization pursuant to § 212.31 and § 212.47, respectively; and

(2) The passenger list furnished to the carrier pursuant to § 212.45.

(b) Not later than 20 days prior to the departure date of a return flight from the United States of a round trip which originated in a foreign country, the carrier shall file with the Board, marked for the attention of the Bureau of Enforcement, a list of the names, U.S. addresses, and U.S. telephone contacts of the passengers whom the filing carrier transported to the United States on the inbound flight.

21. Add a new § 212.27, to read as follows:

§ 212.27 Foreign air carrier to identify enplanements.

The identity of each enplaning charter participant shall be verified by means of his passport and the passport number shall be entered on the passenger manifest.

22. Amend § 212.45(a) to read as follows:

§ 212.45 Passenger lists.

(a) Not later than 30 days prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

23. Amend the table of contents of Part 214 by adding new §§ 214.18, 214.19, and 214.19a under Subpart A—Provisions Relating to Pro Rata Charters, the table as amended to read as follows:

Sec.	
214.18	Charter trips originating in the United States.
214.19	Filing of passenger lists and statements of supporting information.
214.19a	Foreign air carriers to identify enplanements.

24. Amend § 214.3 by numbering the existing section as paragraph (a), and adding a new paragraph (b), the section as amended to read as follows:

§ 214.3 Waiver.

(a) * * *

(b) A request for a waiver of any of the provisions of § 214.18 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

25. Amend § 214.6(a) by revising subparagraphs (2) and (4), and adding new subparagraph (5), the section as amended to read as follows:

§ 214.6 Record retention.

(a) * * *

(2) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter originating outside of the United States: 2 years.

(4) Every statement of supporting information for each pro rata charter trip originating outside of the United States: 2 years.

(5) The written confirmation, and accompanying passenger list, received from another carrier pursuant to § 214.18(b), and a copy of the written request, and accompanying passenger list, to such other carrier for such confirmation: 2 years.

26. Amend § 214.14(b) to read as follows:

§ 214.14 Terms of service.

(b) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation: *Provided, however,* That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 214.7(b), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 30 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded.

27. Add a new § 214.18, to read as follows:

§ 214.18 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 214.14(b), shall be not less than 15 days prior to the departing flight, for a planeload charter, or not less than 45 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 214.7(b).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and obtain from such other carrier, not later than 15 days prior to departure of a planeload charter, or not later than 45 days prior to departure of a less-than-planeload charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

28. Add a new § 214.19, to read as follows:

§ 214.19 Filing of passenger lists and statements of supporting information.

(a) Not later than 20 days prior to the departure date of each charter trip originating in the United States, the carrier shall file with the Board each of the following documents, marked for the attention of the Bureau of Enforcement:

(1) Its Statement of Supporting Information pursuant to § 214.17, together with the Statements of Supporting Information furnished to the carrier by the travel agent and the chartering organization pursuant to § 214.22 and § 214.37, respectively; and

(2) The passenger list furnished to the carrier pursuant to § 214.35.

(b) Not later than 20 days prior to the departure date of a return flight from the United States of a round trip which

originated in a foreign country, the carrier shall file with the Board, marked for the attention of the Bureau of Enforcement, a list of the names, U.S. addresses, and U.S. telephone contacts of the passengers whom the filing carrier transported to the U.S. on the inbound flight.

29. Add a new § 214.19a, to read as follows:

§ 214.19a Foreign air carrier to identify enplanements.

The identity of each enplaning charter participant shall be verified by means of his passport and the passport number shall be entered on the passenger manifest.

30. Amend § 215.35 to read as follows:
§ 215.35 Passenger lists.

(a) Not later than 30 days prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

PART 249—PRESENTATION OF AIR CARRIER ACCOUNTS, RECORDS, AND MEMORANDA

31. Amend § 249.8 by modifying Item 12 of the "Category of records" and adding a new Item 15(c), the section as amended to read as follows:

§ 249.8 Period of preservation of records by supplemental air carriers.

Category of records	Period to be retained
12. Names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip.	2 years.
15. The following documents	
(c) Written confirmation and accompanying passenger list, and copy of request therefor and copy of accompanying passenger list, all pursuant to § 208.202b.	Do.

32. Amend § 249.12(c) by revising subparagraphs (3) and (4) and adding a new subparagraph (5), the section as amended to read as follows:

§ 249.12 Period of preservation of records by foreign air carriers.

(3) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip

originating outside of the United States: 2 years.

(4) Every statement of supporting information for each pro rata charter trip originating outside of the United States, and every proof of the commission paid to any travel agent by the carrier for each pro rata charter trip originating or terminating in the United States: 2 years.

(5) The written confirmation, and accompanying passenger list, received from another carrier pursuant to § 212.25 (b), and a copy of its written request, and accompanying passenger list, to such other carrier for such confirmation: 2 years.

33. Amend § 249.13 by revising paragraph (c) of Item 302 of the "Category of records" and adding a new paragraph (e) to said Item 302, the section as amended to read as follows:

§ 249.13 Period of preservation of records by certificated route air carriers.

Category of records	Period to be retained
302 Reservations, reports and records:	
(c) Names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip.	2 years.
(e) Written confirmation and accompanying passenger list, and request therefor and accompanying passenger list, all pursuant to § 207.25.	Do.

[FR Doc.72-4353 Filed 3-21-72;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 19418]

CABLE TELEVISION SYSTEMS

Proposed Importation of Radio Signals; Extension of Time

Order. In the matter of amendment of Part 76 of the Commission's rules and regulations to govern importation of radio signals by cable television systems; Docket No. 19418.

1. The Rocky Mountain Broadcasters Association, by petition dated March 10, 1972, requests an extension of time for filing comments and reply comments in Docket No. 19418. Comments and reply comments were scheduled to be filed March 16, 1972, and April 6, 1972, respectively, and RMBA proposes, that these dates be changed to April 3, 1972, and April 24, 1972.

2. In support of the requested extension, RMBA alleges that the deadline of March 13, 1972, for petitions for reconsideration of the Cable Television Report and Order, FCC 72-108, has kept RMBA and its counsel occupied since February 3, 1972, when both the report

and the notice of proposed rule making in this matter were released (37 F.R. 3192, February 12, 1972).

3. In view of the fact that RMBA filed the "Petition for Institution of Rule Making Barring or Restricting Importation of Non-Local Radio Station Signals by CATV Systems" which resulted in the present rule making, it appears that the public interest would be served by granting the requested extension of time so that RMBA and its counsel will be able to devote an adequate amount of time and attention to preparation of comments.

4. Accordingly, it is ordered. Pursuant to § 0.289(c)(4) of the Commission's rules, That the "Petition for Extension of Time to File Comments" filed March 10, 1972, is granted, and that the times for filing comments and reply comments in the above-captioned proceeding are extended until April 3, 1972, and April 24, 1972, respectively.

Adopted: March 15, 1972.

Released: March 15, 1972.

[SEAL] SOL SCHILDHAUSE,
Chief, Cable Television Bureau.

[FR Doc.72-4342 Filed 3-21-72;8:47 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-7035]

JOINT ENTERPRISES OR ARRANGEMENTS AND CERTAIN PROFIT-SHARING PLANS

Proposed Combination for Execution of Purchase or Sale of Securities

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of Rule 17d-1 (17 CFR 270.17d-1) under the Investment Company Act of 1940, as amended (Act) by the adoption of a rule, to be designated Rule 17d-1(d)(4). Proposed Rule 17d-1(d)(4) permits an order of a registered investment company for the purchase or sale of securities to be combined together with the orders of other persons, for the sole purpose of execution, in order to achieve the best overall execution.

Section 17(d) (15 U.S.C. 80a-17(d)) of the Act provides, in part, that:

It shall be unlawful for any affiliated person or principal underwriter for a registered investment company * * * or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant * * *

Rule 17d-1 prohibits any affiliated person or principal underwriter for any registered company and any affiliated person of such a person or principal underwriter, acting as principal participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been granted by order of the Commission. In passing upon such applications, the Commission considers whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Section 17(d) of the Act, and Rule 17d-1(a) (17 CFR 270.17d-1(a)) thereunder, may be deemed to prohibit affiliated persons of, and principal underwriters for, a registered investment company or affiliated persons of such persons (all such persons collectively referred to hereinafter as "related persons") from combining, for the purpose of execution, their orders for the purchase or sale of securities with an order of such registered investment company for the purchase or sale, respectively, of securities of the same class, unless an order of the Commission granting permission to effect such transaction has been issued.

In December of 1968, the New York Stock Exchange and other major stock exchanges amended their rules to permit lower brokerage commissions on volume transactions. During April and May 1971, the New York Stock Exchange and other major stock exchanges amended their rules to eliminate fixed commission charges on portions of brokerage orders in excess of \$500,000.

In February of 1972, the Commission issued a statement on the future structure of the securities markets which called for competitive rates, on that portion of an order exceeding \$300,000, to be put into effect in April 1972, and indicated that it had also determined to move toward the point at which commission rates on all orders of institutional size will be, at least in part, subject to competitive rates.

By reason of volume discounts, negotiated commission rates on portions of transactions in excess of a certain size, and possibly advantageous prices with respect to large volume transactions, it may be in the interest of a registered investment company to combine its order for the sale or purchase of a security with the orders of other persons for the sole purpose of execution in order to achieve the best overall execution.

Under the present rule, such combination, to the extent it involved the orders of a registered investment company and the orders of a related person, would

be prohibited unless permitted by an order of the Commission. Because of rapidly changing market factors it would not be feasible to file an application for an order to permit such combination and, therefore, the effect of the present rule is that a registered investment company loses the possible advantage of combining its order for the purchase or sale of a security with the order of a related person.

Proposed Rule 17d-1(d)(4) is intended, therefore, to permit the combination of the orders of related persons of a registered investment company, with the orders of such registered investment company, solely for the purpose of execution in order to achieve the best overall execution.

Under the proposed rule an arrangement for the combination of an order or orders of a related person of a registered investment company with an order or orders of such investment company may be entered into only if the arrangement is likely to produce a benefit for the registered investment company.

In addition, proposed Rule 17d-1(d)(4) is intended to apply only to transactions which are subject to section 17(d) of the Act and Rule 17d-1 thereunder solely because a registered investment company (or one or more series of a registered investment company) and a related person have combined orders for purchases or sales of securities for the sole purpose of execution. A transaction which is subject to section 17(d) and Rule 17d-1 by virtue of some other reason is not within the proposed rule.

Furthermore, the proposed rule should not be deemed to obviate any fiduciary duty of a related person to a registered investment company or companies. If, for example, a related person of an investment company has a fiduciary duty to such company to give priority to the execution of orders of such company over the execution of orders of such related person, such duty would remain unaffected by the proposed rule. The continued observance of such fiduciary duty will avoid exposing the registered investment company to the risk of being disadvantaged by (1) the sharing with another person or persons of the registered investment company's opportunities to buy or sell securities and (2) the adverse enlargement of the supply of, or the demand for, a class of securities which the registered investment company wants, respectively, to sell or buy.

To insure that the participation of the registered investment company in the combination is not less advantageous to the investment company than the participation of other persons in the combination is to such other persons, proposed Rule 17d-1(d)(4) requires that the net unit price paid for securities purchased, or secured for securities sold, shall be the same for each person whose order is combined and that the securities purchased or sold shall be allocated among all participants in such combination in proportion to their respective orders.

The proposed rule would be adopted pursuant to the authority granted to the

Commission in sections 17(d) and 38(a) of the Act.

Commission action. The Commission proposes to amend § 270.17d-1 of Chapter II of Title 17 of the Code of Federal Regulations by adding a new subparagraph (4) to paragraph (d) of said section reading as follows:

As proposed to be amended § 270.17d-1 would read as follows:

§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(a) No affiliated person of or principal underwriter for any registered investment company (other than a company of the character described in section 12(d)(3)(A) and (B) of the act) and no affiliated persons of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this

section with respect to any of the following:

(1) Any profit-sharing, stock option or stock purchase plan provided by any controlled company which is not an investment company for its officers, directors or employees, or the purchase of stock or the granting, modification or exercise of options pursuant to such a plan, provided:

(i) No individual participates therein who is either: (a) An affiliated person of any investment company which is an affiliated person of such controlled company; or (b) an affiliated person of the investment adviser or principal underwriter of such investment company; and

(ii) No participant has been an affiliated person of such investment company, its investment adviser or principal underwriter during the life of the plan and for six months prior to, as the case may be: (a) Institution of the profit-sharing plan; (b) the purchase of stock pursuant to a stock purchase plan; or (c) the granting of any options pursuant to a stock option plan.

(2) Any plan provided by any registered investment company or any controlled company for its officers or employees if such plan has been qualified under section 401 of the Internal Revenue Code of 1954 and all contributions paid under said plan by the employer qualify as deductible under section 404 of said Code.

(3) Any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("Investments"), made by a bank and a small business investment company (SBIC) licensed under the Small Business Investment Act of 1958, whether such transactions are contemporaneous or separated in time, where the bank is an affiliated person of either (i) the SBIC or (ii) an affiliated person of the SBIC; but reports containing pertinent details as to Investments and transactions relating thereto shall be made at such time, on such forms and by such persons as the Commission may from time to time prescribe.

(4) A transaction whereby any registered investment company (or one or more series of a registered investment company) and any affiliated person of such investment company or principal underwriter for such investment company or any affiliated person of such affiliated person or principal underwriter (hereinafter collectively referred to as "related persons"), have combined orders for purchases or sale of securities for the sole purpose of execution in order to achieve the best overall execution, and which transaction is not otherwise subject to paragraph (a) of this section: *Provided, however,* That (i) the net unit price paid for securities purchased, or received for securities sold, is the same for each person whose order is so combined (hereinafter referred to as a "participant"); (ii) the securities purchased or sold are allocated among all participants in such transaction in proportion to their respective orders, and

(iii) the transaction is pursuant to an arrangement that is likely to produce a benefit for the registered investment company.

Notwithstanding the foregoing, nothing herein shall be deemed to obviate any fiduciary duty of any related person to a registered investment company or companies.

All interested persons are invited to submit their views and comments on proposed Rule 17d-1(d)(4) to the Securities and Exchange Commission, Washington, D.C. 20549, on or before April 14, 1972. All such communications should refer to File No. S7-430 and they will be available for public inspection.

(Secs. 17(d), 38(a), 54 Stat. 815, 841, 15 U.S.C. 80a-17(d), 80a-37(a))

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

MARCH 9, 1972.

[FR Doc. 72-4322 Filed 3-21-72; 8:45 am]

PAY BOARD

[6 CFR Part 201]

DEFERRED AND MERIT INCREASES

Proposed Treatment

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Chairman of the Pay Board. Since the rules set forth in Part 201 are essential to the expeditious implementation of the Economic Stabilization Act of 1970, as amended, the Board finds that the time for the submission of comments or suggestions by interested persons in accordance with usual rule making procedures is impracticable and that good cause exists for promulgating them in less than 30 days. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Chairman of the Pay Board, Attention: Office of General Counsel, 2000 M Street NW., Washington, DC 20508, by April 3, 1972. Any written comments or suggestions not specifically designated as confidential may be inspected by any person upon written request.

The proposed regulations are to be issued pursuant to the authority vested in the Pay Board by the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971, as amended), Executive Order No. 11640 (37 F.R. 1213, January 27, 1972), and Cost of Living Council Order No. 3 (36 F.R. 20202, October 16, 1971, as amended).

GEORGE H. BOLDT,
Chairman of the Pay Board.

In order to conform the regulations relating to the Stabilization of Wages

and Salaries (6 CFR Part 201) to the Pay Board policy decisions of February 8, 1972, announced in News Release PB-47 (a copy of the resolution referred to in such release appears as set forth below) and February 9, 1972, announced in News Release PB-48, such regulations are amended as follows:

PARAGRAPH 1. Section 201.11 is amended by adding a new subparagraph (5) to paragraph (a) and by revising paragraphs (b) and (c). These added and revised provisions read as follows:

§ 201.11 Criteria for exceptions.

(a) * * *

(5) *Merit increases*—(i) *Exception for qualified merit plans contained in successor employment contracts or successor pay practices.* Wage and salary increases granted pursuant to a qualified merit plan (as defined in subdivision (ii) of this subparagraph), provided for in an employment contract or pay practice previously set forth which existed prior to November 14, 1971, and which is continued in a successor employment contract or successor pay practice effective after November 13, 1971, without any changes of terms or administrative practice shall (subject to the provisions of paragraphs (b) and (c) of this section) constitute an exception to the general wage and salary standard. For purposes of the preceding sentence, a change in the maximum or minimum terminal points of a pay rate range in a qualified merit plan shall not be deemed a change of terms if the ratio of such maximum to such minimum terminal point is not increased.

(ii) *Qualified merit plan defined.* For purposes of subdivision (i) of this subparagraph and § 201.14(b), the term "qualified merit plan" means a merit plan which is reduced to writing, but not necessarily communicated to employees, and which—

(a) Applies to particular jobs, job classifications, or positions with respect to which the duties and responsibilities of employees are specified,

(b) Specifies merit pay rate ranges with respect to such jobs, job classifications, or positions,

(c) Clearly defines policies and establishes practices (with respect to review of an employee's performance) for determining merit pay and the size and frequency of merit pay increases with respect to such jobs, job classifications, or positions, and

(d) Establishes a system of administrative control.

Notwithstanding the preceding sentence, a qualified merit plan need not be in writing to the extent that the factors referred to in (a) through (d) of this subdivision (ii) are readily ascertainable from past practice.

(iii) *Special rules.* With respect to an appropriate employee unit, wage and salary increases granted pursuant to a merit plan provided for in an employment contract existing prior to November 14, 1971, and continued in a successor employment contract effective prior to (date of publication of final adoption of this notice of proposed rule

making in FEDERAL REGISTER) shall (notwithstanding the provisions of paragraphs (b) and (c) of this section) be excluded from the computation of aggregate wage and salary increases. Such merit plan may continue to operate according to the following rules: Any increases applied to a rate range under such merit pay plan shall be considered a general increase in wages and salaries under the regulations in this chapter. However, individual increases within the rate range under such plans shall not be considered a wage and salary increase under such regulations.

(b) *Overall limitation on exceptions.* Except as provided in paragraph (a) (4) and (5) (iii) of this section, the maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit, whether any or all of the above exceptions are applicable, shall not exceed 7 percent.

(c) *Procedures for exceptions.* Exceptions pursuant to subparagraphs (1) and (2) of paragraph (a) of this section shall require prior approval of the Pay Board (or its delegate). Exceptions pursuant to subparagraphs (3), (4), and (5) of paragraph (a) of this section shall be self-executing for Category II and III wage and salary increases, but reports of all such wage and salary increases shall be made to the Pay Board (or its delegate). Category I wage and salary increases, including those pursuant to subparagraphs (3), (4), and (5) of paragraph (a) of this section shall require prior approval of the Pay Board (or its delegate).

PAR. 2. Section 201.14 is revised to read as follows:

§ 201.14 Wage and salary increases effective after November 13, 1971.

(a) *In general.* Employment contracts and pay practices previously set forth which existed prior to November 14, 1971, will be allowed to operate according to their terms. However, any such specific contract or pay practice, when challenged by a party at interest or by five or more members of the Pay Board, is subject to a review to determine whether any wage and salary increase granted pursuant to such contract or pay practice is unreasonably inconsistent with the criteria established by the Board. In the event of a challenge, these terms shall be allowed to remain in effect unless and until the Pay Board rules otherwise. Notwithstanding any other provision of this chapter (except for paragraph (b) of this section), a pay practice which does not, by its own terms, expire earlier, will be deemed to expire on November 13, 1972.

(b) *Merit plans.* A merit plan provided for in an employment contract or a pay practice, described in paragraph (a) of this section, will be allowed to operate according to its terms in accordance with paragraph (a) of this section; provided however, that—

(1) A qualified merit plan as defined in subparagraph (5) (ii) of § 201.11(a) provided for in a pay practice, will be deemed to be continued in a successor pay practice referred to in subparagraph (5) (i) of § 201.11(a) on November 14, 1972, un-

less such continuation has actually taken place earlier or such pay practice has otherwise been terminated, and

(2) A non-qualified merit plan provided for in a pay practice which does not, by its own terms, expire earlier, will be deemed to expire on November 13, 1972.

(c) *Board review.* For purposes of the review referred to in paragraph (a) of this section, the Pay Board will consider such factors as changes in productivity and the cost of living, on-going collective bargaining and pay practices, the equitable position of the employees involved, and such other factors as are necessary to foster economic growth and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw material, localized shortages of labor, and windfall profits.

(d) *Notice requirement.* Notwithstanding the provisions of Part 202 of this chapter, notice shall be given to the Pay Board at least 60 days prior to the scheduled date of any increase to be paid pursuant to an employment contract or pay practice referred to in this section when such increase would affect an appropriate employee unit of 1,000 or more employees and would cause the total of such increases to be in excess of seven percent (unless such increase has been otherwise prenotified or reported pursuant to Part 202 of this chapter). However, in the case of any increase scheduled to take effect before (90 days after date of publication of final adoption of this notice of proposed rule making in FEDERAL REGISTER), with respect to which a notice would be required pursuant to the preceding sentence, such notice shall instead be given to the Pay Board before (30 days after date of publication of final adoption of this notice of proposed rule making in FEDERAL REGISTER). For purposes of the notice requirement of this paragraph, a fair and reasonable estimate shall be used in determining whether wage and salary adjustments required pursuant to contract or pay practices which are contingent (such as cost-of-living adjustments) will cause the total of such increases to exceed 7 percent.

(e) *Notification instructions.* The notice required by paragraph (d) of this section may be submitted on forms provided by the Pay Board. Such notice shall be accompanied by a full statement of facts prepared by a party at interest showing good cause as to why such increase is not unreasonably inconsistent with the standard, exceptions, or the review criteria referred to in paragraph (c) of this section.

PAR. 3. Appendix B following part 201 is amended by deleting therefrom item (6), and by revising item (2) to read as follows:

APPENDIX B—INTERPRETIVE DECISIONS ADOPTED BY THE PAY BOARD

(2) *Agreements in the Construction Industry (Adopted November 12, 1971.)* Wage increases under existing or future agreements in the construction industry require prenotification and approval by the Construction Industry Stabilization Committee before they can be put into effect.

In its February 8, 1972, policy decision (announced in News Release PB-47) the Pay Board adopted a special method of computation to be used in the case of qualified, or unqualified, merit plans or practices. This special "double snapshot" and "compensating adjustment" method will be published in a subsequent issue of the FEDERAL REGISTER as part of regulations relating to computation of annual increases in base compensation.

RESOLUTION ON MERIT INCREASES (ADOPTED FEBRUARY 8, 1972)

Resolved: That the Pay Board hereby adopts the following policy decision with respect to merit raises:

1. The policy decision on this subject, adopted November 22, 1971, appearing as Item (6), Appendix B—Interpretive Decisions Adopted by the Pay Board (6 CFR 201) is hereby revoked, except as provided below in paragraph 6.

2. Merit increases provided for in contracts or pay practices negotiated or instituted subsequent to November 13, 1971, are governed by the General Wage and Salary Standard (§ 201.10), except as provided below.

3. (a) Exceptions to the General Wage and Salary Standard may be sought on a tandem relationship of other basis, as provided by § 201.11.

(b) That pay practices previously set forth within the meaning of § 201.14 which do not expire earlier will be deemed to expire on November 13, 1972, except as they may qualify as an exception under the criteria set forth in section 5, below.

4. Merit increases provided for in existing contracts and pay practices previously set forth prior to November 14, 1971, are governed by § 201.14.

5. Merit plans under contracts and pay practices shall constitute an exception under § 201.11 of the Pay Board regulations, subject to paragraph (b) of that section, if they meet the following criteria:

(a) The merit plan is continued without change of terms or administrative practice from the preceding contract or pay practice, and

(b) If the pay range is changed, the ranges may not be widened, i.e., the ratio of the maximum to the minimum of each range may not be increased.

(c) The merit plan is one which:

(1) Applies to particular jobs, job classifications, or positions with respect to which the duties and responsibilities of employees are specified;

(2) Specifies rate ranges with respect to such jobs, job classifications, or positions;

(3) Clearly defines policies and establishes practices for determining pay and the size and frequency of increases with respect to such jobs, job classification, or positions; and

(4) Establishes a system of administrative control.

Such exceptions shall be self-executing and handled in accordance with the procedure set forth in paragraph (c) of § 201.11 in the same manner as that which applies to subparagraphs (3) and (4) of Paragraph (a) of § 201.11.

Applications for exceptions which exceed the maximum amount allowed under § 201.11(b) shall be made to the Pay Board or its delegate and shall be reviewed under § 201.11(d).

6. Where, prior to the effective date of the final regulations, an existing contract with a merit plan expired and was replaced with a new contract executed prior to the effective date of the final regulations, for merit plan purposes it shall be governed by Item 6, Appendix B—Interpretive Decision (6 CFR Part 201) which was in effect at that time.

7. Method of computation for increases under merit plans which meet the criteria of paragraph 5 and other merit plans or practices:

(a) For purposes of calculating the allowable amount of such wage and salary increases for an appropriate employee unit, the average wage and salary base for the pay period ending on or immediately preceding the day prior to the first day of the appropriate 12-month period shall be compared with the average wage and salary base for the pay period ending on or immediately preceding the last day of the appropriate 12-month period.

(b) If, by the end of an appropriate wage year, the average wage and salary base for an appropriate employee unit is affected by changes in the composition of the unit with respect to employee average length-of-service or average skill levels, then compensating adjustments may be made in the otherwise permissible average wage and salary base increase for the unit in such 12-month period. Such adjustments are subject to explanation and verification following required reporting procedures for the appropriate employee unit involved if applicable for the

category unit involved. This paragraph shall apply to all merit plans so long as administered in good faith.

8. Effective date of policy decision: That this policy decision will not become effective until final regulations have been published in the FEDERAL REGISTER to implement this decision. Pending the final regulations, a notice of proposed rule making containing the substance of this policy decision will be published in the FEDERAL REGISTER with a period of 10 days for the public to have an opportunity to comment.

[FR Doc.72-4533 Filed 3-21-72; 11:56 am]

Notices

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1971 Rev., Supp. 15]

AMERICAN AGRICULTURAL INSURANCE COMPANY

Surety Company Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of \$1,209,000 has been established for the company.

Name of Company, Location of Principal Executive Office, and State in Which Incorporated

AMERICAN AGRICULTURAL INSURANCE
COMPANY
PARK RIDGE, ILLINOIS
INDIANA

Certificates of Authority expire on June 30 each year, unless sooner revoked, and new Certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: March 16, 1972.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc. 72-4368 Filed 3-21-72; 8:48 am]

Internal Revenue Service

[Pay Board Ruling 1972-16]

ACCRUED INTEREST

Pay Board Ruling

Facts. Employer A and his employees agreed on August 10, 1971, to a \$0.15 per hour increase. The wage increase was not permitted to become effective due to the Phase I freeze. Employer A deposited the agreed upon increased wages in an interest bearing account pending disposition of the question of retroactivity under the Economic Stabilization program.

Issue. May accrued interest on wages set aside for employees be paid them with their retroactive wage increase?

Ruling. Employer A may pay the accrued interest to his employees. The fund is analogous to a "forced savings" program; interest in such a program accrues and is payable to employees. Further,

the cost to the employer is not increased beyond the amount of the retroactive increase.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: March 17, 1972.

LEE H. HENKEL, Jr.,
Acting Chief Counsel,
Internal Revenue Service.

Approved: March 17, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc. 72-4333 Filed 3-21-72; 8:46 am]

[Pay Board Ruling 1972-17]

PHASE ONE EXCEPTION REQUEST AS A PAY PRACTICE

Pay Board Ruling

Facts. On August 20, 1971, Employer A determined that certain of his employees were receiving inadequate compensation for their services. On August 25, he applied for an exception with the Office of Emergency Preparedness on the grounds that severe inequities would result if the raise could not be put into effect. His request was denied.

On November 20, 1971, Employer A reapplied for an exception, basing his application on the fact that the proposed increase was above the 5.5 percent wage standard.

Issue. May the employer treat his original request for an exception during Phase I as a "pay practice previously set forth"? Economic Stabilization Regulations, 6 CFR 201.14, 36 F.R. 21791 (Nov. 13, 1971).

Ruling. Yes. Section 201.14 states that "existing contracts" and "pay practices previously set forth" prior to November 13, 1971, will be allowed to operate after that date subject to challenge by a party at interest or five or more members of the Pay Board. In order for Employer A to treat his request under Phase I as "a pay practice previously set forth," he must have informed the specified employees that a raise was forthcoming and that such raise would take effect if and when his exception request was granted.

This ruling has been approved by the General Counsel of the Pay Board.

Dated: March 17, 1972.

LEE H. HENKEL, Jr.,
Acting Chief Counsel,
Internal Revenue Service.

Approved: March 17, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc. 72-4335 Filed 3-21-72; 8:46 am]

[Pay Board Ruling 1972-18]

RIGHT TO APPEAL ADVERSE DETERMINATION

Pay Board Ruling

Facts. A party at interest is claiming authority to make payment of a wage increase of 12 percent pursuant to Economic Stabilization Regulations, 6 CFR 201.15(a), 37 F.R. 1242 (January 27, 1972), which states that any wage and salary increases which have been or would be withheld under the authority granted by the Act are lawfully due and payable, if a determination is made that:

* * * [S]uch increases were provided for by law, contract, agreement or established practice prior to August 15, 1971, and that prices have been advanced, productivity increased, taxes have been raised, appropriations have been made or funds have otherwise been raised or provided for in order to cover such increases.

The party at interest applied to the Internal Revenue Service for a determination that the requirements of Regulations § 201.15(a), supra, had been met.

The service made a determination that funds had not been raised or provided for in order to cover a full 12-percent increase, and hence, the increase was not authorized by § 201.15(a), supra. Subsequent to this determination, the party at interest paid the full 12-percent increase and filed a notice of appeal to the Pay Board pursuant to Economic Stabilization Regulations, 6 CFR 205.21, 37 F.R. 1004 (January 21, 1972).

Issue. Can a party at interest file a notice of appeal with the Pay Board when he is in violation of a determination made by the Internal Revenue Service?

Ruling. No. Economic Stabilization Regulations, 6 CFR 205.21, 37 F.R. 1004 (January 21, 1972) states that any person aggrieved by an action of the IRS except those persons found by the IRS to be in violation of the Act or Regulations, may appeal to the Pay Board. A party at interest is in violation of the Economic Stabilization Regulations if he pays a wage increase that is not authorized by the regulations. Pursuant to the IRS final determination in this situation, any wage increase paid in conflict with the determination would constitute a violation of the regulations.

Accordingly, the party at interest by paying the full 12-percent increase is in violation of the regulations and consequently may not file an appeal with the Pay Board.

This ruling has been approved by the general counsel of the Pay Board.

Dated: March 17, 1972.

LEE H. HENKEL, JR.,
Acting Chief Counsel,
Internal Revenue Service.

Approved: March 17, 1972.

SAMUEL R. PIERCE, JR.,
General Counsel,
Department of the Treasury.

[FR Doc.72-4334 Filed 3-21-72;8:46 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

HARRY H. MOCHON, JR.

Appointee's Statement of Financial Interests

MARCH 14, 1972.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Harry H. Mochon, Jr.

Name of employing agency: Department of the Interior, Defense Electric Power Administration.

The title of the appointee's position: Director, DEPA Area 1.

The name of the appointee's private employer or employers: New England Power Exchange.

The statement of "financial interests" for the above appointee is enclosed.

ROGERS C. B. MORTON,
Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on February 14, 1972, as Director, DEPA Area 1, Defense Electric Power Administration, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

Northeast Utilities.
General Motors.
American Telephone & Telegraph.
Brascan, Ltd.
Photon, Inc.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

Dated: March 7, 1972.

HARRY H. MOCHON, JR.

[FR Doc.72-4330 Filed 3-21-72;8:46 am]

FINAL ENVIRONMENTAL IMPACT STATEMENT—PROPOSED TRANS-ALASKA PIPELINE

Notice of Availability

Notice is hereby given that a document entitled "Final Environmental Impact Statement—Proposed Trans-Alaska Pipeline" has been prepared by the Department of the Interior pursuant to section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. section 4332 (1970).

The Department of the Interior is the "lead agency" within the terms of paragraph 5(b) of the Council on Environmental Quality's Guidelines for Federal agencies in the preparation of statements on proposed Federal actions affecting the environment. 36 F.R. 7724 (1971).

The Statement has been forwarded to the Council on Environmental Quality, and copies of the Statement, including the comments of other Federal agencies and a related three volume economic and security analysis, are available for public inspection at the following locations:

Department of the Interior Library, 18th and C Streets NW., Washington, DC 20240.

General Services Administration Building, U.S. Geological Survey Library, 18th and F Streets NW., Washington, DC 20240.

Office of the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, AK 99501.

Office of the District Manager, 516 Second Avenue, Post Office Box 1150, Fairbanks, AK 99701.

Office of the Area Director, Bureau of Indian Affairs, Federal Building, Box 3-8000, Juneau, AK 99801.

Office of the Regional Director, Bureau of Outdoor Recreation, 1000 Second Street, Seattle, WA 98104.

Office of the Director, Portland Service Center, Bureau of Land Management, 710 Northeast Holladay Street, Post Office Box 3861, Portland, OR 97208.

Office of the Field Representative, U.S. Department of the Interior, Pacific Southwest Region, 450 Golden Gate Avenue, Box 36098, San Francisco, CA 94102.

Office of the Regional Oil and Gas Supervisor, U.S. Geological Survey, 7744 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

The Statement is contained in six volumes, and copies of it may be purchased from the National Technical Information Service (NTIS) as follows:

Order No.	Volume	Title	Price
PB-206 921-1.	1	Introduction and Summary	\$3.00
PB-206 921-2.	2	Environmental Setting of the Proposed Trans-Alaska Pipeline.	6.00
PB-206 921-3.	3	Environmental Setting Between Port Valdez, Alaska and West Coast Ports.	6.00
PB-206 921-4.	4	Evaluation of Environmental Impact.	9.00
PB-206 921-5.	5	Alternatives to the Proposed Action.	6.00
PB-206 921-6.	6	Consultation and Coordination with Others, Discussion of Points Raised During Review and Public Hearing Process, Attachments.	3.00
PB-206 921- (6 Vols.) Set.		Final Environmental Impact Statement—Proposed Trans-Alaska Pipeline.	30.00

An analysis of the economic and security aspects of the proposed trans-Alaska pipeline may be purchased from NTIS as follows:

Order No.	Volume	Title	Price
PB-205 744...	1	An Analysis of the Economic and Security aspects of the Trans-Alaska Pipeline (Summary).	\$4.75
PB-205 745...	2	An Analysis of the Economic and Security aspects of the Trans-Alaska Pipeline (Supporting Analyses).	4.75
PB-207 254...	3	An Analysis of the Economic and Security aspects of the Trans-Alaska Pipeline Energy and Policy Alternatives (Supplement).	3.00

In addition, a U.S. Coast Guard study, prepared at the Department of the Interior's request, on the potential for oil spillage from tankers carrying oil from the proposed pipeline terminal at Valdez, Alaska, to West Coast ports, is available for \$3.

Requests for any of the above documents should be sent, with a check or money order in the appropriate amount, to:

National Technical Information Service, U.S. Department of Commerce, 5282 Port Royal Road, Springfield, VA 22151.

Other documents pertinent to the proposed trans-Alaska pipeline system include:

Transcript of public hearings held in February 1971 in Washington, D.C., and in Anchorage, Alaska.

Written exhibits to the hearings.

Supplemental exhibits to the hearings.

Project description; submitted by the Alyeska Pipeline Service Co., with summary and supplements.

Description of marine transport system, Valdez to west coast ports, submitted by the Alyeska Pipeline Service Co.

Comments on the proposed trans-Alaska pipeline: State of Alaska report to the U.S. Department of the Interior, July 30, 1971.

Alaska Pipeline Report, Institute of Social, Economic, and Government Research, University of Alaska, August 1971 (report prepared for U.S. Department of the Interior).

Existing Environment of Natural Corridors from Prudhoe Bay, Alaska to Edmunton, Canada, U.S.G.S. Open-File Report, 1971.

Analysis of Future Demand for Crude Oil, Richard L. Gordon, 1971 (prepared for U.S. Department of the Interior).

Review of Reported Forecasts of U.S. Production of Crude Oil and Natural Gas Liquids from the Contiguous 48 States and the Southern Part of Alaska, USGS, 1971.

Analysis of Future Demand and Domestic Supply of Crude Oil, by Petroleum Administration for Defense (PAD) District, Bureau of Mines, October 1971.

Materials on economic and security aspects of the proposed trans-Alaska pipeline, prepared by Federal agencies other than the Department of the Interior, 1971.

A Study of the Impact of the Proposed Trans-Alaska Pipeline on the Alaska Native Population, prepared for the Bureau of Indian Affairs, July 1971.

The Environmental Consequences of the Proposed Oil Transport Between Valdez and Cherry Point Refinery, Canadian Government, August 1971.

Memorandum in Response to Canadian Government Submissions Re: Environmental Impact of the Tanker System Related to the Trans-Alaska Pipeline, Alyeska Pipeline Service Co., October 1971.

Marine Transportation Systems of the Trans-Alaska Pipeline System, U.S. Coast Guard, February 1972.

These documents have been and will continue to be available for public examination in the Department of the Interior Library, 18th and C Streets NW., Washington, DC. In addition, the first three items listed above have been and will continue to be available for public inspection at the Office of the State Director, Bureau of Land Management, Anchorage, Alaska, and at the Office of the District Manager, Bureau of Land Management, Fairbanks, Alaska.

The environmental impact statement and the related economic and security analysis have been prepared to provide information to the Secretary of the Interior and other Federal officers regarding the decisions on applications for permits to construct, operate, and maintain the proposed trans-Alaska pipeline.

No action will be taken on these applications before May 4, 1972.

ROGERS C. B. MORTON,
Secretary of the Interior.

MARCH 20, 1972.

[FR Doc.72-4449 Filed 3-21-72;8:50 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards VOLUNTARY PRODUCT STANDARDS Notice of Action on Proposed Withdrawal

In accordance with the provisions of § 10.12 of the Department's published "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as amended; 35 F.R. 8349, dated May 28, 1970), notice is hereby given of the withdrawal of nine standards identified below. Each of these standards, Commercial Standard (CS) and Simplified Practice Recommendation (R), has been found to be obsolete, no longer technically adequate, no longer acceptable to and used by the industry, or otherwise not in the public interest.

- CS 116-54 Homogenous-wall, bituminized-fiber drain, and sewer pipe.
- CS 226-59 Laminated-wall, bituminized-fiber drain, and sewer pipe.
- CS 270-65 Acrylonitrile-butadiene-styrene (ABS), plastic drain, waste, vent pipe, and fittings.
- CS 272-65 Polyvinyl chloride (PVC), plastic drain, waste, vent pipe, and fittings.
- CS 228-61 Styrene rubber plastic drain, sewer pipe, and fittings.
- CS 188-66 Cast-iron soil pipe and fittings.
- CS 143-60 Perforated vitrified clay pipe (standard and extra strength).
- CS 224-60 Vitrified clay sewer pipe (standard and extra strength).
- R 211-45 Clay sewer pipe and fittings.

Public notice of the Department's intention to withdraw these standards was published in the FEDERAL REGISTER on January 25, 1972, (37 F.R. 1130), and a 45-day period was provided for the submission of comments or objections concerning the proposed withdrawal of any of these standards. No objections to the Department's intention of withdrawing any of these standards have been received by the National Bureau of Standards.

The effective date for the withdrawal of these standards will be 60 days after the publication of this notice. This withdrawal action terminates the authority to refer to these standards as Voluntary Product Standards developed under the Department of Commerce Procedures.

LEWIS M. BRANSCOMB,
Director.

MARCH 16, 1972.

[FR Doc.72-4332 Filed 3-21-72;8:46 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 9411]

PREPARATIONS CONTAINING MECLIZINE AND PYRIDOXINE HYDROCHLORIDE FOR ORAL USE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

Bonadoxin Tablets and Drops, containing meclizine hydrochloride and pyridoxine hydrochloride; J. B. Roerig & Co. Division, Chas. Pfizer & Co., Inc., New York, N.Y. 10017 (NDA 9-411, NDA 10-095).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). The effectiveness classification and marketing status are described below.

A. Effectiveness classification. The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that:

1. Meclizine hydrochloride combined with pyridoxine hydrochloride lacks substantial evidence of effectiveness for nausea and vomiting of pregnancy.

2. Meclizine hydrochloride combined with pyridoxine hydrochloride is possibly effective for treatment of motion sickness, radiation sickness, vertigo associated with Meniere's syndrome, labyrinthitis, dizziness associated with cerebral arteriosclerosis, relief of symptoms of pylorospasm and/or colic of infancy, and for control of nausea and vomiting in other conditions.

B. Marketing status. 1. Within 60 days of the date of publication of this an-

nouncement in the FEDERAL REGISTER, the holder of any approved new drug application for which a drug is classified in paragraph A above as lacking substantial evidence of effectiveness is requested to submit a supplement to his application, as needed, to provide for revised labeling which deletes those indications for which substantial evidence of effectiveness is lacking. Such a supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new drug regulations (21 CFR 130.9 (d) and (e)) which permit certain changes to be put into effect at the earliest possible time, and the revised labeling should be put into use within the 60-day period. Failure to do so may result in a proposal to withdraw approval of the new drug application.

2. If any such preparation is on the market without an approved new drug application, its labeling should be revised if it includes those claims for which substantial evidence of effectiveness is lacking as described in paragraph A above. Failure to delete such indications and put the revised labeling into use within 60 days after the date of publication hereof in the FEDERAL REGISTER may cause the drug to be subject to regulatory proceedings.

3. The notice "Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study," published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273) describes in paragraphs (d), (e), and (f) the marketing status of a drug labeled with those indications for which it is regarded as possibly effective.

A copy of the Academy's report has been furnished to the firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 9411, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (Identify with NDA number):
Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original new drug applications: Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD-67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-60), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: March 10, 1972.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.72-4359 Filed 3-21-72;8:49 am]

CIVIL AERONAUTICS BOARD INTERNATIONAL AIR TRANSPORT ASSOCIATION

[Docket No. 23486; Order 72-3-58]

Order Regarding Fare Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of March 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 1-2 of the International Air Transport Association (IATA). The agreement, which has been assigned the above-designated CAB agreement number, was adopted by mail vote.

The agreement would extend the validity of the existing North Atlantic winter group inclusive tour fares, which the Board approved by Order 72-1-17, from March 31, 1972, to April 30, 1972. In support of this agreement, we are informed that these fares have been very successful in generating new traffic for all Atlantic carriers and that load factors and revenues can be substantially improved during April if this fare is extended.

In light of the apparent generative response to the winter group inclusive tour fares we believe that an extension of the validity of these fares by one month is warranted. The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, finds the subject agreement not to be adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Agreement CAB 22959 is hereby approved.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.72-4352 Filed 3-21-72;8:48 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN WOOL AND MAN-MADE
FIBER TEXTILE PRODUCTS PRO-
DUCED OR MANUFACTURED IN
THE REPUBLIC OF CHINA

Entry or Withdrawal From Warehouse
for Consumption

Correction

In F.R. Doc. 72-3690, appearing on page 5148 in the issue of Friday, March 10, 1972, the agency name should read as set forth above.

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19460; FCC 72-210]

A. P. ST. PHILIP, INC.

Memorandum Opinion and Order Designating Application for Hear- ing on Stated Issues

In the matter of application of A. P. St. Philip, Inc. for authorization of a new public Class III-B coast station to be located at Palmetto, Fla.; Docket No. 19460, File No. 137-M-L-71.

1. The above-captioned application is for authority to operate a new Class III-B public coast station in the Maritime Mobile Service. This class of station provides ship-shore radio-telephone common carrier service of a primarily local character. The applicant proposes to serve Tampa Bay and the Gulf of Mexico waters contiguous thereto.

2. The proposed service area of the applicant is already served by two existing stations licensed to Tampa Radio Marine Service. These existing stations are located at Tampa, Fla. and at St. Petersburg Beach, Fla. By a letter dated December 8, 1971, Tampa Radio Marine Service protested the grant of the subject application alleging, among other things, that there is no need for the proposed station. This letter is not denominated a petition to deny nor does it comply with the affidavit and service requirements of section 309(d) of the Federal Communications Act of 1934, as amended.

3. Notwithstanding the absence of a valid petition to deny, the subject application must be designated for hearing. Section 81.303(a) of the Commission's rules provides that an additional station of this class will not be authorized to serve solely an area in which service is already provided unless an affirmative showing of need therefor has been made. While the applicant has attempted to make such a showing in its application, we are unable to conclude that this showing is sufficient to satisfy the requirements of § 81.303 of the rules. Consequently, a substantial and material question of fact exists as to whether the grant of the subject application would be in the public interest, convenience, and necessity.

4. Except for the issues specified herein the applicant is otherwise qualified. The Chief, Safety and Special Radio Services Bureau, and the Chief, Common Carrier Bureau, are parties to this proceeding.

5. Accordingly, it is ordered, That the above-captioned application of A. P. St. Philip, Inc. is designated for hearing at a time and place to be specified in a subsequent order on the following issues:

a. To determine whether there is a need for the proposed facility at the proposed location taking into account existing services.

b. To determine whether the public interest, convenience, and necessity will

be served by the grant of the application.

6. It is further ordered, That the coverage areas of the proposed and existing facilities will be computed on the basis of the criteria contained in the Commission's notice of proposed rule-making in Docket 18944.

7. It is further ordered, That the burden of proof and the burden of proceeding with the introduction of evidence on the above issues will be on the applicant.

8. It is further ordered, That to avail themselves of an opportunity to be heard, A. P. St. Philip, Inc. and Tampa Radio Marine Service, pursuant to § 1.221(c) of the rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission in triplicate a written appearance stating their intention to appear on the date set for hearing and present evidence on the issues specified in this order.

Adopted: March 8, 1972.

Released: March 15, 1972.

FEDERAL COMMUNICATIONS
COMMISSION,²

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-4339 Filed 3-21-72;8:47 am]

[Dockets Nos. 19393-19395; FCC 72R-66]

QUINNIPIAC COLLEGE ET AL.

Memorandum Opinion and Order Enlarging Issues

In re applications of Quinnipiac College, Hamden, Conn., Docket No. 19393, File No. BPED-1115; St. Thomas Seminary, Hartford, Conn., Docket No. 19394, File No. BPED-1127; University of New Haven, Inc., West Haven, Conn., Docket No. 19395, File No. BPED-1152; for construction permits.

1. This proceeding involves the mutually exclusive applications of Quinnipiac College (Quinnipiac), St. Thomas Seminary (St. Thomas) and University of New Haven, Inc. (UNH) for an authorization to construct a new noncommercial educational FM station. The applications were designated for hearing on various issues by Commission Order, FCC 72-29, released January 7, 1972, 37 F.R. 945, published January 21, 1972. Presently before the Review Board is a petition to enlarge issues, filed February 7, 1972, by UNH, requesting issues against both Quinnipiac and St. Thomas to determine whether they have sufficient funds available to meet their proposed construction and first-year operating expenses.¹

² Commissioner H. Rex Lee absent.

¹ Also before the Review Board are: Comments, filed February 18, 1972, by the Broadcast Bureau; and an opposition, filed February 22, 1972, by St. Thomas; and a motion to dismiss petition to enlarge issues, filed on March 9, 1972, by petitioner. Upon careful consideration, the Board is of the view that said motion does not set forth an adequate basis for not considering the merits of the original petition. Accordingly, said motion will be denied.

2. In support of its request for a financial issue against Quinnipiac, petitioner asserts that Quinnipiac has not presented any documentation to support the claim that it has \$25,000 in existing capital to meet its estimate of \$22,178.01 for construction and first-year operating expenses. The balance sheet dated June 30, 1969, submitted with Quinnipiac's application on May 4, 1970, is, according to UNH, too remote in time to adequately establish that Quinnipiac has sufficient funds available to meet the proposed expenses. Further, UNH asserts, although Quinnipiac stated in its application that it was relying on \$10,000 from the college and \$25,000 from "individual donations," Quinnipiac has not shown the availability of any of these funds, or any resolution or other college action authorizing disbursement of the requisite funds to support the application. A financial issue is also warranted against St. Thomas, according to UNH, because it has failed to adequately demonstrate the availability of sufficient funds to meet its proposed \$150,014 estimate for construction costs and first-year operating expenses. UNH asserts that St. Thomas' reliance upon \$175,000 from the general funds of the Archdiocese of Hartford is misplaced because the funds derived from U.S. Treasury bills² which matured on November 30, 1970, have not been shown to be still available. Further, petitioner alleges, a letter dated May 29, 1970, from Archbishop Whealon, Archbishop of Hartford, stating that, "the budget of the Archdiocese is of such nature that operational expenses of the facility are assured," is inadequate to establish availability of funds by St. Thomas. In light of the "financial woes" of various Archdioceses, UNH asserts that it is difficult to imagine that the Archdiocese of Hartford is merely allowing the \$175,000 proceeds from the Treasury bills to languish away without putting it to some good use.

3. In opposition, St. Thomas points out that in exhibit 2 to its application in which it explains the use of Treasury Bills to meet the proposed construction and operation expenses, St. Thomas stated, " * * * [w]hen these Treasury bills mature, it is the intention of Archbishop Whealon to retain the proceeds in a fixed-principal type of investment to finance the equipment and operation of the FM radio station." The \$175,000, according to St. Thomas, remains invested in Treasury bills in compliance with the above quote from exhibit 2. An affidavit from Archbishop Whealon supports St. Thomas' allegations. UNH's suggestion that the Archdiocese may be in financial difficulties is unsupported, St. Thomas notes, and further is not relevant to the availability of funds by St. Thomas. St. Thomas concludes that

² St. Thomas indicated in its application that it intended to rely upon Treasury bills purchased March 2, 1970, to meet its proposed construction and first-year operating expenses.

it has available \$175,000, which is \$20,000 more than needed.

4. The Broadcast Bureau, in its comments, agrees with petitioner that the balance sheet submitted by Quinnipiac is too old to be useful in determining whether Quinnipiac is financially qualified. The Bureau, citing Atlantic Broadcasting Co., 5 FCC 2d 717 (1966), asserts that the Review Board has the authority to add an issue requiring Quinnipiac to provide updated evidence of its financial qualifications because no "reasoned analysis" of Quinnipiac's financial showing was made in the designation order.³ The Bureau, however, opposes the addition of an issue against St. Thomas, contending that Archbishop Whealon's letter of intention contains sufficient specificity to obviate any need for further inquiry into St. Thomas' financial qualifications. Further, the Bureau argues that UNH did not plead the required facts under § 1.229(c).

5. The showing required to establish financial qualifications for an applicant for a noncommercial broadcast facility is not as stringent as for a commercial operation. The reason behind the policy was expressed in NTA Television Broadcasting Corp., 22 RR 273 (1961), where the Commission stated:

In short, were we to apply rigidly to the noncommercial educational operator the standard required of the commercial operator in showing financial qualification, we think our action would preclude—unnecessarily and against the public interest—many worthwhile educational television endeavors. Accordingly, we require only a reasonable—not a stringent—showing on the part of educational applicants. 22 RR at 291.

The policy, however, does not excuse a noncommercial applicant from the burden of showing sufficient available funds to meet estimates for construction and first-year operating expenses. See, e.g., SRC, Inc., et al., 21 FCC 2d 901, 18 RR 2d 714 (1970). In the instant case, the Review Board agrees with the petitioner that Quinnipiac's outdated balance sheet raises a serious question as to whether Quinnipiac has available sufficient funds to meet its proposed construction and first-year operating expenses. A balance sheet should reflect the applicant's financial position at the time of filing. Cf. Warwick Broadcasting Corp., 15 FCC 2d 1015, 15 RR 2d 331 (1969). Quinnipiac's reliance upon a balance sheet covering a period ending some 11 months prior to the filing of its application and covering the year 1968 to 1969 is not a satisfactory indicator of Quinnipiac's ability to meet its proposed expenses. Moreover, as pointed out by the petitioner, Quinnipiac has supplied no information showing that the college has set the funds aside or otherwise made provision to provide for construction and first-year operating expenses. Compare Los Angeles Unified School District, 30 FCC 2d 547, 22 RR 2d 163 (1971). Quinnipiac did not respond

³ The Commission held in the designation order, "each of the applicants is qualified to construct, own and operate the proposed noncommercial FM broadcast station."

to the questions raised by UNH. The Board, therefore, is unable to resolve the questions raised by the petitioner, and an evidentiary exploration of this matter is required.

6. With respect to St. Thomas, the Board agrees with the Broadcast Bureau that UNH has relied on mere assumptions and has not submitted sufficient factual allegations to warrant addition of a financial issue against St. Thomas. See Folkways Broadcasting Co., Inc., FCC 72R-44, _____ FCC 2d _____, released February 25, 1972; and First Illinois Cable TV, Inc., 14 FCC 2d 232, 13 RR 2d 1121 (1968). St. Thomas, in its opposition pleading, has adequately shown that it has more than sufficient funds available to meet its proposed expenses (see paragraph 3) and that those funds are separated from the general funds of the Archdiocese of Hartford. Cf. Lester H. Allen, 17 FCC 2d 439, 16 RR 2d 19 (1969). The Board, therefore, believes that an issue against St. Thomas is unwarranted.

7. Accordingly, it is ordered, That the petition to enlarge issues, filed February 7, 1972, by the University of New Haven, Inc., is granted to the extent herein indicated, and is denied in all other respects; the motion to dismiss, filed March 9, 1972, by University of New Haven, Inc., is denied; and that the issues herein are enlarged to include the issue: To determine whether Quinnipiac College has available sufficient funds to construct and operate the proposed station for a period of 1 year.

8. It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof under the foregoing issue shall be on Quinnipiac College.

Adopted: March 10, 1972.

Released: March 14, 1972.

FEDERAL COMMUNICATIONS
COMMISSION,⁴

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-4340 Filed 3-21-72;8:47 am]

[Dockets Nos. 19345, 19346; FCC 72R-62]

TUNG BROADCASTING CO. AND ANDRES CALANDRIA

Memorandum Opinion and Order Enlarging Issues

In regard applications of Tung Broadcasting Co., Picayune, Miss., Docket No. 19345, File No. BPH-7285; Andres Calandria, Picayune, Miss., Docket No. 19346, File No. BPH-7331; for construction permits.

1. This proceeding, involving the mutually exclusive applications of Tung Broadcasting Co. (Tung) and Andres Calandria (Calandria) for a new FM broadcast facility at Picayune, Miss., was designated for hearing by Commission Order, FCC 71-1136, released November 5, 1971. The issues specified by the Commission include, among others, real party-in-interest and strike issues

⁴ Review Board Member Kessler absent.

against Calandria. Presently before the Review Board is a petition for enlargement of issues, filed November 26, 1971, by Tung,¹ requesting the addition of the following issues against Calandria: (1) Nondisclosure; (2) ineptness; (3) § 1.65; (4) misrepresentation; (5) abuse of process; (6) Suburban showing; and (7) an independent FM broadcast viability issue.²

Ineptness, § 1.65 and abuse of process issues. 2. Tung bases its requested ineptness, § 1.65 and abuse of process issues on the following allegations: (a) Calandria's response to Tung's petition to deny was untimely; (b) Calandria subsequently amended its financial and staffing proposals as a result of allegations in Tung's petition; (c) Calandria failed to comply with local notice requirements of § 1.580 of the Commission's rules; (d) Calandria failed to respond to a Commission letter concerning its main studio location within the prescribed 30 days and the resulting amendment was transmitted to Tung's counsel by letter, contrary to § 1.1201 of the Commission's rules; (e) Calandria filed an amendment acknowledging that the geographical coordinates for his proposed transmitter and main studio location were in error; and (f) Calandria's November 1, 1971, amendment indicated for the first time that Raymond Hebert would be assistant general manager and program director of the proposed station after Tung had noted in a supplement to its petition to deny that Hebert was not qualified to conduct parts of the ascertainment survey.

3. In opposition, Calandria states that he is new to the broadcast business and when he realized deficiencies in his application and corrected them, amendments became necessary to keep the Commission informed of the changes. In any event, Calandria asserts, he had the right to amend for any reason prior to the date of the designation. As to the delay in publication, Calandria places the blame upon the newspaper involved, but does not supply any supporting affidavits.³ He admits the error of a few seconds in his geographical coordinates and his delay in sending the August 25, 1971, amendment to Tung's counsel. However, Calandria states that the actual amendment was timely and attaches a letter from Martin I. Levy of the Broadcast Bureau extending the time for reply to the Com-

mission's letter of June 25, 1971, until the following August 25. Finally, as to Raymond Hebert's position as assistant general manager and program director, Calandria states that Hebert agreed to this arrangement on September 22, 1970. Calandria also states that Hebert's position will be primarily that of announcer-salesman and that he would only assume the duties of assistant general manager and program director if Calandria became ill. Therefore, in his original list of employees, Calandria states, he included Hebert only as an announcer-salesman.

4. The Broadcast Bureau opposes the addition of the ineptness issue because all of the alleged mistakes were pre-designation mistakes and were properly corrected as a matter of right pursuant to 47 CFR 1.522(a). In addition, the Bureau urges, the mistakes are minor and the Commission was aware of them at the time of designation and did not specify the issue now requested.

5. The Review Board is of the opinion that, although Calandria's handling of its application has not been without fault, none of the errors, considered alone or collectively, are of sufficient importance to warrant the addition of an ineptness issue. As we stated in Edward G. Atsinger III, 29 FCC 2d 443, 447, 21 RR 2d 1039, 1045 (1971): "It is well established that diligence or ineptness issues will be added only where an applicant's conduct has concerned relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence."⁴ The type of conduct necessary for the addition of such an issue is illustrated by the cases cited by Tung. Each case contained serious and repeated violations of important Commission Rules.⁵ Tung has not illustrated that such conduct was attributable to Calandria in the instant proceeding. Therefore, the Board will not add the requested issue.

6. In support of its request for a Rule 1.65 issue, Tung repeats the allegations described above (paragraph 2) and adds that Calandria failed to file an equipment proposal with his initial application. In opposition, Calandria states (via referral to paragraph 6, page 2, of his Reply to Petition to Deny, filed February 18, 1971) that failure to attach the equipment letter of November 6, 1970, to the original application was inadvertent; the letter was filed with an amendment of February 18, 1971. The Broadcast Bu-

reau opposes the addition of the issue, as noted above, and with regard to Rule 1.65, specifically states that Tung has submitted no facts to show that Calandria has made substantial and significant changes in his application that he failed to report to the Commission within the 30-day period prescribed by the rule. In reply, Tung cites Calandria's Exhibit F showing that Hebert accepted an offer to be assistant general manager and program director as of September 22, 1970, before the application was filed, and yet the application was not amended until November, 1971, to reflect this change.

7. The Review Board will not add a Rule 1.65 issue. Tung's reliance on Marvin C. Hanz, supra, for the proposition that Calandria's alleged failure to comply with the Commission's requirements for local publication and notification, ex parte service and timing of amendments warrants the addition of a Rule 1.65 issue is misplaced since there was no such issue involved in that case;⁶ and, as the Bureau states, these alleged omissions do not constitute significant changes in the application requiring an amendment within 30 days. As to Calandria's failure to report Hebert as assistant general manager, the Board is of the view that this matter is not, of itself, of sufficient significance to require a Rule 1.65 issue. First, the arrangement was made prior to the filing of Calandria's application, and therefore § 1.65 is not technically applicable. Moreover, the Board perceives no motive for attempting to conceal Hebert's position since no possible benefit could accrue from such concealment, and Calandria's uncontroverted explanation in this regard is credible in light of the conditional nature of the agreement between Calandria and Hebert. Finally, the only significance of Hebert's employment as assistant general manager and program director is in connection with Calandria's survey efforts, and it was in response to a question regarding these efforts that Hebert's position was disclosed. Under all of the circumstances here, the Board is satisfied that an evidentiary inquiry into this matter is not warranted. Cf. Harvit Broadcasting Corp., 32 FCC 2d 656, 23 RR 2d 328 (1971); Media, Inc., 22 FCC 2d 486, 18 RR 2d 970 (1970); and Georgia Radio, Inc., 19 FCC 779, 17 RR 2d 330 (1969).

8. Tung's request for an abuse of process issue is based on the accumulation of allegations listed above plus the real party-in-interest and strike issues previously added by the Commission in the designation order. Calandria and the Broadcast Bureau oppose the addition of the issue and argue that Tung has not set forth sufficient facts to substantiate its allegation. The Bureau also argues that the cases cited by Tung to support the requested abuse of process issue involved serious derelictions. The Review Board will deny the request for an abuse of process issue against Calandria. As the cases cited by Tung illustrate, abuse of

¹ Also before the Board are: (a) Opposition, filed December 9, 1971, by the Broadcast Bureau; (b) reply (opposition), filed December 15, 1971, by Calandria; and (c) reply to (a) and (b), filed December 29, 1971, by Tung.

² In its reply of December 29, 1971, Tung states that, as a result of a prehearing conference of December 16, 1971, the requested nondisclosure and misrepresentation (only as to Calandria's relationship to one Ben O. Griffin) issues have been mooted.

³ Calandria's explanation that the publisher said the notice was run on December 6, 13, and 30 is not clear since Calandria's application was filed December 9th. According to the publisher's affidavit, filed March 22, 1971, public notice occurred December 30, 1970, January 6 and 13, 1971.

⁴ See also Folkways Broadcasting Co., Inc., 26 FCC 2d 175, 20 RR 2d 528 (1970).

⁵ The Board is of the opinion that the cases cited by Tung are clearly distinguishable from the present situation. The cases are: Heart of the Black Hills Stations, 32 FCC 2d 196, 23 RR 2d 203 (1971) (ineptness issue involved multiple violations of Commission's technical and operating rules; Nick J. Chaconas, 28 FCC 2d 231, 21 RR 2d 576 (1971) (ineptness combined with conscious misrepresentation and deliberate falsification of logs with no mitigating factors); and Marvin C. Hanz, 22 FCC 2d 147, 18 RR 2d 830 (1970) (failure to serve opposing counsel with, among others, five amendments to application).

⁶ Further, petitioner's request for an "undisclosed understanding" issue was denied.

process involves questions of serious misuse of Commission procedures. The filing of numerous predesignation amendments does not fall into this category since an applicant is entitled to freely amend before designation. See § 1.522 (a). We will not penalize an applicant for using authorized Commission procedures. Nor do the other minor mistakes relied on by the petitioner raise a substantial question of abuse of process. Finally, Calandria's motives for filing its application will be fully explored under the strike and real party-in-interest issues that have already been designated against Calandria.

Ascertainment and misrepresentation issues. 9. In support of its request for a Suburban issue, Tung alleges that Calandria's survey does not comply with question 11 of the Primer⁸ because Hebert, one of the interviewers, was not listed as a management level employee; that questions 6 and 7 have not been sufficiently covered because Calandria's ascertainment efforts do not reveal the extent to which his contacts extended beyond the principal community of Picayune; that five of the 70 contacts relied on by Calandria are duplicates; that more than one member of the same family has been interviewed contrary to the random sampling required by the Primer; that Calandria's programing proposal is inadequate since it proposes a single program to meet the significant community problems uncovered, usually only once a week, and at times only once a day for 5 minutes; and that Calandria's program percentages are in error because he proposes 13.7 percent news, 8.3 percent public affairs, 80.3 percent music and sports and 6.3 percent others. In his opposition, Calandria states that the contacts made by Hebert are valid since Hebert was to be the assistant general manager and program director as explained (see paragraph 3). Calandria concedes that only one of his survey contacts was from outside Picayune, but claims that there are no large communities outside Picayune that are within the applicant's service area. Calandria agrees that he did contact five people on two different occasions, but asserts that the duplicate contacts were 7½ months apart, are reported in Calandria's filing, and nothing in the Primer prohibits recontact to determine if new ideas have emerged. As to some of the interviews with more than one member of a family,

⁷ Wayne County Broadcasting Corp., 26 FCC 2d 52 (1970) (one individual's part in four mutually exclusive applications); Southern Broadcasting Co. (WGHP-TV), 31 FCC 2d 790, 21 RR 2d 868 (1971) (witness list containing names of persons who do not exist, are unaware of the proceeding or have not agreed to testify); SENCLand Broadcasting Systems, Inc., 28 FCC 2d 74, 21 RR 2d 546 (1971) (alleged failure of principals to appear at deposition hearing, produce documents in response to a subpoena duces tecum, deliberate refusal to answer questions at deposition hearing and failure to return official transcript for filing).

⁸ Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 21 RR 2d 1507 (1971).

Calandria notes that each was an official in a different capacity. Calandria submits that his programing is sufficient to meet the community needs revealed by his survey with a combination of weekly (four programs of 1 hour each), daily (one daily of 1 hour; one Monday-Friday of 1 hour and one Monday-Friday of 5 minutes), and hourly (3-5 minutes each day) programing. As to the program percentages being incorrect, Calandria states that this was the result of a typographical error which showed 80.3 percent for entertainment and sports, instead of 70.3 percent. The Broadcast Bureau opposes the addition of a Suburban issue because Calandria has submitted extensive demographic data, as well as detailed descriptions of the interviews conducted, the problems uncovered and the proposed programing dealing with them. The Bureau urges that Calandria's survey shows both a knowledge of and an adherence to the Primer's requirements. Finally, since Tung has offered nothing to show that Hebert will not actually fill the position of assistant general manager and program director, the Bureau does not see a problem with his having been listed as management personnel at the last minute.

10. Although the Review Board finds most of Calandria's responses adequate to meet Tung's allegations and views most of Calandria's survey efforts favorably, we are, nevertheless, constrained to add the requested Suburban issue. The error admitted by Calandria in calculating his program percentages and his last-minute amendment concerning Hebert's management role are not significant enough to require a Suburban issue nor do they undermine the validity of the survey under the Primer. Further, the Board does not agree with Tung's allegations that Calandria's survey is deficient for not containing a representative cross-section of community leaders and a random sample of the general public, because of duplicate contacts and more than one contact within the same family. Nothing in the Primer forbids such contacts and Tung has not shown significant groups that have been omitted. As to the alleged inadequacy of Calandria's program proposals in dealing with the community's problems, the Board does not agree with Tung. Calandria has submitted a detailed showing of its proposed programing and there is no indication that major problems have been overlooked in the proposed programing. However, as to the allegation that Calandria's survey may not have adequately included the outlying areas of Picayune, we must agree with the petitioner. Although Calandria indicates that the area contains no large communities, a map submitted with his application reflects several named communities within the 1 mv/m proposed contour. No information has been submitted to indicate the size of these communities or their special interests, if any. Therefore, the Review Board cannot say that one contact with a person living in the "Outlying area" of Picayune is sufficient to

cover these communities. Therefore, the Review Board will add a Suburban issue against Calandria.

11. The misrepresentation issue requested by Tung also arises out of Calandria's survey efforts. Tung's basic argument is that Calandria's Exhibit F indicates that Hebert accepted the position of assistant general manager and program director as of September 22, 1970, but it was not until Calandria's amendment of November, 1971, that the Commission was informed of Hebert's management position. Calandria opposes the request for the same reasons advanced above (paragraph 3); i.e., Hebert's position will be primarily that of announcer-salesman and that he would only assume the duties of assistant general manager and program director if Calandria became ill; thus, Calandria included Hebert only as an announcer-salesman in his original list of employees. The Broadcast Bureau, although opposed to Tung's entire petition, did not address itself specifically to this issue. The Review Board will deny the requested misrepresentation issue because Tung has submitted nothing to contradict Hebert's letter of September, 1970, indicating the terms of Calandria's offer of a management position with the proposed station; nor has Tung produced anything to suggest that Hebert does not intend to perform the duties of the position. Finally, concealment of Hebert's management role, as noted (paragraph 6), could only be detrimental to Calandria and therefore we fail to see any motive for an attempted misrepresentation.⁹

Economic viability issue. 12. Tung's last request is for an issue he describes as an "independent FM broadcast viability issue." His allegations include the same arguments he made to the Commission in requesting a financial issue against Calandria, which the Commission denied in its designation order. In addition, Tung argues that independent FM stations are less profitable than those operated by AM licensees. In support of this, Tung cites the Commission's AM-FM Broadcasting Financial Data, 1969 (Public Notice 60057, December 14, 1970) to show that FM stations operated by AM licensees reported revenue increases of 36.5 percent over 1968 compared to 18 percent for independents. Further, petitioner points out, 65 percent of all AM and AM-FM stations reported profits for 1969; while 69 percent of all independent FM stations reported losses for that period. Tung goes on to recite the generally depressed nature of the economy in the area and says it is unrealistic "to assume that an additional broadcast station, especially an independent FM station, would be profitable."

⁹ Any problem with survey contacts allegedly made by Carolyn Scott appears to be clarified by her affidavit of December 6, 1971, stating that she merely arranged for Calandria to interview the president of a club to which she belonged, but did not conduct the interview herself. Any other connection of Carolyn Scott with Calandria's application will be explored under the real party-in-interest issue.

13. In opposition, Calandria states that the Commission has already found him financially qualified with a surplus of funds in an amount over \$30,000, and questions Tung's stress on the depressed nature of the area since Tung is, himself, applying for the FM facility. The Broadcast Bureau asserts that petitioner is requesting a Carroll-type issue,¹⁰ and opposes it because the data alleged to support it is insufficient and lacks specificity when it comes to determining whether Picayune and/or Pearl River County can support another FM station. In reply, Tung asserts that he is not requesting a Carroll-type issue but the statistics set forth in his petition on independent FM stations present a prima facie case of the nonviability of Calandria's proposal.

14. The Review Board will not add the requested issue. Since Tung is not questioning the feasibility of an additional facility in Picayune, a Carroll issue is not required. Tung's argument that Calandria's anticipated revenue estimates are not consistent with a reasonable evaluation of the Picayune market has been presented to the Commission previously. In its designation order, the Commission rejected Tung's request for a financial issue based, in part, on this argument. Finally, we do not question Tung's assertion that the Commission has the right to expect applicants to submit reasonable proposals capable of effectuation; e.g., Veterans Broadcasting Co., 38 FCC 25, 4 RR 2d 375 (1965).¹¹ However, except in unusual circumstances,¹² an applicant must show only that it has sufficient funds to construct its proposal and operate it for 1 year without reliance on revenues, and that it can effectuate that proposal with the funds estimated. Where such a showing is made, there is no additional requirement to establish that revenue estimates are reasonable, that the station will be profitable, or even that the city of license has a sufficient economic base to support the station. Petitioner cites no precedent where the Commission has imposed such a requirement, which would, in our view, constitute an unwarranted extension of Commission policy on our part.

15. Accordingly, it is ordered, That the petition for enlargement issues, filed November 26, 1971, by Tung Broadcasting Co., is granted to the extent indicated below, and is denied in all other respects; and

16. It is further ordered, That the issues in this proceeding are enlarged to include the following issue: To determine the efforts made by Andres Calandria to ascertain the community needs and inter-

ests of the area to be served and the means by which the applicant proposes to meet those needs and interests; and

17. It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof under the issue added herein shall be on Andres Calandria.

Adopted: March 9, 1972.

Released: March 13, 1972.

FEDERAL COMMUNICATIONS
COMMISSION,¹³

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-4341 Filed 3-21-72;8:47 am]

[FCC 72-225]

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

MARCH 15, 1972.

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on April 28, 1972, the following standard broadcast application will be considered ready and available for processing:

BP-19073—NEW, San Juan, Puerto Rico, Augustine L. Cavallaro, Jr., req: 1030kc, 10kw, DA-1, U.

Pursuant to § 1.227(b)(1), § 1.591(b) and note 2 to § 1.571 of the Commission's rules¹, an application, in order to be considered with the above application, must be in direct conflict with said application, substantially complete and tendered for filing at the offices of the Commission by the close of business on April 27, 1972.

The attention of any party in interest desiring to file pleadings concerning the application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time of filing and other requirements relating to such pleadings.

Action by the Commission March 15, 1972. Commissioners Burch (Chairman), Bartley, Robert E. Lee, Johnson, H. Rex Lee, and Reid, with Commissioner Wiley concurring.

Application deleted from public notice of October 15, 1964 (Mimeo No. 56931, 29 F.R. 14504).

BP-16182—NEW, Bayamon, Puerto Rico, Augustine L. Cavallaro, Jr., req: 1030kc, 10kw, DA-1, U. (Assigned new file No. BP-19073.)

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-4343 Filed 3-21-72;8:47 am]

¹⁰ Review Board Member Kessler absent.

¹¹ See Report and Order released July 18, 1968, FCC 68-739, Interim Criteria to Govern the Acceptance of Standard Broadcast Applications, 33 F.R. 10343, 13 RR 2d 1667.

FEDERAL POWER COMMISSION

[Docket No. CP72-223]

DELHI GAS PIPELINE CORP.

Notice of Application

MARCH 20, 1972.

Take notice that on March 14, 1972, Delhi Gas Pipeline Corp. (applicant), Fidelity Union Tower Building, Dallas, Tex. 75201, filed in Docket No. CP72-223 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Natural Gas Pipeline Co. (Natural) at two existing points of interconnection in Dewey County, Okla., and one existing point of interconnection in Harper County, Okla., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to Natural on March 6, 1972, within the contemplation of § 2.68 of the Commission's General Policy and Interpretations (18 CFR 2.68) and that it proposes to continue the sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell and deliver up to 40,000 Mcf of natural gas per day at 35 cents per Mcf at 14.65 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 31, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

¹⁰ Carroll Broadcasting Co. v. FCC, 103 U.S. App. D.C. 346, 258 F. 2d 440, 17 RR 2066 (1958).

¹¹ Reaffirmed sub nom. Syracuse Television, Inc., 10 FCC 2d 642, 11 RR 2d 817 (1967).

¹² See, e.g., 5 KW, Inc., FCC 72R-54, — FCC 2d —, released March 7, 1972.

convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-4395 Filed 3-21-72;8:50 am]

[Docket No. CP72-175]

MICHIGAN WISCONSIN PIPE LINE CO.

Further Notice of Application

MARCH 20, 1972.

Take notice that on January 7, 1972, Michigan Wisconsin Pipe Line Co. (applicant), 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP72-175 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase the capacity of its interstate natural gas pipeline system and to render service under new provisions of its FPC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The proposed facilities have heretofore been described in the notice in the instant docket issued January 21, 1972, and published in the FEDERAL REGISTER on January 27, 1972 (37 F.R. 1269).

Applicant proposes to allocate an additional annual gas supply among its ACQ and MDQ customers in the ratio of their respective current annual gas purchase entitlements pursuant to a proposed new tariff provision included as an exhibit to the subject certificate application. In addition, applicant proposes to modify its tariff to provide present SGS customers an option to purchase gas under applicant's new ACQ-2 rate schedule. Applicant states that the increase in the annual requirements of its SGS customers is not significant and will be met in full within the limits of their maximum daily quantities.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have

heretofore filed petitions to intervene need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-4396 Filed 3-21-72;8:50 am]

[Docket No. CI72-576]

E. RALPH DANIEL ET AL.

Notice of Application

MARCH 20, 1972.

Take notice that on March 13, 1972, E. Ralph Daniel (Operator), et al. (Applicant), 2108 Chamber of Commerce Building, Houston, Tex. 77002, filed in Docket No. CI72-576 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transcontinental Gas Pipe Line Corp. (Transco) from the Johnson Bayou Field, Cameron Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that he commenced the sale of natural gas to Transco on February 17, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that he proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 45,000 Mcf of gas per month at 35 cents per Mcf at 15.025 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should, on or before March 31, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant

of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-4441 Filed 3-21-72;8:50 am]

[Docket No. CI72-577]

CHAS. T. McCORD, JR., ET AL.

Notice of Application

MARCH 20, 1972.

Take notice that on March 14, 1972, Chas. T. McCord, Jr., and Henry Goodrich, doing business as McCord-Goodrich Oil Co. (applicant), 1705 Beck Building, Shreveport, La. 71101, filed in Docket No. CI72-577 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) from the Bourg Field, Terrebonne Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to United on March 8, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for one year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 60,000 Mcf of gas per month at 35 cents per Mcf at 15.025 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 31, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7

and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-4442 Filed 3-21-72;8:50 am]

[Docket No. CI72-568]

ROBERT MOSBACHER ET AL.

Notice of Application

MARCH 20, 1972.

Take notice that on March 10, 1972, Robert Mosbacher et al. (Applicants), 21st Floor, Capitol National Bank Building, Houston, Tex. 77002, filed in Docket No. CI72-568 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transcontinental Gas Pipe Line Corp. (Transco) from the East Perkins Field, Calcasieu Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they commenced the sale of natural gas to Transco on March 6, 1972, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that they propose to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicants propose to sell up to 5,000 Mcf of gas per day at 35 cents per Mcf at 15.025 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should, on or before March 31, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding

or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-4443 Filed 3-21-72;8:50 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5163; 68-184]

AMERICAN ELECTRIC POWER CO.,
INC.

Notice of Proposed Amendment of Certificate of Incorporation To In- crease Authorized Shares of Com- mon Stock and Order Authorizing Solicitation of Proxies in Con- nection Therewith

MARCH 16, 1972.

Notice is hereby given that American Electric Power Company, Inc. (AEP), 2 Broadway, New York, NY 10004, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a)(2), 7, and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

AEP proposes to submit to its stockholders at an annual meeting to be held April 26, 1972, a proposal to amend its Certificate of Incorporation to increase from 70 million to 80 million the aggregate number of authorized shares of common stock, par value \$6.50 per share. It is contemplated that the additional shares of authorized stock, the issuance and sale of which are to be the subject of future filings with this Commission, will be used (a) to retire AEP's notes to banks and commercial paper

notes, heretofore authorized, (b) for equity investments in its operating subsidiary companies, and (c) to permit the acquisition of operating properties or securities of one or more public utility companies. The proposed amendment will require the affirmative vote of the holders of the majority of the 59,500,000 outstanding shares of common stock. AEP intends to solicit proxies, which are to be mailed on or about March 20, 1972, the date of record for voting eligibility, from its common stockholders to obtain the requisite approval of the proposed amendment. AEP proposes to make telephonic, telegraphic, or personal solicitation to some stockholders through its officers and regular employees.

A statement of fees and expenses of AEP to be paid in connection with the proposed amendment will be filed by amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. AEP has filed its proxy solicitation material and requests and the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than April 14, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20 (a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc. 72-4323 Filed 3-21-72; 8:45 am]

[812-3106]

**BROAD STREET INVESTING CORP.
ET AL.**

**Notice of Filing of Application for
Exemption**

MARCH 16, 1972.

Notice is hereby given that Broad Street Investing Corp., National Investors Corp., Tri-Continental Corp., Union Capital Fund, Inc., and Whitehall Fund, Inc., 65 Broadway, New York, NY 10006 (hereinafter collectively referred to as "applicants"), investment companies registered under the Investment Company Act of 1940 (Act), have filed an application for an order pursuant to section 6(c) of the Act exempting from the provisions of section 12(d)(3) of the Act the purchase or other acquisition of any security issued by or any other interest in the business of Union Service Corp. (Union Service) by applicants or any company or companies wholly-owned by applicants or any of them.

Union Service is wholly-owned by the applicants under an arrangement pursuant to which their voting rights and liquidation rights in Union Service are adjusted continuously on the basis of the changing net assets of the respective applicants and their proportionate contributions to the costs of operation of Union Service. Union Service, through its staff of over 100 officers and employees, provides applicants with accounting, corporate secretary, investor relations, law and regulation, personnel, office management, investment research, order execution, and other administrative services and makes investment recommendations to each of the applicants. Union Service provides such services on an at-cost basis, its costs being charged to each of the respective applicants in proportion to their net assets. Applicants are internally managed by their own officers and investment decisions are made by the Executive Committee on the Board of Directors of each company. There is no management or investment advisory contract with any outside management company.

Section 12(d)(3) of the Act provides, in pertinent part, that it shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is an investment adviser of an investment company or an investment adviser registered under title II of the Act, the Investment Advisers Act of 1940 (Advisers Act) unless (a) such person is a corporation all of the outstanding securities of which (other than short-term

paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (b) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities.

Union Service is excepted from the definition of investment adviser of an investment company under section 2(a)(2)(B)(iii) of the Act because it furnishes its advisory services at cost to one or more investment companies. Union Service, however, is included within the definition of an investment adviser under section 202(a)(11) of the Advisers Act and pursuant to section 203 of the Advisers Act, amended effective December 14, 1971, is subject to the registration provisions of that Act. When Union Service registers under the Advisers Act, applicants will not be in compliance with section 12(d)(3) of the Act, because, as herein stated, they are continually acquiring interests in Union Service. Union Service, though wholly owned by applicants, does not fall within the exception to section 12(d)(3) of the Act because it is not primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities. Union Service has not registered under the Advisers Act relying on a "no-action" position taken by the staff pending resolution of the matter.

Applicants assert that through the use of the Union Service arrangement applicants are able to benefit from the economies of scale of a single organization and that this arrangement has made it possible for applicants to have relatively low operating expense ratios for many years. For example, the overall operating expense ratios for Broad Street Investing Corp., National Investors Corp., and Tri-Continental Corp. for the year 1971 were 28/100, 28/100, and 27/100 of 1 percent of average assets, respectively.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 3, 1972 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communi-

cation should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicants at the address stated above. Proof of such service by affidavit (or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in the matter including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc. 72-4324 Filed 3-21-72; 8:46 am]

[812-3148]

**BROAD STREET INVESTING CORP.
ET AL.**

**Notice of Filing of Application for
Order**

MARCH 16, 1972.

Notice is hereby given that Broad Street Investing Corp., National Investors Corp., Union Capital Fund, Inc., and Whitehall Fund, Inc. (the Funds), all open-end registered investment companies, Tri-Continental Corp. (Tri-Continental), a closed-end registered investment company, Union Service Corp. (Union Service), Union Data Service Center, Inc. (Union Data), and Union Service Distributor, Inc. (Distributor), all collectively referred to herein as "Applicants", have filed an application pursuant to Rule 17d-1 under the Investment Company Act of 1940, as amended (Act) for an order pursuant to section 17(d) of the Act and Rule 17d-1 thereunder. The Funds and Tri-Continental are collectively referred to herein as the "Investment Companies." All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

The application states that pursuant to the Mutual Service Agreement between Union Service and the Investment Companies, Union Service provides the Investment Companies with accounting, corporate secretary, investor relations, law and regulation, personnel, office management, investment research, order execution and other administrative services and makes investment recommendations to each of the Investment Companies. Union Service provides these services to the Investment Companies on

an at-cost, not-for-profit basis, and the costs of the services rendered by Union Service are charged to the Investment Companies in proportion to their net assets. Union Service is wholly owned by the Investment Companies, whose voting and liquidation rights in Union Service are, pursuant to the Mutual Service Agreement, adjusted continuously on the basis of the changing net assets of the respective Investment Companies and their proportionate contributions to the costs of operation of Union Service. The Investment Companies are internally managed by their own officers, and investment decisions are made by the respective Executive Committee of the Board of Directors of each of the Investment Companies. The Investment Companies have no management or investment advisory contract with any outside management company.

Union Data is a wholly owned subsidiary of Union Service, and provides the Investment Companies with data processing services, including transfer, redemption and other shareholder services. These services are provided on a cost-sharing basis, and the Investment Companies are charged in relation to the work performed for each by Union Data.

Distributor is a wholly owned subsidiary of Union Service, and a member of the National Association of Securities Dealers registered as a broker-dealer under the Securities Exchange Act of 1934. Distributor engages in the wholesale distribution of the shares of Funds to retail broker-dealers.

It is proposed to submit for approval by shareholders of the Investment Companies a plan for participation by such companies in the financing of the operations of Distributor. Following shareholder approval of the proposed financing plan, the shares of stock of Distributor, all of which are now held by Union Service, will be distributed by Union Service to the Investment Companies in proportion to their liquidation rights in Union Service, and an agreement will then be entered into among the Investment Companies and Distributor providing for the sharing of the actual net cost of operation of Distributor by the Investment Companies in proportion to their respective net asset values.

According to the proposed agreement, the proportion of such net cost to be borne by each of the Investment Companies in respect of each quarterly period shall be the ratio of the value of its net assets in the case of Funds, and 60 percent of its net assets in the case of Tri-Continental, as computed at the end of the last preceding quarterly period and reported to the shareholders of such Investment Company, to the aggregate value of the total net assets of the Funds and 60 percent of the value of the net assets of Tri-Continental, likewise computed as at the end of the last preceding quarterly period; provided that the amounts so paid by each of the Investment Companies, together with any other amounts contributed by such Investment Company to the costs and other financial requirements of Distributor, shall not exceed in any year 5/100

of 1 percent of the average net value of its assets for that year in the case of any Fund or 3/100 of 1 percent of the average net value of its assets for that year in the case of Tri-Continental. The proposed agreement further provides for the estimation of the net cost of operation of Distributor for each calendar year, and the advance payment within 30 days of the commencement of each calendar quarter by the Investment Companies of their respective portion of such estimated net cost. Adjustments and payments to reconcile such advance payments to final payments based on actual net cost of operation shall be made as soon as practicable after the end of each calendar quarter so that each of the Investment Companies shall bear its proportion of the actual net cost of operation of Distributor as required by the proposed agreement.

Pursuant to the proposed agreement, the proportionate interest of each of the Investment Companies in the net assets of Distributor at any time shall be the ratio at the end of the last preceding quarter-yearly period of the amount contributed to the actual net cost of operation of Distributor by such Investment Company over the preceding 60 months (or such shorter period as Distributor shall have been in existence) to the total amount contributed to the actual net cost of operation of Distributor by all the Investment Companies over the same 60 month (or shorter) period, taking into account, for any period prior to the date of execution of the proposed agreement included in such 60-month (or shorter) period, as contributions to the net cost of operation of Distributor, the total financial contribution made during such prior period by each Investment Company to the cost of capital stock in or of capital contribution made to Distributor by Union Service Corp.

Applicants contend that the arrangement between the Investment Companies and Union Service enables each Investment Company to benefit from the economies of scale of a single organization, as well as the at-cost operation of that organization, and that this had made it possible for the Investment Companies to have relatively low operating expense ratios. For example, Applicant states that the overall operating expense ratios for Broad Street Investing Corp., National Investors Corp., and Tri-Continental for the year 1971 were $\frac{28}{100}$, $\frac{28}{100}$ and $\frac{27}{100}$ of 1 percent of average assets, respectively.

Applicants further state that the plan embodied in the proposed agreement for participation by the Investment Companies in the financing of the operations of Distributor is fair and equitable to the Investment Companies and their shareholders and in the best interests of such shareholders. They contend that economies of scale achieved through net sales of shares of the Funds accrue to the benefit of shareholders of all the Investment Companies, and that sales of new shares of any one of the Funds increase the net assets of that Fund and, under cost-sharing arrangements with Union Service, reduce the proportion of

the shared expenses borne by each outstanding share of that Fund and of each of the other three Funds and Tri-Continental.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide as here pertinent, that it shall be unlawful for an affiliated person of a registered investment company acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or arrangement in which any such registered investment company, or a company controlled by such registered investment company, is a participant unless an application regarding such arrangement has been granted by the Commission. Since the investment companies each own more than 5 percent of the securities of Union Service, Union Service and the investment companies are each affiliates of each other. Therefore, each investment company is an affiliated person of an affiliated person of each other investment company in the Broad Street complex. The arrangement between the Investment Companies to share costs of Union Service, and the proposed arrangement between the investment companies to own Distributor directly and share its costs therefore constitute joint transactions between each investment company and an affiliated person of an affiliated person of that investment company within the meaning of section 17(d) of the Act and Rule 17d-1 thereunder.

Notice is further given that any interested person may, not later than April 3, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-4325 Filed 3-21-72;8:46 am]

[File No. 500-1]

CANADIAN JAVELIN, LTD.**Order Suspending Trading**

MARCH 16, 1972.

The common stock, no par value, of Canadian Javelin Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such security on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15 (c) (5) and 19(a) (4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from the close of business on March 17, 1972, through the close of business on March 27, 1972.

By the Commission.

RONALD F. HUNT,
Secretary.

[FR Doc.72-4326 Filed 3-21-72; 8:46 am]

[811-2123]

GROUP PROGRAMS

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

MARCH 15, 1972.

Notice is hereby given that USLIFE Mutual Funds Management Corp. (USLIFE) a Delaware corporation, the sponsor of Group Programs (Group), 125 Maiden Lane, New York, N.Y. 10038, a unit investment trust, registered under the Investment Company Act of 1940 (Act), has filed an application on behalf of Group, pursuant to section 8(f) of the Act for an order of the Commission declaring that Group has ceased to be an investment company as defined in the Act. All interested persons are referred to the application.

Group registered under the Act on September 25, 1970, by filing a Notification of Registration on Form N-8A. Group's registration statement on Form S-6 under the Securities Act of 1933 was declared effective on December 15, 1971, and was ordered withdrawn on March 7, 1972.

USLIFE represents that Group's sole asset consisted of an initial deposit by USLIFE of \$100,008 which was liquidated and refunded by the custodian bank to USLIFE. USLIFE states that because of market factors USLIFE has never made a public offering of Group's securities and does not plan to make such a public offering in the future.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than April 5, 1972 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Group at the address set forth above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in the application, unless an order for hearing upon the application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-4327 Filed 3-21-72; 8:46 am]

[812-2951]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO. AND MASSACHUSETTS MUTUAL VARIABLE ANNUITY FUND 2

Notice of Application for Exemptions

MARCH 16, 1972.

Notice is hereby given that Massachusetts Mutual Life Insurance Co. (Mass. Mutual) and Massachusetts Mutual Variable Annuity Fund 2 (Fund 2) (herein collectively called "Applicants") 1295 State Street, Springfield, Mass. 01101, have filed an application pursuant to section 6(c) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a-1 et seq. (Act), for an order exempting Applicants from the provisions of sections 22(c), 22(d), and 26(a) of the Act and Rule 22c-1 promulgated thereunder. All interested persons are referred to the application on file with the Commission for

a statement of the representations therein which are summarized below.

On May 12, 1971, Mass. Mutual established Fund 2 pursuant to Chapter 175 of the Massachusetts General Laws as a separate account to offer single payment immediate variable annuity contracts (Contracts). Payments made under the Contracts will be invested in shares of MML Investment Co. (MML), an open-ended diversified investment company registered under the Act and managed by Mass. Mutual. Fund 2 has registered under the Act as a unit investment trust.

Rule 22c-1, promulgated pursuant to section 22(c), prohibits a registered investment company issuing a redeemable security, a person designated in such company's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, any such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The current net asset value must be computed not less frequently than once daily on each day that the New York Stock Exchange is open for trading as of the time of the close of trading on such Exchange.

Applicants request an exemption from Rule 22c-1 so as to permit the application of purchase payments received, and the determination of death benefits and redemption values, to be based on valuations as of the close of the New York Stock Exchange on the date the purchase payment, notice of death, or request for redemption is received, regardless of the time of receipt, except to the extent such payment is made in person or such notice or request is delivered in person at the home office of Mass. Mutual. Applicants represent that the requested exemption is sought for ease of administration and that in almost all instances purchase payments, death notices, and redemption requests will be received by mail and that, therefore, it will be fortuitous whether such receipt is prior or subsequent to the close of the New York Stock Exchange.

Section 22(d) provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus.

Applicants request an exemption from section 22(d) to permit Contracts which depend in whole or in part on the investment performance of MML to be sold without a deduction for sales expenses upon the receipt of proceeds payable under fixed-dollar annuity contracts previously issued by Mass. Mutual. Applicants represent that sales expenses will be lower with this class of contract owners; that such other contracts have already been subject to sales expenses; and that no unfair discrimination between variable annuity contract owners would result from the requested exemption.

Section 26(a) of the Act prohibits a principal underwriter for, or depositor of,

a registered unit investment trust from selling any security of which such trust is the issuer unless the trust indenture or custodian agreement pursuant to which the security is issued provides: (1) That the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them; (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept. The Applicants request an exemption from section 26(a) on the grounds that the Company's status as a regulated insurance company and its obligations as an insurance company to the Contract owners provide substantially the same protection contemplated by the requirements of that section.

In support of the requested exemption from the foregoing provisions of section 26(a) of the Act, Applicants state that the net proceeds under the Contracts will be invested in shares of MML and that such shares will be held in an open account so that ownership thereof will only be shown on the books and records of Fund 2 and MML, and will not be evidenced by transferable stock certificates. Applicants further state that Mass. Mutual is subject to regulation by the Department of Banking and Insurance of the Commonwealth of Massachusetts and the National Association of Insurance Commissioners; that Mass. Mutual had total unassigned surplus of \$197 million as of December 31, 1970; and that the officers and employees of Mass. Mutual are covered by a fidelity bond in the amount of \$2 million. Therefore, Applicants state that such jurisdiction, financial and legal requirements and bond effect the protections contemplated by the requirements under section 26(a) of the Act.

The Applicants consent to the requested exemption from section 26(a) being made subject to the condition (a) that deductions under the Contracts for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, the Commission reserving jurisdiction for such purpose, and (b) that the payment of sums and charges out of the assets of Fund 2 shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of such other sums and charges.

Section 6(c) of the Act permits the Commission, upon application, to exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants represent that the granting of the requested exemption is appropriate in the public interest and con-

sistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, no later than April 6, 1972 submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. Any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered), and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc. 72-4328 Filed 3-21-72; 8:46 am]

SUBVERSIVE ACTIVITIES CONTROL BOARD

[Dockets Nos. E72-083—E72-111]

ATTORNEY GENERAL'S LIST OF ORGANIZATIONS

Notice of Hearings

John N. Mitchell, Attorney General of the United States, Petitioner, in regard:

- Congress of the Unemployed, Docket No. E72-083.
- Connecticut Committee to Aid Victims of the Smith Act (AKA: Connecticut Committee for Amnesty; Connecticut Committee to Aid Smith Act Victims), Docket No. E72-084.
- Connecticut State Youth Conference, Docket No. E72-085.
- Council for Jobs, Relief and Housing (AKA: Council for Jobs and Relief; Council for the Unemployed), Docket No. E72-086.
- Council for Pan-American Democracy, Docket No. E72-087.
- Council of Greek Americans (AKA: Greek American Council), Docket No. E72-088.
- Council on African Affairs, Docket No. E72-089.

- Croatian Benevolent Fraternity, Docket No. E72-090.
- Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan) (AKA: North American Dai Nippon Butoku Kai; Southern California Kendo Association; Hokubei Butoku Kai), Docket No. E72-091.
- Daily Worker Press Club, Docket No. E72-092.
- Daniels Defense Committee, Docket No. E72-093.
- Dennis Defense Committee, Docket No. E72-094.
- Detroit Youth Assembly, Docket No. E72-095.
- East Bay Peace Committee, Docket No. E72-096.
- Elsinore Progressive League (AKA: Hilltop Community Center), Docket No. E72-097.
- Emergency Conference to Save Spanish Refugees (Founding body of the North American Spanish Aid Committee), Docket No. E72-098.
- Everybody's Committee to Outlaw War, Docket No. E72-099.
- Families of the Baltimore Smith Act Victims, Docket No. E72-100.
- Families of the Smith Act Victims, Docket No. E72-101.
- Federation of Italian War Veterans in the U.S.A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America), Docket No. E72-102.
- Finnish-American Mutual Aid Society, Docket No. E72-103.
- Florida Press and Educational League, Docket No. E72-104.
- Frederick Douglass Educational Center, Docket No. E72-105.
- Freedom Stage, Inc., Docket No. E72-106.
- Friends of the New Germany (Freunde des Neuen Deutschlands) (AKA: German-American Bund (Amerikadeutscher Volksbund)), Docket No. E72-107.
- Friends of the Soviet Union, Docket No. E72-108.
- Garibaldi American Fraternal Society, Docket No. E72-109.
- George Washington Carver School, New York City (AKA: Carver School), Docket No. E72-110.
- German-American Bund (Amerikadeutscher Volksbund), Docket No. E72-111.

On February 4, 1972, the Attorney General petitioned the Subversive Activities Control Board for a determination that the above organizations now on the Attorney General's List have ceased to exist. The petitions are published in accordance with the Rules of the Subversive Activities Control Board.

Notice is hereby given pursuant to Executive Order 11605 and the Rules of the Subversive Activities Control Board issued in accordance therewith that hearings on the petitions will be held Friday, April 28, 1972, at 11 a.m., in Room 500, 2120 L Street NW., Washington, DC 20037.

JOHN W. MAHAN,
Chairman,

Subversive Activities Control Board.

[Docket No. E72-083]

In regard Congress of the Unemployed; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Congress of the Unemployed has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization

ceased to exist on or about May 1954. There is no record of any known activity since that date.

The last known address of the above-named organization was % Reverend Robert Freison, 2413 Wylie Avenue, Pittsburgh, Pa.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Congress of the Unemployed has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Congress of the Unemployed at the following last known address: % Reverend Robert Freison, 2413 Wylie Avenue, Pittsburgh, PA.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-084]

In regard Connecticut Committee to Aid Victims of the Smith Act, AKA: Connecticut Committee for Amnesty; Connecticut Committee to Aid Smith Act Victims; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Connecticut Committee to Aid Victims of the Smith Act has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about March 1954. There is no record of any known activity since that date.

The last known address of the above-named organization was Room 208, 69 Congress Avenue, New Haven, CT.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Connecticut Committee to Aid Victims of the Smith Act has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Connecticut

Committee to Aid Victims of the Smith Act, at the following last known address: Room 208, 69 Congress Avenue, New Haven, CT.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-085]

In regard Connecticut State Youth Conference, petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Connecticut State Youth Conference has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1948. There is no record of any known activity since that date.

The last known address of the above-named organization was 77 Sargeant Street, Hartford, CT.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Connecticut State Youth Conference has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Connecticut State Youth Conference at the following last known address: 77 Sargeant Street, Hartford, CT.

For the Attorney General.

THOMAS MARUM,
Attorney, Department of Justice.

[Docket No. E72-086]

In regard Council for Jobs, Relief and Housing AKA: Council for Jobs and Relief; Council for the Unemployed; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Council for Jobs, Relief and Housing has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about July 1952. There is no record of any known activity since that date.

The last known address of the above-named organization was c/o Mrs. Ruth Jones, 1200 Waldo Court, Apartment C-2, Somerset Project, Baltimore 2, MD.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Council for Jobs, Relief and Housing has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to section 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037) on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Council for Jobs, Relief and Housing, at the following last known address: c/o Mrs. Ruth Jones, 1200 Waldo Court, Apartment C-2, Somerset Project, Baltimore 2, MD.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-087]

In regard Council for Pan-American Democracy; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Council for Pan-American Democracy has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about January 5, 1948. There is no record of any known activity since that date.

The last known address of the above-named organization was 112 East 19th Street, New York City, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Council for Pan-American Democracy has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Council for Pan-American Democracy, at the following last known address: 112 East 19th Street, New York City, NY.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-088]

In regard Council of Greek Americans, AKA: Greek American Council; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Council of Greek Americans has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about October 11, 1956. There is no record of any known activity since that date.

The last known address of the above-named organization was Hellenic Center, 257 Seventh Avenue, New York City, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Council of Greek Americans has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Council of Greek Americans, at the following last known address: Hellenic Center, 257 Seventh Avenue, New York City, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-089]

In regard Council on African Affairs; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Council on African Affairs has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about June 17, 1955. There is no record of any known activity since that date.

The last known address of the above-named organization was 139 West 125th Street, New York City, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Council on African Affairs has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make

any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Council on African Affairs, at the following last known address: 139 West 125th Street, New York City, NY.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-090]

In regard Croatian Benevolent Fraternity, petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Croatian Benevolent Fraternity has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1954. There is no record of any known activity since that date. The last known address of the above-named organization was 80 Fifth Avenue, New York, N.Y.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Croatian Benevolent Fraternity has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Croatian Benevolent Fraternity at the following last known address: 80 Fifth Avenue, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-091]

In regard Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan), AKA: North American Dai Nippon Butoku Kai; Southern California Kendo Association; Hokubei Butoku Kai; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order

No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Dai Nippon Butoku Kai has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about December 7, 1941. There is no record of any known activity since that date.

The last known address of the above-named organization was c/o The Law Firm of Chuman, McKibbin and Yokozeki, Suite 510, Douglas Building, 257 South Spring Street, Los Angeles, CA.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Dai Nippon Butoku Kai has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Dai Nippon Butoku Kai, at the following last known address: c/o The Law Firm of Chuman, McKibbin and Yokozeki, Suite 510 Douglas Building, 257 South Spring Street, Los Angeles, CA.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-092]

In regard Daily Worker Press Club; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Daily Worker Press Club has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about April 1948. There is no record of any known activity since that date.

The last known address of the above-named organization was 50 East 13th Street, New York 3, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Daily Worker Press Club has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board

(Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Daily Worker Press Club at the following last known address: 50 East 13th Street, New York 3, NY.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-093]

In regard Daniels Defense Committee; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Daniels Defense Committee has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about May 1955. There is no record of any known activity since that date.

The last known address of the above-named organization was Box 1601, Durham, NC.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Daniels Defense Committee has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Daniels Defense Committee, at the following last known address: Box 1601, Durham, NC.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-094]

In regard Dennis Defense Committee; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Dennis Defense Committee has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1948. There is no record of any known activity since that date.

The last known address of the above-named organization was 35 East 12th Street, New York 3, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Dennis Defense Committee has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Dennis Defense Committee at the following last known address: 35 East 12th Street, New York 3, NY.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-095]

In regard Detroit Youth Assembly; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Detroit Youth Assembly has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about January 1942. There is no record of any known activity since that date.

The last known address of the above-named organization was 4612 Woodward Avenue, Detroit, MI.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Detroit Youth Assembly has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Detroit Youth Assembly, at the following last known address: 4612 Woodward Avenue, Detroit, MI.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-096]

In regard East Bay Peace Committee; petition for a determination pursuant to sec-

tion 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the East Bay Peace Committee has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about September 18, 1951. There is no record of any known activity since that date.

The last known address of the above-named organization was 411 28th Street, Oakland, CA.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the East Bay Peace Committee has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the East Bay Peace Committee at the following last known address: 411 28th Street, Oakland, CA.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-097]

In regard Elsinore Progressive League (AKA: Hilltop Community Center); petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Elsinore Progressive League has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1957. There is no record of any known activity since that date.

The last known address of the above-named organization was c/o Flurena Douthard, Elsinore Progressive League Hall, Elsinore, Calif.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Elsinore Progressive League has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Elsinore Progressive League at the following last known address: c/o Flurrena Douthard, Elsinore Progressive League Hall, Elsinore, Calif.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-098]

In regard Emergency Conference to Save Spanish Refugees (Founding body of the North American Spanish Aid Committee); petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Emergency Conference to Save Spanish Refugees has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about April 14, 1940. There is no record of any known activity since that date.

The last known address of the above-named organization was 425 Fourth Avenue, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Emergency Conference to Save Spanish Refugees has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Emergency Conference to Save Spanish Refugees, at the following last known address: 425 Fourth Avenue, New York, NY.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-099]

In regard Everybody's Committee to Outlaw War; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Everybody's Committee to Outlaw War has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about October 13, 1955. There is no record of any known activity since that date.

The last known address of the above-named organization was 1234 West 40th Place, Los Angeles, CA.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Everybody's Committee to Outlaw War has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Everybody's Committee to Outlaw War, at the following last known address: 1234 West 40th Place, Los Angeles, CA.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-100]

In regard Families of the Baltimore Smith Act Victims; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Families of the Baltimore Smith Act Victims has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about September 1955. There is no record of any known activity since that date.

The last known address of the above-named organization was % Mrs. Alice Meyers, Post Office Box 262, Walbrook Station, Baltimore 16, MD.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Families of the Baltimore Smith Act Victims has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this

4th day of February 1972 to the Families of the Baltimore Smith Act Victims, at the following last known address: c/o Mrs. Alice Meyers, Post Office Box 262, Walbrook Station, Baltimore 16, MD.

For the Attorney General.

ORAN WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-101]

In regard Families of the Smith Act Victims; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Families of the Smith Act Victims has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about February 1959. There is no record of any known activity since that date.

The last known address of the above-named organization was 130 West 16th Street, New York City, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Families of the Smith Act Victims has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Families of the Smith Act Victims, at the following last known address: 130 West 16th Street, New York City, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-102]

In regard Federation of Italian War Veterans in the U.S.A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America); petition for a determination Pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Federation of Italian War Veterans in the U.S.A., Inc., has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1940. There is no record of any known activity since that date.

The last known address of the above-named organization was 626 Fifth Avenue, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with

section 12(i) of Executive Order 10450, as amended, that the Federation of Italian War Veterans in the U.S.A., Inc., has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Federation of Italian War Veterans in the U.S.A., Inc., at the following last known address: 626 Fifth Avenue, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-103]

In regard Finnish-American Mutual Aid Society; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Finnish-American Mutual Aid Society has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1954. There is no record of any known activity since that date.

The last known address of the above-named organization was 80 Fifth Avenue, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Finnish-American Mutual Aid Society has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Finnish-American Mutual Aid Society, at the following last known address: 80 Fifth Avenue, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-104]

In regard Florida Press and Educational League; petition for a determination pursuant

to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Florida Press and Educational League has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about October 21, 1943. There is no record of any known activity since that date and there is no known address.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Florida Press and Educational League has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

THOMAS E. MARUM,
Attorney, Department of Justice.

[Docket No. E72-105]

In regard Frederick Douglass Educational Center; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Frederick Douglass Educational Center has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about February 1953. There is no record of any known activity since that date.

The last known address of the above-named organization was 124 West 124th Street, New York 27, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Frederick Douglass Educational Center has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Frederick Douglass Educational Center, at the following last known address: 124 West 124th Street, New York 27, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-106]

In regard Freedom Stage, Inc.; petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Freedom Stage, Inc., has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about July 1954. There is no record of any known activity since that date.

The last known address of the above-named organization was 6513 Hollywood Boulevard, Los Angeles, CA.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Freedom Stage, Inc., has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Freedom Stage, Inc., at the following last known address: 6513 Hollywood Boulevard, Los Angeles, CA.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-107]

In regard Friends of the New Germany (Freunde des Neuen Deutschlands), AKA: German-American Bund (Amerikadeutscher Volksbund); petition for a determination pursuant to section 12(i) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(i) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Friends of the New Germany has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about December 1941. There is no record of any known activity since that date.

The last known address of the above-named organization was Suite 6, 178 East 85th Street, New York, N.Y.

Therefore, the Government petitions this Board for a determination in accordance with section 12(i) of Executive Order 10450, as amended, that the Friends of the New Germany has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to

make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Friends of the New Germany at the following last known address: 178 East 85th Street, Suite 6, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-108]

In regard Friends of the Soviet Union; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Friends of the Soviet Union has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1939. There is no record of any known activity since that date.

The last known address of the above-named organization was 80 East 11th Street, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Friends of the Soviet Union has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Friends of the Soviet Union, at the following last known address: 80 East 11th Street, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-109]

In regard Garibaldi American Fraternal Society; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the Garibaldi American Fraternal Society has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1954. There is no record of any known activity since that date.

The last known address of the above-named organization was 80 Fifth Avenue, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the Garibaldi American Fraternal Society has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the Garibaldi American Fraternal Society, at the following last known address: 80 Fifth Avenue, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-110]

In regard George Washington Carver School, New York City. AKA: Carver School; petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the George Washington Carver School, New York City has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about 1948. There is no record of any known activity since that date.

The last known address of the above-named organization was 57 West 125th Street, New York, NY.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the George Washington Carver School, New York City, has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the George Washington Carver School, New York City, at

the following last known address: 57 West 125th Street, New York, NY.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[Docket No. E72-111]

In regard German-American Bund (Amerikadeutscher Volksbund); petition for a determination pursuant to section 12(1) of Executive Order No. 10450 as amended by Executive Order 11605.

Pursuant to section 12(1) of Executive Order 10450 as amended by Executive Order No. 11605, issued July 2, 1971, 36 F.R. 12831, the Attorney General, by counsel, petitions this Board for a determination that the German-American Bund has ceased to exist.

Records of the Department of Justice reflect that the aforementioned organization ceased to exist on or about December 1941. There is no record of any known activity since that date.

The last known address of the above-named organization was 178 East 85th Street, Suite 6, New York, N.Y.

Therefore, the Government petitions this Board for a determination in accordance with section 12(1) of Executive Order 10450, as amended, that the German-American Bund has ceased to exist on or about the above date.

In the absence of a specific request from the Board, at least 10 days prior to any hearing date that may be set for this matter, the Department of Justice does not plan to make any further factual showing with respect to this petition.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

CERTIFICATE OF SERVICE

Pursuant to § 201.56 of the regulations of the Subversive Activities Control Board (Room 500, 2120 L Street NW., Washington, DC 20037), on proceedings under Executive Order No. 11605, issued July 2, 1971, a copy of the attached petition has been mailed this 4th day of February 1972 to the German-American Bund, at the following last known address: 178 East 85th Street, Suite 6, New York, N.Y.

For the Attorney General.

ORAN H. WATERMAN,
Attorney, Department of Justice.

[FR Doc.72-4336 Filed 3-21-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 17, 1972.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42377—Strip or sheet steel from Chicago, Ill. Filed by Illinois Freight Association, agent (No. 376), for

interested rail carriers. Rates on strip or sheet steel, in carloads, as described in the application, from specified points in Illinois and Indiana, to specified points in Illinois.

Grounds for relief—Carrier competition and rate relationship.

Tariff—Supplement 160 to Illinois Freight Association, agent, tariff ICC 1087. Rates are published to become effective on April 13, 1972.

FSA No. 42378—*General commodities between ports in Europe and Japan and rail stations in California and New Jersey.* Filed by Sea-Land Service, Inc. (No. 60), for itself and interested rail carriers. Rates on general commodities, between ports in Europe, Japan, and United Kingdom, on the one hand, and rail stations in California and New Jersey, on the other, to the extent proposed in the application.

Grounds for relief—Water competition.

Tariffs—Sea-Land Service, Inc., tariffs ICC 67, 68, and 69 contain rates that are presently in effect. Rates in Sea-Land Service, Inc., tariff ICC 70 are published to become effective on April 16, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4365 Filed 3-21-72;8:48 am]

[Notice 10]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MARCH 17, 1972.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c) (9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c) (9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c) (9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-1515 (Deviation No. 611) (Cancels Deviation No. 545), GREY-HOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed March 7, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over

a deviation route as follows: From junction New Jersey Highway 3 and the New Jersey Turnpike (Interchange No. 17), just outside of New York, N.Y., over the New Jersey Turnpike to junction Interstate Highway 95 (Interchange No. 18), thence over Interstate Highway 95 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction New Jersey Highway 17, thence over New Jersey Highway 17 to junction New York Thruway (Interchange No. 15), thence over the New York Thruway to junction New York Highway 17, (Interchange No. 16), thence over New York Highway 17 to Binghamton, N.Y., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From junction New Jersey Highway 3 and the New Jersey Turnpike (Interchange 17) just outside of New York, N.Y., over New Jersey Highway 3 to junction U.S. Highway 46, thence over U.S. Highway 46 to junction U.S. Highway 611 at Columbia, N.J., thence over U.S. Highway 611 to junction Pennsylvania Highway 307, thence over Pennsylvania Highway 307 to junction U.S. Highway 11 in Scranton, Pa., thence over U.S. Highway 11 to Binghamton, N.Y., and return over the same route.

No. MC-1515 (Deviation No. 612) (Cancels Deviation No. 538), GREY-HOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed March 7, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From junction New Jersey Highway 3 and the New Jersey Turnpike (Interchange No. 17), near New York, N.Y., over the New Jersey Turnpike to junction Interstate Highway 95, thence over Interstate Highway 95 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction U.S. Highway 46, near Pine Brook, N.J., (2) from junction U.S. Highway 46 and Interstate Highway 80 near Denville, N.J., over Interstate Highway 80 (bypassing Dover, N.J.), to junction U.S. Highway 46, near Netcong, N.J., and (3) from junction U.S. Highway 46 and Interstate Highway 80 at Columbia, N.J., over Interstate Highway 80 to junction Interstate Highway 81-E, thence over Interstate Highway 81-E to junction Pennsylvania Highway 307, near Scranton, Pa., with the following access routes: (a) From Stroudsburg, Pa., over U.S. Highway 611 to junction Interstate Highway 80, (b) from Scotrun, Pa., over unnumbered access highway to junction Interstate Highway 80, (c) from Tobyhanna, Pa., over Pennsylvania Highway 423 to junction Interstate Highway 81-E, and (d) from junction U.S. Highway 611 and Pennsylvania Highway 507 over Pennsylvania Highway 507 to junction Interstate Highway 81-E, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to

transport passengers and the same property, over a pertinent service route as follows: From New York, N.Y., via the Lincoln Tunnel to junction New Jersey Highway 3, thence over New Jersey Highway 3 to junction U.S. Highway 46, thence over U.S. Highway 46 to junction U.S. Highway 611, at Columbia, N.J., thence over U.S. Highway 611 to junction Pennsylvania Highway 307, thence over Pennsylvania Highway 307 to Scranton, Pa., and return over the same route.

No. MC-70947 (Deviation No. 8), MT. HOOD STAGES, INC., doing business as PACIFIC TRAILWAYS, 1068 Bond Street, Bend, OR 97701, filed March 2, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: Between Ogden, Utah, and Hot Springs, Utah, over Interstate Highway 15, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: from Burley, Idaho, over U.S. Highway 30-S to Brigham City, Utah, thence over U.S. Highway 89 to Salt Lake City, Utah, and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4361 Filed 3-21-72;8:47 am]

[Notice 21]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MARCH 17, 1972.

The following publications are governed by the new § 1100.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 30884 (Sub-No. 16) (Republication), filed May 3, 1971, published in the FEDERAL REGISTER issues of May 27, 1971, July 9, 1971 and July 22, 1971, and republished this issue. Applicant: JACK COOPER TRANSPORT CO., INC., 3501 Manchester Trafficway, Kansas City, MO 63011. Applicant's representative: Warren A. Goff, 2111 Sterick Building, Memphis, Tenn. 38103. An order of the Commission, Operating Rights Board, dated January 21, 1972, and served March 14, 1972, finds, that operation by applicant, in interstate or foreign commerce, as a

contract carrier by motor vehicle, over irregular routes, of automobiles, trucks, and buses, as described in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in initial movements, in truckaway service, (1) from the plantsites of General Motors Corp. at Janesville, Wis., to Kansas City, Mo., and (2) from the plantsites of General Motors Corp. at Janesville, Wis., to points in Arkansas, Iowa, Kansas, Missouri, Nebraska, and Oklahoma, restricted in (2) above to the transportation of traffic moving through Kansas City, Mo.; under a continuing contract with General Motors Corp., of Warren Mich., will be consistent with the public interest and the national transportation policy. That inasmuch as the grant of authority described in this order duplicates applicant's existing authority to a certain extent, such grant of authority and applicant's existing authority that it duplicates shall be construed as conferring only a single operating right. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 80389 (Sub-No. 2) (Republication), filed February 4, 1970, published in the FEDERAL REGISTER issues of March 5, 1970, and August 19, 1971, and republished this issue. Applicant: RUSSELL E. HARTHCOCK, doing business as ACTION MURRAY VAN LINES, 1855 West Hovey, Springfield, MO 65804. Applicant's representative: John E. Burnus, Jr., Seventh Floor, Central Trust Building, Jefferson City, Mo. 65101. An order of the Commission, Division 1, Acting as an Appellate Division, dated February 29, 1972, and served March 14, 1972, finds, that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of meats, meat products, and meat byproducts, and articles distributed by meat packinghouses as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (a) from points in Greene County, Mo., to points in Madison and St. Claire Counties, Ill., Miami, Linn, Bourbon, Crawford, and Cherokee Counties, Kans.; and Madison, Carroll, Boone, Marion, Searcy, and Baxter Counties, Ark., and Miami, Okla.; (b) between points in Greene County, Mo., on the one hand, and, on the other, points in Missouri; (c) from points in Madison and St. Clair Counties, Ill., to points in Madison, Carroll, Boone, Mar-

ion, Searcy, and Baxter Counties, Ark., and Vernon, Barton, Jasper, Newton, McDonald, Barry, Lawrence, Dade, Cedar, St. Clair, Hickory, Polk, Greene, Stone, Taney, Christian, Webster, Dallas, Camden, Laclede, Wright, Douglas, Ozark, Howell, Texas, Pulaski, New Madrid, Dunklin, Pemiscot, Mississippi, Stoddard, Butler, Ripley, Oregon, Shannon, Reynolds, Bollinger, Scott, Perry, Cape Girardeau, Ste. Genevieve, and Carter Counties, Mo.; and (d) from St. Louis, Mo., and points in St. Louis County, Mo., to points in Madison, Carroll, Boone, Marion, Searcy, and Baxter Counties, Ark., Linn, Bourbon, Crawford, and Cherokee Counties, Kans., and Miami, Okla.; restricted in each instance to the transportation of traffic destined to the named destinations, and subject to the further restriction that the authority described herein shall not be tacked or joined, directly or indirectly with any of the other authorities now held by said carrier for the purpose of performing a through service. Because it is possible that other persons who may have relied upon the notice of the application as published in the FEDERAL REGISTER may have an interest in and would be prejudiced by the lack of proper notice, a notice of the authority actually granted applicant will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

TRANSFER APPLICATION TO BE ASSIGNED FOR ORAL HEARING

No. MC-FC-73286. Authority sought by transferee, L & V TRUCKING CO., INC., 140 East Broadway, Gardner, MA 01440, to acquire the operating rights of transferor, S & H TRANSFER, INC., Post Office Box 886, Gardner, MA 01440. Applicants' representative: Frederick T. O'Sullivan, Attorney at Law, 372 Granite Avenue, Milton, MA 02186. Operating rights in certificate No. MC-2059 sought to be acquired: New furniture, baby and doll carriages, infants' walkers, children's vehicles, and parts, between points in Suffolk, Worcester, and Middlesex Counties, Mass., on the one hand, and, on the other, specified points in Connecticut, New Jersey, and New York, including points in the New York, N.Y., commercial zone; supplies and materials used in the manufacture of furniture, between points in Suffolk, Worcester, and Middlesex Counties, Mass., on the one hand, and, on the other, Newark, N.Y., and points in the New York, N.Y., commercial zone; paper, from Newton, Holliston, Gardner, and Fitchburg, Mass., to points in the above-described Connecticut territory and points in the New York, N.Y., commercial zone; paper boxes, from points in the New York, N.Y., commercial zone, to points in Suffolk, Worcester, and Middlesex Counties, Mass., and general commodities, with

usual exceptions, between specified points in Massachusetts.

By order of January 31, 1972, Division 3 assigned the section 212(b) application for hearing at a time and place hereafter to be fixed for the purpose of determining, among other issues under the rules and regulations Governing Transfers of Rights to Operate as a Motor Carrier in Interstate or Foreign Commerce (49 CFR Part 1132), whether transferee is fit to acquire the operating rights. Interested parties have 30 days from the date of this publication in which to file petitions for leave to intervene. Such petitions should state the reasons for the proposed intervention, the place where petitioner wishes the hearing to be held, the number of witnesses petitioner desires to present, and the estimated time required by petitioner for the presentation of evidence. The Bureau of Enforcement has been directed to participate in the proceeding for the purpose of developing the record.

APPLICATION FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 44447 (Sub-No. 28), filed March 7, 1972. Applicant: SUBURBAN MOTOR FREIGHT, INC., 1100 King Avenue, Columbus, OH 43212. Applicant's representative: Taylor C. Burneson, 88 East Broad Street, Suite 1680, Columbus, OH 43215. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission), (1) between Cincinnati, Ohio, on the one hand, and, on the other, points in Ohio, and (2) between Middletown, Ohio, on the one hand, and, on the other, points in Ohio. Applicant states that it does not propose, in connection with (1) above, to serve points in Kentucky which are within the Cincinnati, Ohio, commercial zone as defined by the Commission. NOTE: The instant application is a matter directly related to MC-F-11471 published in the FEDERAL REGISTER issue of March 8, 1972. Applicant states that the requested authority can be tacked with its existing authority and serve points in Ohio, Michigan, Illinois, Indiana, Kentucky, West Virginia, and Pennsylvania. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11486. Authority sought for purchase by MIDSTATES PARCEL

SERVICE, INC., 101 West 10th Avenue, North Kansas City, MO 64116, of a portion of the operating rights of SLOAN'S MOVING AND STORAGE CO., 9889 Page Boulevard, St. Louis, MO 63132, and for acquisition by EARLE E. JAMESON, JR., 8522 Cherokee Lane, Leawood, KS, and ABBOTT J. SHER, 1009 West 67th Terrace, Kansas City, MO of control of such rights through the purchase. Applicants' attorney: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A, B, and C explosives and other dangerous articles, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission, restricted to parcels not exceeding 100 pounds each, as a *common carrier* over irregular routes, from St. Louis, Mo., to points in St. Louis and St. Charles Counties, Mo., and certain specified points in Illinois, between St. Louis, Mo., on the one hand, and, on the other, certain specified points in Illinois. Vendee holds no authority from this Commission. However, it is affiliated with EXHIBITORS FILM DELIVERY & SERVICE CO., INC., 101 West 10th Avenue, North Kansas City, MO 64116, which is authorized to operate as a *common carrier* in Kansas, Missouri, Nebraska, Arkansas, and Colorado. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11487. Authority sought for control and merger by AUCLAIR TRANSPORTATION, INC., 333 March Avenue, Manchester, NH 03103, of the operating rights and property of PAUL V. ADAMS TRUCKING, INC., Route 109, Sanford, Maine 04073, and for acquisition by ALFRED L. SICOTTE, also of Manchester, N.H., of control of such rights and property through the transaction. Applicants' attorneys: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155, and William S. Green, Amoskeag Bank Building, Manchester, N.H. 03103. Operating rights sought to be controlled and merged: *General commodities*, with specified exceptions, as a *common carrier* over regular routes, between Boston, Mass., and Lewiston, Maine, between Boston, Mass., and Brewer, Maine, between Boston, Mass., and South Paris, Maine, between Portsmouth, N.H., and Biddeford, Maine, between Providence, R.I., and New Bedford, Mass., serving all intermediate points and the off-route points of Barrington, Cranston, and Pawtucket, R.I., between Boston, Mass., and Westerly, R.I., serving all intermediate points, between Providence, R.I., and Newport, R.I., serving all intermediate points; *wool, woolen mill products, supplies, machinery, and equipment*, between Sanford, Maine, and Boston, Mass.; *general commodities*, with specified exceptions, over irregular routes, between Boston, Mass., on the one hand, and, on the other, points in Massachusetts within 50 miles of Boston, between Boston, Mass., on the one hand, and, on the other, points in Massachusetts, New Hampshire, and Rhode Island; *boots,*

shoes, shoe findings, and leather, between points and places in Maine, on the one hand, and, on the other, Brockton, Springfield, and Worcester, Mass.; *meat products, meat byproducts, and dairy products*, as described in sections (A) and (B) of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, other than in bulk, in tank vehicles, from Providence, R.I., to points in Rhode Island; and return with *empty containers or other such incidental facilities* used in transporting the commodities specified immediately above, with restriction; *asphalt*, in drums, from East Providence and Riverside, R.I., to points in Massachusetts and New Hampshire. AUCLAIR TRANSPORTATION, INC., is authorized to operate as a *common carrier* in Massachusetts, New Hampshire, Vermont, Connecticut, Maine, New Jersey, New York, and Rhode Island. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11488. Authority sought for control by TRIMAC TRANSPORTATION LIMITED, a noncarrier, 535 Seventh Avenue SW., Calgary, AB, Canada, of DUBUC TANK LINES, LTD., 11650 Metropolitan Boulevard, East Point Aux Trembley, PQ, Canada, and for acquisition by J. R. McCAIG, 635 Sifton Boulevard SW., Calgary, AB, Canada, R. W. McCAIG, 167 Eagle Ridge Drive SW., Calgary, AB, Canada, and M. W. McCAIG, 2208 Amherst Street SW., Calgary, AB, Canada, of control of DUBUC TANK LINES, LTD., through the acquisition by TRIMAC TRANSPORTATION LIMITED. Applicants' attorney: Ray F. Koby, 314 Montana Building, Post Office Box 2567, Great Falls, MT 59401. Operating rights sought to be controlled: (In pending No. MC-134941 (Sub-No. 2), report by review board No. 2, decided December 27, 1971, and served January 14, 1972, certificate not yet issued). Liquid asphalt, in bulk, in tank vehicles, as a *common carrier*, over irregular routes, from ports of entry on the International boundary line between the United States and Canada in New York, Vermont, New Hampshire, and Maine to points in Maine, Connecticut, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. TRIMAC TRANSPORTATION LIMITED, holds no authority from this Commission. However, it is affiliated with (1) H. M. TRIMBLE & SONS, LTD., 4056 Ogden Road SE., Calgary, AB, Canada, (2) OIL AND INDUSTRY SUPPLIERS LTD., Post Office Box 3500, 640 12th Avenue SW., Calgary, AB, Canada, and (3) MERCURY TANKLINES, LIMITED, Post Office Box 3500, 12th Avenue and Sixth Street SW., Calgary, AB, Canada, which are authorized to operate as a *common carrier* in (1) North Dakota, Alaska, Idaho, Washington, Montana, Arizona, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Tennessee, Utah, Wisconsin, and Wyoming, (2) Iowa, Minnesota, Illinois, South Dakota, Wisconsin, North Dakota,

Canada, Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, Nebraska, Kansas, Missouri, Indiana, New Mexico, Texas, Oklahoma, and Arkansas, and as a *contract carrier* in (3) Montana, North Dakota, Minnesota, Maryland, Michigan, Kentucky, California, New York, Ohio, Washington, Illinois, and Pennsylvania. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11489. Authority sought for control by SHANDS & BAKER, INC., 744 Riverside Avenue, Jacksonville, FL 32204, of PETROLEUM CARRIER CORPORATION OF FLORIDA, 600 Powers Avenue, Jacksonville, FL 32217, and for acquisition by W. A. SHANDS, THOMPSON S. BAKER, and EDWARD L. BAKER, all of 744 Riverside Avenue, Jacksonville, FL 32204, of control of PETROLEUM CARRIER CORPORATION OF FLORIDA, through the acquisition by SHANDS & BAKER, INC. Applicant's attorneys: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, Fla. 32207, and Lewis S. Lee, Post Office Box 479, Jacksonville, FL 32201. Operating rights sought to be controlled: *Petroleum and petroleum products*, as described in appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, as a *common carrier* over irregular routes, from the terminal site of the Tenneco Oil Co., near Southport (Bay County), Fla., to points in South Carolina, and points in that part of Georgia more than 175 miles from Panama City, Fla., with restriction, from St. Marks, Fla., and points within 15 miles thereof, to points in Alabama within 175 miles thereof: *Petroleum products*, as defined in appendix XIII of *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 294, in bulk, in tank vehicles, from points in Hillsborough County, Fla., to points in Richmond County, Ga.; *petroleum and petroleum products*, in bulk, in tank vehicles, from the site of the terminal of Tenneco Oil Co., located at or near Southport, Fla., to points in North Carolina; *petroleum products*, in bulk, in tank vehicles, from points in Hillsborough County, Fla., to points in Georgia on and south of U.S. Highway 80, from Orlando, Fla., to North Charleston, S.C.; *petroleum products*, in bulk, in tank trucks, from Jacksonville, Port St. Joe, St. Marks, Pensacola, and Panama City, Fla., and points within 15 miles of each such origins, to points in Georgia, Florida, and South Carolina; *petroleum products*, in bulk, in tank vehicles, moving on Government bills of lading, from Panama City and Lynn Haven, Fla., and points within 1 mile of Lynn Haven, to points in Georgia, with restrictions; *liquefied petroleum gas*, in bulk, in tank vehicles, from Pensacola, Fla., to points in Alabama within 175 miles of Pensacola;

Gasoline, in bulk, in tank vehicles, from points in Hillsborough County, Fla., to points in Cobb County, Ga.; *marine white gasoline*, in bulk, in tank vehicles, from Tampa and Port Tampa, Fla., to Savannah, Ga.; *gasoline, kerosene, and fuel oil*, in bulk, in tank vehicles, from

Jacksonville, Fla., to points in South Carolina located more than 175 miles and less than 200 miles from Jacksonville, Fla.; *methanol*, in bulk, in tank vehicles, from Pace Junction, Fla., to Fox, Ala., Charlotte, N.C., and Hampton, S.C., from points in Santa Rosa County, Fla., to points in Kentucky, Louisiana, Mississippi, and Virginia, from Pace, Fla., to points in Alabama (except Fox), Georgia, North Carolina (except Charlotte), South Carolina (except Hampton), Tennessee, and West Virginia; *tall oil*, in bulk, in tank vehicles, from Fernandina Beach, Foley, Palatka, and Jacksonville, Fla., to Savannah, Ga.; *turpentine*, in bulk, in tank vehicles, from Lake City, Fla., to Valdosta and Savannah, Ga.; *asphalt*, in bulk, in tank vehicles, from Jacksonville, Fla., to certain specified points in Georgia; *asphalt asphalt cutback*, and *fuel oil*, in bulk, in tank vehicles, from St. Marks, Fla., to certain specified points in Georgia; *creosote*, in bulk, in tank vehicles, from Jacksonville, Fla., to points in Thomas and Colquitt Counties, Ga., and the plantsite of Coastal Plain Treating Co., Inc., at Tifton, Ga.; *gum resin*, in bulk, in tank trucks, from Lake City, Fla., to Valdosta, Ga.; *natural gum resin*, from Jacksonville, Fla., to Valdosta, Ga.; *liquid glue and liquid urea-formaldehyde resin*, in bulk, in tank vehicles, from Jacksonville, Fla., to points in Georgia and South Carolina; *sulfuric acid*, in bulk, in tank vehicles, from points in Polk County, Fla., to points in Georgia, from points in Hamilton County, Fla., to points in Georgia and Alabama; *molten sulphur*, in bulk, in tank vehicles, from points in Duval County, Fla., to points in Georgia; *magnesium oxide, calcined and dead burned magnesite, calcium oxide, calcium hydroxide, and magnesium hydroxide*, in bulk, and *magnesium hydroxide slurry or sludge*, in bulk, in tank vehicles, from Port St. Joe, Fla., to Washington, D.C., and points in Alabama, Arkansas, Georgia, Louisiana, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia; *liquid chemicals*, in bulk, in tank vehicles, from points in Florida, to St. Marys, Ga.; *nitrogen solutions*, in bulk, in tank vehicles, from Pace Junction (Santa Rosa County), Fla., to points in Georgia and Alabama;

Nitrogen fertilizer solutions and anhydrous ammonia, in bulk, in tank vehicles, from Pace, Fla., to points in Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee; *anhydrous ammonia*, in bulk, in tank vehicles, from Pace Junction, Fla., to points in Alabama and Georgia; *acids*, in bulk, in tank vehicles, from Jacksonville, Fla., to points in Georgia located within 125 miles of Jacksonville, Fla.; *pulp mill liquid*, in bulk, in tank vehicles, from Jacksonville, Fernandina, and Port St. Joe, Fla., and points within 10 miles of each, to Brunswick, Ga., and points within 10 miles thereof, from the plantsite of Hudson Pulp & Paper Co., near Palatka, Fla., to Brunswick, Ga.; *black liquor skimmings*, in bulk, in tank vehicles, from

Fernandina Beach and Jacksonville, Fla., to Brunswick and Savannah, Ga.; *salt cake*, in bulk, from Jacksonville, Fla., to Foley, Palatka, and Eastport, Fla.; *sand*, in bulk, from points in Clay and Putnam Counties, Fla., to points in Georgia; *naval stores*, in bulk, in tank vehicles, from Jacksonville, Fla., to Savannah, Ga., from points in Dixie County, Fla., to points in Chatham County, Ga.; *gasoline, kerosene, fuel oil, industrial oils, lubricating oils, naphthas, toluene, and xylene*, in bulk, from Jacksonville, Fla., to points in Georgia more distant than 175 miles from Jacksonville, Fla.; *phosphate, phosphate rock, phosphate products, and phosphate byproducts*, in bulk, from points in Hamilton County, Fla., to points in Alabama, Florida, and Georgia; *dry fertilizer*, in bulk, from Cordele, Ga., to points in Florida; *commodities in bulk*, in shipper or water carrier owned vehicles, between Jacksonville, Fla., on the one hand, and, on the other, points in Florida and Georgia, with restriction; *turpentine, dipentene, pine oil, pinene, pine pitch, resin, and resin sizing*, in bulk, in tank vehicles, from points in Duval County, Fla., to points in Georgia (except Valdosta, Ga.), and South Carolina; *ammonium lignosulphanate*, in bulk, in tank vehicles, from Fernandina Beach, Fla., to Doctortown, Ga.; *commodities in bulk* (except cement, vegetable oils, and edible flour), from points in Duval County, Fla., to points in Florida and Georgia, with restriction; *lubricating oil*, in bulk, in tank vehicles, from points in Hillsborough County, Fla., to points in South Carolina. SHANDS & BAKER, INC., holds no authority from this Commission. However, they are affiliated with DIAMOND SAND & STONE CO., 744 Riverside Avenue, Jacksonville, FL 32204, which is authorized to operate as a common carrier in Alabama, Florida, and Georgia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 72-4362 Filed 3-21-72; 8:48 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MARCH 17, 1972.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall

be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Tennessee Docket No. MC 4470 (Sub-No. 8) (Amendment), filed December 6, 1971, published in the FEDERAL REGISTER issue of February 16, 1972 and republished as amended this issue. Applicant: POTTER FREIGHT LINES, INC., Post Office Box 428, Sparta, TN 38583. Applicant's representative: James Clarence Evans, 1800 Third National Bank Building, Nashville, Tenn. 37219. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, excluding used household goods and commodities in bulk, in intrastate commerce and coextensively in interstate commerce as follows: (1) Between Knoxville and Bristol, Tenn., via U.S. Highway 11W, serving all intermediate points between Surgoinsville and Bristol, including Surgoinsville and including all intermediate points between Surgoinsville and Kingsport lying within 2 miles of that segment of U.S. Highway 11W extending between Surgoinsville and Kingsport; (2) between Knoxville and Bristol, Tenn., via U.S. Highway 11E, serving all intermediate points between Johnson City and Bristol, including Johnson City; (3) between Knoxville and Bristol, Tenn., via Interstate Highway 81; (4) between Kingsport and Erwin via U.S. Highway 23, serving all intermediate points; (5) between Elizabethton and Bristol via U.S. Highway 19E and U.S. Highway 19, serving all intermediate points; (6) between Elizabethton and Johnson City via U.S. Highway 321, serving all intermediate points; (7) between Bristol, Tenn., and Kingsport, Tenn., via Tennessee Highway 126, serving all intermediate points; (8) between Blountville, Tenn., and the intersection of U.S. Highway 23 and Tennessee Highway 75, via Tennessee Highway 75, serving all intermediate points and (9) between Blountville, Tenn., and Bluff City, Tenn., via Tennessee Highway 37, serving all intermediate points. The foregoing includes authority to tack or join any of the aforesaid routes, or portions thereof at any intersection between any of them and also authority, with closed doors, over any convenient streets and highways between any point on Interstate Highway 81 and any point at which service is otherwise authorized. All of the foregoing routes and authority are to be used in conjunction with all of applicant's existing authority, by tacking or joinder. The authority will include, but is not limited to, service between points on the above routes and Nashville and Memphis (applicant will, in addition to other evidence, present evidence pertaining to traffic between the above points and points reached through the Nashville and Memphis gateways, both intrastate and interstate).

HEARING: June 5, 1972, 9:30 a.m. at C-1-110 Cordell Hull Building, Nashville, Tenn. Requests for procedural information including the time for filing protests concerning this application

should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission. NOTE: The sole purpose of this republication is to add route segments (7), (8), and (9) to the original application.

Tennessee Docket No. MC 4485 (Sub-No. 7), filed February 11, 1972. Applicant: WAVERLY TRANSFER COMPANY, INC., 111 Tredco Drive, Nashville, TN 37210. Applicant's representative: A. O. Buck, 500 Court Square Building, Nashville, TN 37201. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of general commodities, except household goods, commodities in bulk and articles requiring special equipment, serving all points and places in Benton County, Tenn., in conjunction with applicant's existing authority contained in Certificates Nos. 219, 219-A, 219-B, 219-G, and 219-F. Restriction: The authority sought herein may not be used with any authority held by applicant to provide any service between Memphis and Jackson, Tenn.; Nashville and Jackson, Tenn., or Nashville and Memphis, Tenn. Both intrastate and interstate authority sought.

HEARING: May 2, 1972 at 9:30 a.m. at the Commission's Court Room, C-1 Cordell Hull Building, Nashville, Tenn. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4360 Filed 3-21-72;8:47 am]

[Notice 32]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 17, 1972.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73445. By order of March 10, 1972, the Motor Carrier Board approved the transfer to Able Moving and Storage Co., Inc., Charleston, S.C., of the operating rights in Certificate No.

MC-121593 (Sub-No. 2) issued October 3, 1969, to James C. Russell, doing business as Able Moving and Storage Co., Charleston, S.C., authorizing the transportation of household goods between points in Charleston, Berkeley and Dorchester Counties, S.C., with certain restrictions. Demal I. Mattson, Jr., 141 East Bay Street, Charleston, S.C. 29401, attorney for applicants.

No. MC-FC-73486. By order of March 10, 1972, the Motor Carrier Board approved the transfer to Delta Bus Co., a corporation, Saginaw, Mich., of the operating rights in Certificates Nos. MC-109173 and MC-109173 (Sub-No. 2), issued April 16, 1962, and March 16, 1965, respectively, to Henry A. Crooks, doing business as Mio Bus Line, Onaway, Mich., authorizing the transportation of passengers and their baggage between Onaway, Mich., and West Branch, Mich., between Onaway, Mich., and Rogers City, Mich., between Onaway, Mich., and Mackinaw City, Mich., and between Bay City, Mich., and West Branch, Mich., serving all intermediate points. Quentin A. Ewert, 1200 Bank of Lansing Building, Lansing, Mich. 48933, attorney for applicants.

No. MC-FC-73515. By order of March 10, 1972, the Motor Carrier Board approved the transfer to Scotty's Truck Line, Inc., Mammoth Spring, Ark., of the operating rights in Permit No. MC-126681 issued August 20, 1970, to B & B Lines, Inc., Jonesboro, Ark., authorizing the transportation of glass bottles and jars, from Jonesboro, Ark., to points in Illinois, Missouri, Arkansas, Texas, Louisiana, Indiana, Oklahoma, Kentucky, Mississippi, Georgia, Florida, and Tennessee. Louis Tarlowski, 914 Pyramid Life Building, Little Rock, Ark. 72201, attorney for applicants.

No. MC-FC-73543. By order of March 14, 1972, the Motor Carrier Board approved the transfer to George Moorhead, doing business as Midway Farms, Moorhead, Iowa, of Certificate No. MC-104504, issued May 15, 1969, to Darrell B. Odefey, Moorhead, Iowa, authorizing the transportation of: Livestock, between Moorhead, Iowa, and points within 15 miles of Moorhead, on the one hand, and, on the other, Omaha, Nebr.; and building materials and feeds, from Omaha, Nebr., to points in Iowa within 15 miles of Moorhead, Iowa, except Blenco, Berne, Castana, Dunlap, Kennebec, Little Sioux, Onawa, Orson, Pisgah, Soldier, Turin, Ute, Woodbine, and Moorhead, Iowa. George Moorhead, Moorhead, Iowa 51558, representative for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4363 Filed 3-21-72;8:48 am]

[Notice 32-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations pre-

scribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73203. By order of Division 3, acting as an Appellate Division, dated March 13, 1972, the transfer to George Green, doing business as Mift, Quincy, Mass., of Certificate No. MC-41809 and Certificate of Registration No. MC-41809 (Sub No. 2), issued to W. B. Howard Express Co., Inc., Worcester, Mass., covering the transportation of commodities solely within the State of Massachusetts, was approved. Thomas B. Shea, attorney, 19 Beacon Street, Boston, Mass. Frederick T. O'Sullivan, attorney, 372 Granite Avenue, Milton, MA 02186.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4364 Filed 3-21-72;8:48 am]

[W-C-21]

SACRAMENTO-YOLO PORT DISTRICT

Notice of Filing of Petition for Declaratory Order

MARCH 17, 1972.

Petitioner: Sacramento-Yolo Port District, Sacramento, Calif.

Petitioner's representatives: John J. Hamlyn, Jr., 1007 Seventh Street, Sacramento, CA 95814, and Timothy V. A. Dillon, 1001 15th Street, NW., Washington, DC 20005. Petitioner is a public corporation formed under the laws of the State of California to operate the Sacramento River Deepwater Ship Channel project, an inland port approximately 79 nautical miles from the Pacific Ocean. It states that in order to hold down costs in recent years, ocean common carriers by water have limited the number of calls to those made to a few larger ports on each coast; and that to protect its interests and to adapt itself to the new realities of ocean transportation, the Port of Sacramento inaugurated on January 1, 1970, a unique method of attracting general cargo which it designated as its Container Barge Service. This service involves the movement of merchandise in containers between the Port of Sacramento and ports in the San Francisco Bay area on a barge leased by the port, and moved in the services of a towing company holding operating authority from the Interstate Commerce Commission.

The Container Barge Service is used only to transport container cargo moving wholly by water between a port in a foreign country or a noncontiguous State or territory, on the one hand, and, on the other, the Port of Sacramento, under

a port-to-port ocean bill of lading naming Sacramento as the port of origin or destination. The service is offered only to ocean common carriers by water and includes, in addition to the water transportation between Sacramento and San Francisco Bay Ports, the loading and unloading of the containers at the Port of Sacramento to and from the barge as well as the land carrier. The Port of Sacramento acts as the carriers' agent in transporting the merchandise as part of a single continuous, port-to-port water movement, and its Container Barge Service is offered only in lieu of direct physical call of the ocean vessel to the Port of Sacramento. Tariffs are published and filed with the Federal Maritime Commission, and charges are paid by the steamship companies. The entire service is on a single per-container rate basis as provided in the published rate schedules.

Section 302(i)(3)(B) of the Interstate Commerce Act (49 U.S.C. 902(i)(3)(B)), as pertinent, subjects to the regulatory jurisdiction of this Commission the "transportation * * * of property * * * wholly by water * * * from or to a place in the United States to or from a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place the el. prior to transshipment as a place within the United

States for movement to a place outside thereof * * *" or in the reverse direction, after such transshipment for further movement to a place in the United States. The word "transshipment" has never been formally interpreted by the Commission, but it has for some time been the informal view of the Commission's staff that in this context "transshipment" means the transfer of lading between different lines. On the other hand, it has also been informally held that the transfer of a lading from one vessel to another under common ownership does not constitute a "transshipment" within the meaning of the statute.

It is the position of petitioner that its Container Barge Service is operated for the account of ocean carriers; that the service performed merely substitutes the movement on the barge for the movement on the ocean-going ship; and that, in such posture, the barge and the ocean-going ship must be viewed as being under common ownership, just as if the latter had directly hired and operated the barge. Thus, petitioner argues, its service is not regulated by the Interstate Commerce Commission, but rather by the Federal Maritime Commission. In sum, petitioner seeks the issuance of a declaratory order construing the term "transshipment" embraced in section

302(i)(3)(B) of the statute as not including the transfer of the lading from a vessel of an ocean carrier to the vessel of its "agent" (the Port of Sacramento) operating such latter vessel in substituted service in lieu of direct port call by the ocean carrier. Petitioner notes that there is presently pending before the Congress certain legislation which would specifically exclude jurisdiction from this Commission over activities of the type described; however, petitioner has been informed that further action on these bills has been postponed pending final determination of this petition.

Any interested person (including petitioner) desiring to participate may file with this Commission an original and six (6) copies of his written representations, views, or argument in support of, or against, the petition within 30 days from the date of publication of this notice in the FEDERAL REGISTER. A copy of each such document should be served upon petitioner's representatives and upon the Federal Maritime Commission which has expressed its desire to participate in this proceeding.

By the Commission.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.72-4366 Filed 3-21-72; 8:48 am]

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PART II



FEDERAL COMMUNICATIONS COMMISSION

**Domestic Communications—
Satellite Facilities**

**PROPOSED ESTABLISHMENT BY
NON-GOVERNMENTAL ENTITIES**

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 25]

[Docket No. 16495; FCC 72-229]

ESTABLISHMENT OF DOMESTIC COMMUNICATIONS—SATELLITE FACILITIES BY NONGOVERNMENTAL ENTITIES

Memorandum Opinion and Order

In the matter of establishment of Domestic Communications—Satellite Facilities by Nongovernmental Entities.

1. In response to the Report and Order issued in this proceeding on March 24, 1970 (22 FCC 2d 86) and the concurrently issued notice of proposed rule making (22 FCC 2d 810), the Commission has received eight applications for domestic satellite systems and a number of applications for earth stations only. We have also received comments and reply comments on the applications and rule making issues by the applicants and other interested parties.

2. Applications were filed by the following:

SYSTEM APPLICANTS

The Western Union Telegraph Co. (Western Union).
Hughes Aircraft Co. and four telephone operating companies of GTE Service Corp. (Hughes/GTE).
Western Tele-Communications, Inc. (WTCI).
RCA Global Communications Inc. and RCA Alaska Communications, Inc. (RCA Globcom/RCA Alascom or "the RCA applicants").
Communications Satellite Corp. and American Telephone and Telegraph Company (Comsat/A.T. & T.).
Comsat.
MCI Lockheed Satellite Corp. (MCI Lockheed).
Fairchild Industries, Inc. (Fairchild).

EARTH STATION APPLICANTS

Hawaiian Telephone Co.
Twin County Trans-Video, Inc.
TelePrompTer Corp.
LVO Cable, Inc., and United Video, Inc.
Phoenix Satellite Corp.

3. The rule making called for comment and suggestions as to the policies the Commission should follow to resolve possible economic or technical conflicts among applicants; the appropriate initial role of A.T. & T. in the domestic field; earth station ownership, access, and interconnection; and procurement. The 1970 Report also requested parties to address the questions of whether domestic satellite facilities should be capable of providing service to Alaska and Hawaii in the interest of national unity, and whether public broadcasting and other educational interests should have access to domestic satellite facilities on special terms, and, if so, on what terms.

4. The applications and comments of the parties have been analyzed by the Commission's staff, with technical assistance from the National Aeronautics and Space Administration (NASA). The

Chief of the Common Carrier Bureau has recommended to the Commission a proposed Second Report and Order in this proceeding (the attachment hereto).

5. Before reaching any determinations in this matter, we have decided to afford applicants and other parties (who have filed in response to the 1970 Report and Notice) an opportunity to be heard orally and to comment on the recommendations of the staff. Our action therefore does not reflect any predisposition by the Commission with respect to the resolution of the issues involved. The basic thrust of the staff recommendations is summarized below. We will also indicate those aspects participants in the oral argument are requested particularly to address.

I. SUMMARY OF STAFF POSITION

5a. In brief, on the question of the number and nature of the space segments to be authorized initially, the staff discusses three possibilities:

a. One space segment (selection either of one applicant or a consortium of all pending applicants found qualified);

b. Selection of some of the pending system applicants on the basis of the comparative merits of their proposed systems and other relevant public interest considerations; or

c. Some form of "open entry" for all applicants except those, if any, found disqualified on policy grounds, with appropriate conditions to protect the public interest.

6. The staff is of the view that it would be technically feasible to accommodate all of the in-orbit satellites proposed by the applicants, with certain technical adjustments in their proposals, but that the total initial space segment capacity of the eight proposed systems substantially exceeds the present and foreseeable communications market in the next few years for domestic satellite services.¹ It recommends against attempting to select one or a few of the proposed space segments on the ground that this would be inconsistent with the policy objectives of encouraging diverse entities to exploit the potential advantages of this technology to achieve new communications services, as well as expansion of the scope and flexibility of existing services. It would militate against the goal of creating a situation where competition would determine how the most efficient survive, where innovative services are given a reasonable opportunity to attract a market, and where the development and demonstration of different technologies would be fostered to the extent practicable. The staff also maintains that selection of one type of space segment or a few applicants on the merits of their system proposals would entail further proceedings, thereby delaying the inauguration of any domestic satellite service to the public, and would be of little assistance in an area

¹ The system applicants have proposed a total of 20 in-orbit satellites, with a combined capacity of about 600 transponders. A transponder is capable of handling, for example, one color television channel, or about 600-900 voice circuits, or a one-way digital stream of about 35 Mb/s.

of dynamic technology with the uncertainties and difficulties of definitive resolution in advance of an operational demonstration of the proposed facilities and public response to the service offerings.

7. With respect to "open entry," the staff discusses two possibilities. Under Open Entry Option I, the Commission could adopt a policy permitting authorization of all of the facilities proposed by all of the system applicants who are found qualified and are willing to proceed subject to the conditions recommended by the staff. The staff believes that an open entry policy of this nature might cause some to drop out or to endeavor to consolidate their proposals, and could result in the establishment of a system or systems that might not achieve the desired public interest objectives. The staff further points out that under FCC v. RCA Communications, Inc., 346 U.S. 86 (1953) and other applicable judicial authorities, competition—while relevant—is not the sole pertinent consideration; the Commission must weigh the potential benefits and detriments to the public interest and determine that on balance, competition will serve some beneficial purpose in furtherance of communications policies. It also notes that some of the applicants (e.g., Comsat, GTE, Western Union, the RCA applicants, and A.T. & T.) are presently engaged in providing essential common carrier services to the public, and that the potential impact on such services is a pertinent factor for Commission concern. In addition, the staff asserts that a policy of unrestricted entry with unlimited facilities poses a danger of fragmenting the market for potential satellite services to such an extent that most carrier entrants might fail to come even remotely close to recovering their costs; and might result in survival only of a carrier such as A.T. & T., which itself or through affiliates, has massive resources unrelated to the domestic satellite market. This would defeat the policy objectives indicated above.

8. Under the alternative recommended by the staff, Open Entry Option II, the Commission could adopt a policy of open entry to all pending and future applicants who are found qualified and meet certain conditions, but require or strongly encourage consolidation in a common space segment those who have proposed the same or very similar satellite technology and authorize minimum facilities to each space segment initially pending a stronger public interest justification for additional capacity to any space segment or participant in a common space segment. The staff indicates that common space segments would reduce the required investments and overheads of participants considerably (e.g., by reducing the number of in-orbit and ground-spare satellites, by permitting shared use of earth stations in some instances, etc.); and might afford other

² Satellites intended primarily for the use of the broadcast networks would not be authorized until there is a firm customer commitment to a particular licensee or applicant.

advantages to the public and the applicants without hampering their operations.

9. It is contemplated by the staff that each participant in a common space segment would be licensed to own a proportionate share of the satellites on a cost-sharing basis, with authorization of a single managerial licensee to perform tracking, telemetry and control (TT&C) and other managerial functions. Each participant could use its share of the satellite capacity in whatever manner it desires (including, in the case of Hughes, for private CATV network operations), provided that such operations are not inconsistent with any of the conditions set forth in the proposed Second Report and Order or the provisions of applicable law. No participant would have any commitment to the initial common venture beyond its proportionate share of the funds required to procure and launch the initially authorized satellites (plus the ground spare if needed), and of the costs of managerial services (e.g., TT&C) during the active life of such satellites. Any participant could at any time, subject to prior Commission approval, sell its share to any remaining participant or to an independent entity. Each participant could be authorized its own earth station facilities to operate with its share of the satellites, subject to a requirement for shared use of earth stations in some instances (see paragraph 14 below).

10. Open Entry Option II, as envisaged by the staff, would afford applicants who are found qualified and meet other conditions an opportunity to proceed as follows. MCI Lockheed and Fairchild could pursue their applications as proposed. Subject to the conditions indicated below, Western Union, and Hughes/GTE could proportionately own a common Space Segment A on a cost-sharing basis, with an option to WTCI and the RCA applicants to share in this space segment or to proceed independently with different satellite technology.³ Similarly, Comsat and A.T. & T. could proportionately own a common Space Segment B on a cost-sharing basis.

11. Any applicant grouped in Space Segments A or B above could elect instead to have its pending proposal considered pursuant to such further proceedings as might be deemed necessary by the Commission to enable the requisite public interest finding, or to take advantage of the opportunity for sharing ownership while reserving the right—either simultaneously or in the future—to seek additional or independent space segment facilities for good cause shown. Choice of the latter courses would require

³In the event that the RCA applicants should elect to proceed independently with different technology, such authorization would be upon condition that these applicants participate in Space Segment A to provide service to Alaska until such time as any independent RCA space segment is operational, and upon the further condition that they make a reasonable showing that their existing services to the public would not be adversely affected.

a stronger public interest justification than those now pending before the Commission, and might require further proceedings. Moreover, the policies and conditions elsewhere specified in the proposed Second Report and Order would in any event apply, unless good cause were shown for an exception. Processing priority would be accorded to applications submitted in accordance with the provisions summarized in paragraphs 8-10 above.

12. Any authorization to Comsat, A.T. & T., or GTE—whether pursuant to paragraph 10 or paragraph 11 above, would be upon the following special conditions. Comsat would be given the option to elect between limiting itself to the provisions of satellite services to A.T. & T. under lease or of entering the field as a supplier of satellite services to domestic entities other than A.T. & T. pursuant to tariffs, but not of proceeding in both capacities (see paragraph 79 of the attachment). If Comsat should elect to serve entities other than A.T. & T., it could share ownership in Space Segment B with A.T. & T. and act as manager for the jointly owned space segment or for one independently owned by A.T. & T. If A.T. & T. should opt to acquire its space segment facilities by lease from Comsat, it will be required to show that the costs are no greater than if it owned facilities jointly with Comsat or acquired equivalent facilities by other available means (paragraph 79 of the attachment). GTE would be required to make showings as to the effect of the proposed arrangement (whether under Open Entry Option II or its pending application) on the efficiency, quality, and costs of interstate switched telephone service (MTT); and as to the kinds of data it intends to gather and report as a basis for the evaluation and efficiency of the proposed operations compared to its continued reliance on existing interexchange facilities of A.T. & T. (see paragraphs 97-99 of the attachment).

13. It has been urged by various parties that each of the system applicants should be disqualified on policy grounds. These contentions are summarized and discussed at some length in the attachment (paragraphs 82-119, and paragraphs 1-63 of the appendix to the attachment). Without attempting to recapitulate the reasoning of the staff, we note that it is against outright disqualification of any system applicant at the outset but has recommended certain conditions. Any authorization to a satellite equipment supplier would be conditioned upon the existence or creation of a separate corporate entity to engage in the communications service aspect (attachment, paragraphs 84-86). Any authorization to Hughes would be upon the further condition that it afford CATV customers the option of owning receive-only earth stations, and permit reasonable access to the earth station facilities by common carriers sharing the same space segment and offering program transmission service to other CATV program originators (attachment, paragraphs 88, 126-127). The conditions re-

lating to GTE have already been indicated in paragraph 12 above. A.T. & T. would be limited, at least in its initial system proposal for the use of satellites, to those of its services that are essentially monopoly services, such as interstate message toll and wide area telephone services (attachment, paragraphs 100-104). Any domestic authorization to Comsat would be limited to service to the contiguous 48 States and conditioned upon a prohibition against establishing domestic earth stations in any overseas State or other area served by Intelsat facilities (attachment, paragraphs 105-118, particularly paragraph 114).⁴ It would also be required to form a separate corporate subsidiary to engage in any domestic satellite venture, and limitations would be placed on the amount of equity capital acquired for Intelsat purposes that Comsat could devote to financing such domestic subsidiary (attachment, paragraphs 115-116).

14. With respect to earth station ownership, the staff recommends that users, such as local broadcasters and CATV systems, be afforded the option of owning receive-only earth stations, subject to a requirement for reasonable access by other local entities desiring receive-only services that can be received at such facilities (attachment, paragraphs 120-127). Independent ownership of transmit-receive earth stations would not be permitted in any geographic area reasonably proximate to a transmit-receive earth station of the carrier furnishing the transponders, except for good cause shown (attachment, paragraphs 128-129). The staff further recommends that a common carrier participant in a joint space segment be required to share (i.e., proportionately own on a cost-sharing basis) a common transmit-receive earth station, in lieu of being authorized an independent facility, in any area where another participant in the same space segment has proposed a transmit-receive earth station in reasonable geographic proximity. However, each such space segment owner could be authorized an individual transmit-receive earth station in any area where no other participant in the same space segment has proposed a transmit-receive earth station in the vicinity, or for other good cause shown (attachment, paragraphs 130-131).

15. On the question of access to earth stations and terrestrial interconnection (attachment, paragraphs 133-142), the staff states a belief that carriers should own, to the extent practicable, the facilities used to provide end-to-end service to their customers, and that any construction of new facilities required for access to earth stations should be undertaken by the satellite system carrier (or other entities using the earth station facilities). Where it is necessary or desirable to use

⁴This condition would not preclude Comsat from providing network program transmission service to overseas points in the event it should elect to serve entities other than A.T. & T. and obtain the network business, provided that the earth station facilities in such overseas areas are owned and operated by local entities.

the terrestrial facilities and services of the Bell System or another terrestrial carrier, this should be furnished under terms which would promote the concept of end-to-end service by the satellite system carrier. The staff recommends that any domestic satellite authorization to A.T. & T. or other carrier be conditioned upon a requirement that it make available to all other authorized earth station carriers the terrestrial facilities and services required to deliver their satellite services to their customers, on reasonable and nondiscriminatory terms and conditions and: (a) In the case of local loop service, at charges not to exceed the interstate tariff rates applicable to such loop, and (b) in the case of an interexchange channel at some other junction point on the landline facilities under a leased channel arrangement, at charges computed on a basis that is no less favorable than the basis used for computing interstate charges to the carrier's customers between the points involved or on the same terms that service between such points is made available to other carriers. Thus, A.T. & T. would also be required to submit on behalf of the Bell System, prior to consideration of its application, a full description of the kinds of arrangements that will be made available to other satellite system or earth station licensees to meet their interconnection requirements (attachment, paragraphs 140-141, and see paragraph 99 relating to GTE). Common carrier space segment and earth station licensees would be subject to general requirements that they permit reasonable and nondiscriminatory access to such facilities by means of earth stations and/or terrestrial interconnection facilities authorized by the Commission to other carriers and users (attachment, paragraph 142).

16. The staff is of the view that one or more domestic systems should be authorized to serve the States of Hawaii and Alaska (attachment, paragraphs 148-152). The Intelsat aspect of this matter has been coordinated with the Department of State. The staff also recommends that applicants proposing to serve these States be required to submit certain additional information as to how they plan to meet their needs (attachments, paragraphs 149, 150). The assignment of orbital arc locations would be by further order of the Commission. Assignments for satellites utilizing 4 and 6 GHz frequencies would be separated by 3° (or allow for intervening satellites separated by 3°), unless good cause is shown for wider separation (attachment, paragraph 152a).

17. For the staff's recommendation as to the terms of access, by public broadcasting and other educational interests, see attachment, paragraphs 157-162. The staff notes that there is a well-established national policy, incorporated in legislation, which encourages and makes it lawful for common carriers to provide free or reduced rate interconnection services to noncommercial broadcast network and educational institutions. While

these statutes do not operate automatically to require such treatment, they make it possible for the Commission to prescribe preferential rates to educational entities, as well as for carriers to file tariffs offering such rates on their own initiative. The staff is of the opinion that the Commission presently lacks sufficient information to initiate any requirement as to common carriers, but should entertain specific proposals by carriers or users for the prescription of preferential rate classifications. Noncarrier applicants (such as Hughes and Phoenix), who have offered free access, would be expected to implement the proposals made in their applications (see attachment, paragraph 162). Finally, as to procurement, the staff concludes that the Commission has authority to prescribe procurement rules requiring competitive bidding. However, it recommends against exercising such authority in the present circumstances under an open entry policy.

II. AREAS THE PARTICIPATING PARTIES ARE REQUESTED TO ADDRESS PARTICULARLY IN ORAL ARGUMENT

18. Those participating in the oral argument are requested to treat particularly the following issues:

a. Whether the Commission should adopt a policy of limited open entry as proposed by the staff or, in the alternative, a policy of unrestricted entry.

b. Whether the Commission should require Comsat to elect between owning and operating a space segment dedicated to the use of A.T. & T. or owning and operating satellite facilities for the purpose of furnishing services to persons other than A.T. & T.

c. Whether A.T. & T. should be limited in its use of satellite facilities to the furnishing of its noncompetitive services (i.e., message toll telephone and wide area telephone services).

d. Whether the Commission as a matter of policy should require licensees of satellite facilities to provide free service to educational entities and, if so, on what basis of eligibility; or whether, as proposed by the staff, the provision of free or reduced rate services to such entities should be left to future rate-making proceedings in accordance with the applicable provisions of the Communications Act or to the initiative of the licensees choosing voluntarily to provide such free or reduced rate service.

Order. 19. Accordingly, it is ordered, That the Commission will hear oral argument on the attached proposed Second Report and Order recommended by the Chief, Common Carrier Bureau, commencing on May 1, 1972 in the Commission meeting room in Washington, D.C. Parties desiring to participate in the oral argument⁵ shall file a notice of intent on or before March 29, 1972, indicating the nature of the interest and

⁵ Those entities eligible to participate will be limited to applicants and parties who have filed applications and/or comments in response to the 1970 Report and Notice.

the amount of time requested. Parties with similar interests are encouraged to select a single representative to present their viewpoint. The amount of time allocated to each participating party and the order of presentation will be designated by further order of the Commission, after consideration of the notices of intent. Written comments on the staff recommendations may be submitted by interested parties on or before April 19, 1972. These comments should address matters not covered in previous pleadings or filings.

Adopted: March 15, 1972.

Released: March 17, 1972.

FEDERAL COMMUNICATIONS
COMMISSION,⁶

[SEAL] BEN F. WAPLE,
Secretary.

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⁶ Commissioners Johnson and Wiley concurring in the result; Commissioner H. Rex Lee not participating.

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I. BACKGROUND

1. The background of this proceeding is fully set forth in the Report and Order (1970 Report, released on March 24, 1970 (22 FCC 2d 86, 35 F.R. 5356)). In brief, the Commission there concluded that the communications satellite technology offers sufficient promise of making a substantial contribution to the Nation's communications system to warrant appropriate steps towards the authorization of communication satellite facilities to be used solely for domestic purposes (22 FCC 2d at 88-90). The Commission emphasized that coordination with Intelsat would be required, and that domestic satellite facilities will not be authorized unless they are fully consistent with U.S. obligations to, and continued full support of, the global system (22 FCC 2d at 87, 94). For the reasons set forth in Appendix C to the 1970 Report, the Commission concluded that it possesses legal power under the Communications Act of 1934 and the Communications Satellite Act of 1962 (particularly section 102(d)) to authorize domestic satellite and earth stations facilities to any entity—either common carrier or noncarrier or some combination of both—as the national public interest requires (22 FCC 2d at 86, 128-133). However, the Commission was unable to determine on the basis of the record and other information then before it, which included two studies conducted by the

executive branch, "whether domestic communications satellite opportunities would be more fully and effectively developed through one or more multipurpose systems, specialized systems, through a combination of both, or through an essentially 'open entry' policy" (22 FCC 2d at 93).

2. The Commission decided that it would be assisted in making such policy determinations if potential applicants took the initiative in submitting concrete system proposals for the Commission's consideration (22 FCC 2d at 93). The Commission stated (22 FCC 2d at 93-94):

Thus, we will consider applications by all legally, technically, and financially qualified entities proposing the establishment and operation of domestic communications satellite systems designed to provide the capability for multiple or specialized communications services. Applicants may propose the rendition of such services directly to the public on a common carrier basis or by the lease of facilities to other common carriers, or any combination of such arrangements. Applicants may also propose private ownership and use or the joint cooperative use of the system by the several owners thereof. [Footnote omitted.] Applicants may further propose the shared use of some facilities by different systems, or a division in the ownership of various system components (e.g., user ownership of earth stations to afford direct access to the space segment of a common carrier or cooperative system).

Pending the adoption of application forms and rules governing technical standards, the Commission specified in the 1970 Report and appendix D thereto the procedures for filing and contents of applications, and technical criteria (22 FCC 2d 98-103, 133-139).¹

3. The 1970 Report further stated in paragraph 20 (22 FCC 2d at 94):

In considering whether the public interest would be served by a grant of applications, in whole or in part, the Commission will be guided, of course, by the policies and provisions of the Communications Act and other relevant statutes, as well as pertinent judicial authorities. The basic touchstone for decision is our mandate set forth in Section 1 of the Communications Act to regulate "interstate * * * commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nationwide * * * wire and radio communication service with adequate facilities at reasonable charges * * *." In short, we believe that we can best render the public interest judgments as to what system or systems are to be authorized in the context of specific proposals. Parties are thus expressly advised that while the Commission will welcome submission of applications and give them all the most serious consideration, the extension of this opportunity to file, and the expenditure involved in preparing an application, do not in any way indicate that the application will be granted in whole or in part.

¹ With respect to the technical criteria (set forth in appendix D to the 1970 Report), the Commission indicated that applicants might also submit "alternative proposals reflecting what would be requested if there were different technical constraints and showing how the alternative would better serve the public interest" (22 FCC 2d at 98).

4. The Commission concurrently issued a notice of proposed rule making (22 FCC 2d 810), and consolidated the proposed rule making with this proceeding (22 FCC 2d at 95-97, 104). The rule making concerns the policies to be followed in the event of technical or economic conflicts among the applications, the appropriate initial role of American Telephone & Telegraph Co. (A.T. & T.) in the domestic satellite field, procurement policies, access to earth stations and terrestrial interconnection (see paragraphs 23-38 of the 1970 Report, and paragraphs 2-5 of the notice of proposed rule making). By a further notice of inquiry and proposed rule making released on September 25, 1970 (25 FCC 2d 718), the Commission expanded the rule making issues to include consideration of possible use of other frequency bands, in addition to the 4 and 6 GHz bands,² in light of U.S. preparation for, and the outcome of, the World Administrative Radio Conference (WARC) for Space Telecommunications (Geneva, 1971).

5. In the 1970 Report the Commission said that in giving public notice of the first proposal accepted for filing, it would specify a time period for the filing of applications by other applicants desiring to have their proposals considered in this proceeding in conjunction with the first proposal, as well as dates for the filing of comments on the rule making issues (22 FCC 2d at 98). By Public Notice issued on August 7, 1970 (FCC 70-865), the Commission gave notice that the first system proposal, submitted on July 30, 1970, by the Western Union Telegraph Co. (Western Union), had been accepted for filing. That public notice afforded potential applicants desiring consideration with the Western Union proposal an opportunity to indicate how much time would be necessary for submission of their proposals. Upon consideration of the responses, the Commission established a cutoff date of December 1, 1970 for the filing of such applications,³ and dates for comments and reply comments (FCC 70-953). At the requests of interested entities the original filing times were subsequently extended by various orders in Docket No.

² In this Second Report, the following abbreviations are used for frequencies indicated below:

2 GHz	2500-2690 MHz
4 GHz	3700-4200 MHz
6 GHz	5925-6425 MHz
7 GHz	6625-7125 MHz
12 GHz	11.7-12.2 GHz
13 GHz	12.75-13.25 GHz
14 GHz	14-14.5 GHz
18 or 20 GHz	17.7-21.2 GHz
30 GHz	27.5-31 GHz

³ The Commission afforded the national television networks an additional 15-day period beyond the general cutoff date within which to apprise the Commission as to whether they intended to apply for a domestic system (FCC 70-953, paragraph 3).

16495,⁴ until the final schedule was as follows:⁵

Applications for domestic satellite systems to be considered in Docket No. 16495	Mar. 15, 1971
Statement of intent by television networks	Mar. 29, 1971
Applications by various specified entities for earth stations to operate with systems of others	Apr. 13, 1971
Comments on applications and rule making issues	May 12, 1971
Reply comments	July 12, 1971

6. By March 15, 1971, the Commission received applications for eight separate domestic satellite systems from the following applicants (some of whom filed joint or interrelated proposals):

- (1) Western Union.
- (2) Hughes Aircraft Co. and four telephone operating companies of GTE Service Corp. (Hughes/GTE).⁶
- (3) Western Tele-Communications, Inc. (WTCI).
- (4) RCA Global Communications, Inc. and RCA Alaska Communications, Inc. (RCA Globcom/RCA Alascom or "the RCA applicants").
- (5) Communications Satellite Corp. and A.T. & T. (Comsat/A.T. & T.).⁷
- (6) Comsat.
- (7) MCI Lockheed Satellite Corp. (MCI Lockheed).
- (8) Fairchild Industries, Inc. (Fairchild).⁸

In addition, timely filed applications for earth stations only (to operate with one or more of the foregoing systems) were received from the following:

⁴ Order released November 6, 1970 (FCC 70-1198); Order released November 17, 1970 (FCC 70-1207); Memorandum Opinion and Order released December 2, 1970 (FCC 70-1238); Order released February 18, 1971 (FCC No. 64311); Order released February 23, 1971 (FCC No. 64461); Order released February 25, 1971 (FCC 71-197); Order released March 19, 1971 (FCC No. 65299); Order released April 7, 1971 (FCC No. 65811); Order released May 27, 1971 (FCC No. 68541); Order released July 9, 1971 (FCC No. 69971). In its Memorandum Opinion and Order released on December 2, 1970 (FCC 70-1238), the Commission stated that the cutoff date for the filing of applications, while a needed schedule, was "not designed to limit us to considering only those proposals filed within that period or to restrict applicants to the confines of their proposals as originally tendered" (paragraph 6).

⁵ The State of Alaska was granted leave to file its comments and reply comments at later dates. The Department of Justice and the National Association of Educational Broadcasters have requested, and are hereby granted, acceptance of late filings. Pursuant to leave granted by the Commission, the State of Hawaii filed comments on October 21, 1971.

⁶ The GTE operating companies are: General Telephone Co. of California, General Telephone Co. of Florida, General Telephone Co. of Indiana, Inc. and Bethel and Mt. Aetna Telephone and Telegraph Co. In addition, another GTE operating company, Hawaiian Telephone Co., filed separately for an earth station in Hawaii.

⁷ The Comsat/A.T. & T. applications filed on Mar. 3, 1971 replaced previous joint applications submitted by them on Oct. 19, 1970.

⁸ The Fairchild applications were originally filed under the name of Fairchild Hiller Corp.

- (1) Hawaiian Telephone Co. (see footnote 6 above).
- (2) Twin County Trans-Video, Inc.
- (3) TelePrompTer Corp.
- (4) LVO Cable, Inc., and United Video, Inc.
- (5) Phoenix Satellite Corp.

On March 29, 1971, the ABC, CBS, and NBC networks filed a joint statement as to their present plans in the domestic satellite field (see paragraphs 34-35 below). Comments and reply comments on the applications and rule making issues were filed by the applicants and other interested persons.⁹ Subsequently, on October 28, 1971, the Office of Telecommunications Policy (OTP) submitted a letter of comment which was placed in the record of the proceeding.

7. Before discussing the various threshold policy questions posed by the applications, rule making issues and pleadings of the parties, we shall indicate the general nature of the various applications filed for consideration in this proceeding and the statements of the broadcast networks. The comments of the parties are summarized at some length in the appendix hereto, and more briefly in the ensuing policy discussion (paragraphs 40-167 below).

II. THE APPLICATIONS AND BROADCAST NETWORK STATEMENTS

A. SYSTEM APPLICATIONS

8. The system applications are grouped below according to the number of transponders proposed per satellite. It should be noted that some of the applicants contemplate a much larger number of earth stations in the event their proposals are authorized, but have presently applied for only a few major or prototype earth stations.

1. Proposed Systems With 12 Transponder Satellites

9. Two applicants, Western Union and Hughes/GTE, propose spin-stabilized 12-transponder satellites (similar to the Canadian Telsat satellite being developed by Hughes) with a Thor-Delta launch vehicle. Both propose to use frequencies only in the 4 and 6 GHz bands for the space segment. Both propose illumination of the 48 contiguous States (CONUS) and spot beam coverage of Hawaii and Alaska.

Western Union. 10. Western Union proposes a multipurpose system. It has applied for:

- (a) Three in-orbit satellites at 95°, 102°, and 116° west longitude (with ground spare);
- (b) Seven transmit-receive earth stations (45-foot antennas) to be located near New York City, Los Angeles, Chicago, Atlanta, Dallas, Portland (Oreg.), and in Hawaii;
- (c) Six receive-only earth stations (33-foot antennas) in the States of California, Oregon, and Washington (with another five contemplated for West Coast television program distribution); and
- (d) Microwave and cable terrestrial interconnection facilities.

⁹ The record also contains a large number of letters and other material submitted by interested persons who did not file formal comments.

Western Union plans to use eight transponders to augment its own present and planned general communications services to the public. In addition, it hopes to provide network program transmission service on 10 transponders, to provide message service to Hawaii and Alaska (240 two-way voice channels to each State), and to use 10-16 spare transponders in orbit for backup and for video transmission service on an "available" or "interruptible" basis. It also discusses potential use of the system for Mailgram service. The proposal estimates an initial investment of approximately \$92 million, and annual revenue requirements of approximately \$27 million.

Hughes/GTE. 11. Hughes/GTE propose a hybrid common carrier-private system. They have entered into a contract whereby Hughes would build, own and maintain two 12-transponder spin-stabilized satellites in orbit (with a third spare on the ground), and lease eight transponders in one satellite to GTE (including backup rights to eight transponders in a second satellite) for 7 years at an annual rental of \$900,000 per transponder. GTE proposes to use these transponders to meet some of the intercity communications requirements (switched-voice and private-line) of customers of the four GTE operating companies who have applied for earth stations. Hughes does not intend to operate as a common carrier. It proposes to use the remaining satellite capacity as a private venture for distributing programming to CATV systems and for use by the Corporation for Public Broadcasting (CPB). Hughes has offered CPB free access to two transponders on the primary satellite (with backup rights to two transponders on the second satellite), as well as free access to all Hughes earth stations. The remaining transponders on the primary satellite and those on the second satellite (when not needed for backup purposes) would be used by Hughes for distributing programming it intends to procure and sell to CATV systems. The Hughes objective is to make available to the CATV viewing public a wide diversity of special-interest programs.

12. Hughes has applied for:¹⁰

- (a) Two in-orbit satellites at 100° and 103° west longitude, and a third orbital location at 97° west longitude for future growth (with a ground spare);
- (b) Two transmit-receive earth stations at Califon, N.J. (89-foot and 42-foot antennas) and San Juan Capistrano, Calif. (98-foot antenna); and
- (c) Seven receive-only earth stations (35-foot nontracking antennas) to be located at Elmira, N.Y.; St. Petersburg, Fla.; Eugene, Oreg.; Los Angeles, Calif.; New York, N.Y.; Atlanta, Ga.; and Denver, Colo.

¹⁰ Hughes expects that "several hundred" receive-only earth stations would ultimately be required as the system develops. Hughes has amended its application to delete an earlier request for terrestrial microwave interconnection facilities to the transmit-receive earth stations. It now proposes to locate its program operating centers at or near such earth stations and to use cable for interconnection.

13. The GTE companies have applied for:

- (a) For transmit-receive earth stations (98-foot antennas) to be located in Pennsylvania, Indiana, Florida, and California; and
- (b) Microwave facilities to interconnect earth stations with existing terrestrial routes.

14. Hughes estimates an initial investment of approximately \$49 million (increasing as receive-only stations—estimated to cost about \$110,000 each—are added), and first-year operating expenses of about \$9½ million (also increasing as its operations expand).¹¹ In addition to the annual lease charge of \$7.2 million to Hughes, the GTE companies estimate an initial investment of approximately \$26 million in earth station and interconnection facilities, and annual revenue requirements of about \$16 million.

Western Tele-Communications, Inc.
15. WTCI proposes a multipurpose system using spin-stabilized 12-transponder satellites, with a Thor-Delta launch vehicle (or possibly an Atlas/TE 364-4 if available at lower cost). It proposed, prior to the 1971 WARC,¹² that six transponders would operate at 4 and 6 GHz and six at 12 and 13 GHz, affording CONUS coverage and spot beam, 4 GHz coverage of Hawaii and Alaska. Subsequently, WTCI amended its applications to propose only 4 and 6 GHz, to add spot beam coverage of Puerto Rico, and to revise its estimates as to investment costs and annual revenue requirements. WTCI has applied for:¹³

- (a) Two in-orbit satellites at 113° and 116° west longitude (with a spare on the ground);
- (b) Four representative transmit-receive earth stations (60-foot antennas at 4-6 GHz) located near Los Angeles, Denver, Chicago and New York City;
- (c) One representative receive-only earth station at Desert Springs, Nev. (20-foot antenna at 4 GHz); and
- (d) Microwave and cable terrestrial interconnection facilities.

¹¹ These costs are for the communications system only and do not include costs associated with program acquisition and program operation centers.

¹² While the United States proposed an up-link allocation at 12.75-13.25 GHz, the WARC did not adopt this proposal. Instead it adopted an upband at 12.5-12.75 GHz for region 2, shared with fixed and mobile, and an upband at 14-14.5 GHz shared with existing services in the current table of allocations. By Public Notice issued on July 29, 1971 (FCC No. 70479), domestic satellites applicants were advised that those who included 12.75-13.25 GHz frequencies in their applications might wish to consider amendments in light of the outcome of the WARC. The U.S. proposal also included an upband at 2.15-2.2 GHz, whereas the WARC made provision for an upband at different frequencies (2,655-2,690 MHz). See footnote 2 above.

¹³ WTCI proposes, but has not applied for, a third orbital location at 119° W. longitude for a future satellite. It also contemplates possible addition of 26 transmit-receive earth stations for network program distribution and many additional receive-only earth stations for broadcast network and CATV program distribution, as well as transportable transmit-receive earth stations.

WTCI states that basically its aim will be to serve wideband users up to and including video (e.g., both CATV and broadcast network program distribution), to provide interconnection for its proposed terrestrial network for specialized common carrier services (private line, including data transmission), and to offer transponder capacity to other common carriers under 7-year contracts at \$62,500 per transponder per month. WTCI originally estimated that the initial investment for the facilities applied for would be about \$67.7 million, with annual revenue requirements of approximately \$22.4 million. Revised estimates were submitted with its amendments.

RCA Globcom/RCA Alascom. 16. The RCA applicants propose a multipurpose system to operate in the 4 and 6 GHz bands, or alternatively in the 12 and 14 GHz bands. They propose to use 12-transponder satellites, or satellites of higher capacity, to be either spin-stabilized or three-axis stabilized depending on the contractor bid response. They have not yet decided whether the launch vehicle would be a Thor-Delta, an Atlas/TE-364-4, or an augmented Thor-Delta. The satellites would afford broad-beam coverage of Alaska and CONUS, and spot beam coverage of Hawaii and Puerto Rico.¹⁴

17. The RCA applicants have applied for:

- (a) Three in-orbit satellites at 125°, 121°, and 114° west longitude (with a spare on the ground);¹⁵
- (b) Thirteen transmit-receive earth stations (with antennas ranging from 32 feet to 98 feet) to be located near New York City, Washington, D.C., Chicago, Denver, Los Angeles, San Francisco, and Seattle in CONUS; Anchorage, Fairbanks, Juneau, Ketchikan, and Prudhoe Bay in Alaska; and Honolulu in Hawaii;¹⁶ and

¹⁴ In the event that the RCA applicants decide upon a 12-transponder spin-stabilized satellite, they propose to use the Hughes Telsat satellite. If three-axis stabilized satellites are to be used, potential suppliers include RCA (Astro Electronics Division) and General Electric Co. The RCA applicants have recently filed amendments proposing as an alternative a higher capacity satellite to be launched by an augmented Thor-Delta or comparable launch vehicle with a payload capability of approximately 1,890 pounds (as compared to the 1,550-pound payload capability of the present Thor-Delta). This alternative also contemplates the use of 2-GHz frequencies to operate with 7-foot diameter earth stations in Alaska (costing approximately \$7,000 each) for instructional television. This alternative entails revised estimates of investment costs and annual revenue requirements.

¹⁵ RCA contemplates that two satellites would be placed into orbit initially and the third when needed. At that time the original in-orbit spare would be moved from 121° to 118° west longitude for continued use as an in-orbit spare.

¹⁶ RCA Alascom proposes to acquire earth station facilities near Anchorage either through the addition of another antenna at the existing Bartlett earth station used with the Intelsat system (for which antenna it has applied) or, if that is not feasible, by a new earth station in the vicinity of Anchorage. It also incorporates by reference its pending application for an earth station at Lena Point near Juneau.

(c) Terrestrial microwave interconnection facilities in Alaska.¹⁷

18. RCA Alascom plans to integrate the satellite system facilities with its existing and proposed terrestrial facilities in Alaska. RCA Alascom proposes to provide voice and data services within Alaska, and between Alaska and CONUS and Hawaii, including message toll telephone and intercity private line services for civilian, military, and other Government use. RCA Alascom also proposes to provide instructional, educational and network television and radio transmission services within Alaska, including programs originated in CONUS plus instructional and educational television programs generated in Alaska. RCA Globcom proposes to offer analog private line services among the areas served in CONUS and between them and Hawaii,¹⁸ and digital private line and switched services within CONUS. RCA Globcom also plans to use the system between its New York City, Washington, D.C., and San Francisco terminals in connection with its overseas service. The applicants state that their 13 earth stations are well positioned to provide private line services for the Government. They also note that the initial earth station network could be significantly augmented by the installation of earth stations to provide broadcast and CATV program transmission services, and a motion picture distribution service. They further state that the system could be expanded to accommodate the requirements of Western Union and GTE. It is estimated that the initial investment and annual revenue requirements would approximate \$90 million and \$40 million, respectively, and that these estimates would increase to about \$197 million and \$100 million, respectively, for the expanded system contemplated by 1978.

2. Proposed systems with 24 transponder satellites

19. Two applicants, Comsat/A.T. & T. and Comsat, propose spin-stabilized 24-transponder satellites (deriving 24 channels from the Intelsat IV type of satellite through cross-polarization techniques), with an Atlas-Centaur launch vehicle. Both applicants propose to use only 4 and 6 GHz frequencies for commercial communications purposes, but to conduct experimental tests at higher frequencies (Comsat/A.T. & T. at 20 and 30 GHz, and Comsat at 12 and 13 GHz). The Comsat/A.T. & T. system proposes broad-beam coverage of Conus with spot-beam coverage of Alaska (if another entity provides earth stations there).¹⁹ Comsat system, in addition to broad-beam coverage of Conus and spot-beam coverage

¹⁷ In CONUS and Hawaii the applicants propose interconnection by arrangement with connecting terrestrial carriers.

¹⁸ It indicates that customers could use such private line channels for voice, data, alternate or simultaneous voice data, and other private line services including private line video service.

¹⁹ A.T. & T. has recently indicated an intent to amend to include spot-beam coverage of Hawaii.

of Alaska, could provide spot-beam coverage of Hawaii and Puerto Rico.

Comsat/A.T. & T. 20. The Comsat/A.T. & T. proposal is for a system dedicated to A.T. & T.'s use. They have entered into an agreement whereby Comsat would procure, own, and maintain three satellites in orbit for exclusive lease to A.T. & T., with a fourth spare on the ground. Comsat has applied for:

Three in-orbit satellites at 94°, 104° and 119° west longitude.

A.T. & T. has applied for:

(a) Five transmit-receive earth stations (100 foot antennas) near New York City, Los Angeles, Chicago, Atlanta and Dallas; and

(b) Terrestrial microwave interconnection facilities.

A.T. & T. proposes to use the system to augment its terrestrial systems in accommodating voice, picturephone, data, and other services, to provide long-haul digital channels, to assist in handling peak loads of the Bell System (e.g., time zones, seasonal), to afford additional diversity in any service-restoration need, and to experiment with 20 and 30 GHz technology. In these respects, no charges different from those in its terrestrial tariffs are contemplated. A.T. & T. is further willing to lease transponders to other carriers.²⁰

21. Comsat's estimated initial investment is about \$140 million, and its estimated annual lease charge to A.T. & T. is about \$33.7 million. Apart from the space segment lease charge, A.T. & T.'s estimated investment (including earth stations and connecting microwave facilities, but not multiplexing equipment) is about \$96 million. A.T. & T. estimates that its annual costs would be about \$65 million after the first year. It states that such annual cost is nearly comparable to the annual cost of equivalent terrestrial facilities, \$60 million (insofar as equivalent terrestrial value can be readily determined), and that the cost differential is "offset by significant uses to which a value cannot readily be assigned—such as the enhanced network capability for rapid restoration and to meet sudden demands, and the advanced satellites system research which may yield great savings in future generations of satellites" (A.T. & T. application, p. 25).

Comsat. 22. Comsat has also proposed a multipurpose system of its own to serve all other carriers and users. It has applied for:

(a) Three in-orbit satellites at 99°, 114° and 124° west longitude (with a fourth spare on the ground);

(b) Four transmit-receive earth stations near New York City and Los Angeles (97-foot and 42-foot antennas), and near Juneau and Prudhoe Bay, Alaska (32-foot antennas); and

²⁰ A.T. & T. originally indicated a willingness to discuss arrangements for providing program transmission service to the broadcast networks. Following the networks August 12, 1971, addendum to its stated requirements (see paragraph 35 below), A.T. & T. stated that it is not presently interested in providing such service via satellite.

(c) Three receive-only earth stations (42-foot antennas) near Talkeetna, Alaska; Fairbanks, Hawaii, and Cayey, P.R.

In the event that its proposed system is authorized and potential customers materialize, Comsat contemplates an initial nationwide complex of 132 earth stations (which might later be expanded to 174). It proposes to lease transponders to general common carriers (such as Western Union, GTE, etc.) under long-term, fixed-price contracts at \$760,000 per transponder per year; to provide service to specialized common carriers; to provide program transmission service to broadcast networks, CATV and the Public Broadcasting Service (PBS); to provide data transmission services to educational institutions under the same terms applicable to PBS; and to provide intrastate and interstate public message and private line service to Alaska, as well as television program transmission service to Alaska. It also hopes to attract other noncarrier users and, as demand materializes, to introduce new services such as: Multidestination, one-way data channels for the distribution of news, educational material, financial, medical, and scientific data; service to off-shore installations with small earth stations to meet oil and mining requirements; and service to industry and Government. Comsat would prefer that terrestrial interconnection facilities be provided by other carriers on a long-term, fixed-price carrier-to-carrier basis.²¹ Its estimated initial total investment for the proposed 132-earth station system is about \$244 million. The estimated annual average revenue requirement is about \$69 million.

3. Proposed System With 48 Transponder Satellites

23. MCI/Lockheed proposes a 48 transponder, three-axis stabilized satellite with an antenna mounted on an equipment shell which would always point toward the earth, and solar cells on two large (47- x 8-foot) unfurlable panels which would rotate so as always to face the sun. The launch vehicle is a Titan III D Agena or, in the alternative, a Titan III C. Each satellite would have 24 transponders operating in the 4 and 6 GHz bands and 24 transponders operating in the 12 and 14 GHz bands (see amendments filed on October 8, 1971). Frequency reuse would be accomplished through cross-polarization techniques. The satellite would illuminate Conus with beams at 4/6 GHz and 12/14 GHz and would provide spot beam 12/14 GHz coverage to Alaska and Hawaii.

24. MCI Lockheed, which proposes a multi-purpose system, has applied for:

(a) 2 in-orbit satellites at 114° and 119° west longitude (with a ground spare);

(b) 5 transmit-receive earth stations (4/6 GHz, 32-foot antennas) located outside New York City, Los Angeles, Chicago, Atlanta, and Dallas;

²¹ A.T. & T. and a GTE company have applied for microwave facilities to provide terrestrial interconnection to Comsat's earth stations near New York City and Los Angeles, but Comsat has been unable to agree with them on interconnection terms.

(c) 17 earth stations (12/14 GHz, 32-foot antennas) located within the downtown areas of the cities listed in (b) above and in the downtown areas of Seattle, San Francisco, Denver, Kansas City (Kansas), New Orleans (two antenna locations), Cincinnati, Detroit, Boston, Washington, D.C., and Miami (two antenna locations); and

(d) Terrestrial microwave interconnection facilities for the 4/6 GHz earth stations.

Thus, five urban areas would be served both by a 4/6 GHz earth station located a number of miles outside the central city (ranging from 32.9 to 80.6 miles), and by a 12/14 GHz earth station located downtown. The other 10 urban areas would be served by 12/14 GHz earth stations in downtown locations at or near MCI Lockheed distribution centers. MCI Lockheed contemplates that for further distribution the system would interconnect with existing or proposed terrestrial common carrier systems, privately-owned microwave systems, cable systems, or other modes of local transmission.

25. Based on a market study conducted by Booz, Allen & Hamilton (Application, Vol. IV, Exh. IV), MCI Lockheed expects its primary initial market to consist of leased private line services (including data, voice and low-speed record message). Other potential services include television and radio program distribution, cable television distribution, electronic special delivery mail service, service to Hawaii and Alaska, occasional use services, the provision of carrier trunk lines, and educational services. MCI Lockheed proposes to make available for educational uses the equivalent of five television channels and access to its downtown earth stations, without charge for 5 years and at a fraction of its regular rates for the remainder of the satellite life (estimated at 10 years). For other users, MCI Lockheed proposes to charge rates that are not dependent upon the distance between earth stations, or so-called "distance insensitive" rates (e.g. \$1,200 per month per 4 KHz duplex circuit regardless of distance, and proportional charges for other services depending on bandwidth). MCI Lockheed estimates an initial investment of about \$169 million (with an additional \$60 million investment over a 4-year period for further equipment and earth stations). The average annual revenue requirement over this 5-year period is estimated at about \$68 million.

4. Proposed System With 120 Transponder Satellites

26. Fairchild, which is under contract to build NASA's Applications Technology Satellites (ATS) F and G, proposes to use a 3-axis stabilized satellite based largely upon the design and technology of ATS-F. Fairchild states that the satellite will have a large point-to-point transponder channel capacity made possible by the use of narrow beams and reuse of frequencies. It claims that each satellite would have 72 point-to-point, narrow beam transponder channels at 4 and 6 GHz to provide message service to six earth stations in Conus (12 trans-

ponders to each),²² and 24 additional narrow beam transponders at 4 and 6 GHz to provide message and television program distribution to Hawaii, Alaska, Puerto Rico, and the Canal Zone (6 to each). The same satellite would also have 22 transponder channels at 7 and 14 GHz for television program distribution in Conus, and an option of two 2 GHz transponders. By reusing the 4 and 6 GHz bands 8 times, and the 7 and 14 GHz bands twice, each satellite would provide a total of about 120 transponders.²³ The proposed launch vehicle is a Titan III C.

27. Fairchild has applied for:

(a) 2 in-orbit satellites at 104° and 115° west longitude (with a ground spare), and reservation of a third orbital location at 124° west longitude for future use;

(b) 6 transmit-receive (100 foot) earth stations near New York City, Los Angeles, Chicago, Atlanta, Dallas, and Portland, Wash. (the New York and Los Angeles stations would also have 35-foot antennas for television distribution); and²⁴

(c) Microwave and cable terrestrial interconnection facilities.

28. In addition to voice circuits and television transmission channels, Fairchild's proposed system could provide digital data transmission and reception. In the event that its proposal (including television transmission service to Conus) is implemented, Fairchild would offer:

(a) Two free, noninterruptible satellite transponders to PBS for service in Conus;

(b) Free, shared use of television channels for "off shore" locations to public broadcast interests;

(c) Free, part-time use of two transponders to the medical community for the exploration of techniques to improve health care; and

(d) An option of free use of one or two transponder channels utilizing frequencies at 2 GHz for:²⁵

(i) Instructional television to remote areas (e.g., Alaskan bush) for school or community use with a low cost terminal (estimated at about \$2,000) to be provided by some one other than Fairchild, or

(ii) A message service to remote areas (e.g., Alaskan bush) where usage is minimal and low cost (about \$25,000) earth stations are needed (and would have to be provided by some entity other than Fairchild).

For commercial users Fairchild estimates that the average charge would be \$30,000 per transponder per month with two satellites in orbit (one on standby) and \$19,500 with three in-orbit satellites. Initial investment (including 3 satellites, 3 launch vehicles and support, 6 earth sta-

tions and appropriate terrestrial interconnection facilities) is estimated at approximately \$220.8 million. The revenue requirement is estimated at about \$91.2 million in the first year of operation and at about \$47.8 million by the seventh year of operation.

B. APPLICATIONS FOR EARTH STATIONS ONLY

29. Hawaiian Telephone Co. (Hawaiian Telco) has applied for a 4/6 GHz transmit-receive earth station (45-foot antenna) at Pupukea, Oahu, Hawaii, and terrestrial microwave interconnection facilities. It states that the station could be used with Western Union's proposed system or any other domestic system that is economically viable for Hawaii. However, Hawaiian Telco takes the position that Hawaii should not be part of any domestic satellite system at this time. Should the Commission decide otherwise, then Hawaiian Telco desires to be the entity authorized to provide ground facilities in Hawaii. Its proposed station would be operated initially as a receive-only facility, but would have capacity for two-way message and television transmission service. Investment (including terrestrial microwave) is estimated at about \$1.85 million, and annual operating expenses at about \$.5 million.²⁶

30. TelePrompTer Corporation (TelePrompTer) has applied for five 4 GHz receive-only earth stations (35-foot antennas) to be located at or near New York City, Los Angeles, St. Petersburg (Florida), Elmira (New York), and Eugene (Oregon). It is contemplated that the earth stations would operate with a system proposed by one of the pending system applicants, such as Hughes, and would be used for the reception and distribution of CATV programming produced by TelePrompTer and others. TelePrompTer estimates that the overall unit cost for a typical receive-only earth station would be about \$110,000, with an annual operating cost of approximately \$5,600 (prorating personnel costs between the earth station and the CATV system), and an annual depreciation charge of about \$11,000.

31. Twin County Trans-Video, Inc. (Twin County) is the operator of a CATV system in the Allentown-Bethlehem area of Pennsylvania. It has applied for a receive-only station (35-foot antenna) near Allentown to receive in the 4 and/or 12 GHz bands and to be operated with one or more of the systems proposed in the pending systems applications. The station would be used for reception of CATV programming transmitted via domestic satellites, as selected by Twin County, for distribution over Twin County's CATV system. It estimates construction costs at \$154,097, with annual operating costs of approximately \$5,000 and an annual depreciation expense of about \$15,410.

²⁶ GTE and its subsidiary, Hawaiian Telco, have recently filed a notice of intention to amend their respective applications to operate as a unit in serving Conus and Hawaii, providing message toll service as well as private line, data, television, and other broadband services between Hawaii and Conus.

32. LVO Cable, Inc. (LVO Cable), an operator of CATV systems, and its wholly owned subsidiary, United Video, Inc. (United Video)—a miscellaneous common carrier, have applied for receive-only earth stations (35-foot antennas) to receive in the 4 and/or 12 GHz bands. LVO Cable has applied for three stations near Oklahoma City and Tulsa (Oklahoma), and near La Salle (Illinois). United Video has applied for two stations near Albuquerque (New Mexico) and Boise (Idaho). The applicants contemplate that the primary initial use of the earth stations would be to receive and distribute programming to local CATV systems, and that future services might include any nontelephone communications, including data transmission, that may be offered by satellite. They estimate that the cost of the five earth stations would come close to \$800,000 with annual operating costs of about \$5,000 per station and annual depreciation expense ranging from \$15,410-\$16,552 per station (depending on whether channel capacity is 6 or 7).

33. Phoenix Satellite Corporation (Phoenix) has filed a "prototype" application for a 4 GHz receive-only earth station (32-foot antenna) near Phoenix, Ariz.²⁷ The application is supported by the CBS Television Network Affiliates Association, the ABC Television Network Affiliates Association, and the NBC Television Network Affiliates Association (the Network Affiliates Associations). If the Commission should grant the Phoenix application, it is anticipated that other television broadcast stations would file for similar earth station facilities using this "prototype" application as a model. The three network affiliated stations in Phoenix, Ariz.,²⁸ have entered into a cooperative venture to establish a jointly owned and managed corporation, Phoenix, to apply for and operate the earth station. They propose that the licensees of two independent television stations in Phoenix and any future commercial television broadcast licensees in that area would be permitted to participate in ownership, or to use the services of the earth station on a nondiscriminatory basis without ownership participation. Public broadcasting stations could use the earth station without charge. The cost of the facilities to be owned by Phoenix is estimated to total some \$135,000, with annual operating costs of some \$6,000 and annual depreciation expense of about \$13,500 or less. While the Phoenix investment includes a microwave tower for common use at the earth station, each user would otherwise supply its own terrestrial interconnection facilities—estimated to approximate \$22,400 for each of four network affiliated stations (including the PBS affiliate). Each user would have access to a locked cubicle in a Phoenix building at the earth

²⁷ The station could be modified to operate in the 7 GHz band.

²⁸ KOOL Radio-Television, licensee of KOOL-TV, a CBS affiliate; Arizona Television Co., licensee of KTVE, an ABC affiliate; and KTAR Broadcasting Co., licensee of KTAR-TV, an NBC affiliate.

²² The channels for the New York and Los Angeles earth stations could be increased to 24 each by reducing service elsewhere.

²³ Fairchild proposes to use a 30-foot satellite antenna to provide 10 spot beams. It is contemplated that earth stations will operate at below average radiated power levels and that low power solid state transmitters will be used in the satellite.

²⁴ Fairchild anticipates that there would also ultimately be over 100 receive-only earth stations (25-foot antennas). See also footnote 34.

²⁵ Fairchild has proposed the use of 2.15-2.2 GHz (up link) and 2.5-2.55 GHz (down link). With respect to the up link frequencies see footnotes 2 and 12 above.

station, which would contain the user-owned equipment necessary to pickup the RF signal, convert it to video and transmit it via the user's microwave link to the user's studio. In the Phoenix area it is estimated that each network affiliate, including the PBS affiliate, would need two video channels²⁹ and that each of the two existing independent stations would need one video channel. Phoenix states that the facility would have sufficient capacity to permit up to two video channels to each of three unused television assignments in Phoenix if stations should materialize on these assignments.

C. JOINT STATEMENT OF THE COMMERCIAL TELEVISION NETWORKS

34. On March 29, 1971, the ABC, CBS, and NBC television network companies filed a joint statement as to their present plans in the domestic satellite field. In brief, the networks stated that they are negotiating with the system applicants³⁰ and "think it highly likely that program transmission requirements can satisfactorily be met through this approach at a cost considerably below that of current A.T. & T. program transmission rates."³¹ They therefore intend to pursue such possibilities fully rather than to submit a separate application for domestic satellite facilities at this time. However, in the event that the analysis and negotiations now in progress do not lead to satisfactory arrangements, they request that an opportunity remain available for the submission of a separate system proposal by or on behalf of the network companies.

35. Noting that a resolution of the various policy issues in this proceeding may affect the number and type of satellite entities that will be available in final negotiations and influence the manner in which network service needs could be met, the networks urge the Commission to proceed as expeditiously as possible to act on the basic policy matters to be resolved in this proceeding. Despite

²⁹ Phoenix indicates that each commercial network affiliate would have one fixed-tuned video receiver for network interconnection, and one video receiver remotely tuned across the entire 4 GHz band to be used as a back-up during the network hours and to gain access to such nonnetwork programming as the affiliate has a contract to receive.

³⁰ The networks stated that all of the system applicants except Hughes/GTE have indicated an interest in program transmission arrangements. A.T. & T., which originally expressed such interest, is not presently proposing to provide service to the networks via satellite facilities.

³¹ The network companies contracted with Page Communications Engineers, Inc., for a study of the manner in which broadcast program transmission requirements could best be met, utilizing satellite and/or terrestrial microwave facilities designed primarily for this specialized purpose, as an alternative to the continued use of A.T. & T. facilities. According to the networks, the Page Report (submitted to them on Aug. 3, 1970) indicated that either a satellite system or a terrestrial microwave system devoted exclusively to program transmission requirements could be constructed and operated with multimillion dollar annual savings to the networks.

such uncertainties, the networks indicated that in the interim they would press forward with their negotiations with the applicants. On April 20, 1971, after the pending system applications were filed, the networks furnished interested applicants a written statement of their requirements for a satellite program distribution system. On August 12, 1971, the networks distributed an addendum to their requirements. The networks state that they have been and will be evaluating proposals based on these initial and amended statements of requirements.

D. ESTIMATED REQUIREMENTS OF COMMERCIAL AND NONCOMMERCIAL BROADCAST NETWORKS

36. In essence, the network stated requirements are for nine fully backed up channels (three for each network), plus access to two additional channels for occasional use, up to five additional channels on Saturday (12 m. to 8 p.m.), and up to six more channels on Sunday (12 m. to 8 p.m.)—i.e., a total of 22 channels for regular and occasional use. They contemplate 151 earth stations, of which 29 would have transmit as well as receive capability. The major transmitting station would be in the New York City area, with Los Angeles as an alternative major transmission point. It is anticipated that there would be a trial period to test system performance in the Pacific time zone, running simultaneously with the landline distribution system for comparison purposes, within the 36-month period (from the issuance of FCC authorizations) the networks specify for completion of a nationwide system. Service to Alaska and Hawaii would be included in the nationwide system, but not in the Pacific time zone trial period.

37. The Corporation for Public Broadcasting (CPB) and the Public Broadcasting Service (PBS) have estimated that public broadcasting would require full-time use of two satellite transponders, fully backed up and nonpreemptible, plus access to a third transponder for 31 hours a week at specified hours for supplemental service and access for a maximum at 7 hours per week, subject to availability, for occasional service. They also desire access to and use of all earth stations (transmit and receive) serving commercial customers (e.g., broadcast and CATV), and access to satellite channels and earth stations to meet the needs of National Public Radio (NPR).³² The terms on which CPB and PBS desire access to domestic satellite facilities are discussed in paragraph 154 and paragraphs 87-89 of the appendix.

³² CPB and PBS state that they would initially require 109 receive stations in CONUS (equivalent to the number of drop points on the A.T. & T. dedicated terrestrial network when it becomes operational), and should have terminals in Alaska as well. NPR would need 86 receive points. PBS and NPR together would need eight audio channels, and those circuits used by NPR should be matched pairs of 15 KHz for stereophonic transmission.

III. ISSUES

38. The principal policy issues for Commission resolution at this time appear to be these:

A. Whether to adopt some form of "open entry" policy or to limit the number or nature of systems to be authorized.

B. Whether any of the pending system applicants should be disqualified on policy grounds, or have conditions placed on any authorization to protect the public interest.

C. What policy to adopt as to earth station ownership, access to earth stations, and interconnection with terrestrial facilities.

D. Whether Alaska and Hawaii should be served by domestic satellite facilities and, if so, by what system or systems.

E. Whether ETV and other educational interests should be permitted to use domestic satellite facilities on special terms and, if so, on what terms.

F. Whether to promulgate rules governing procurement.

39. Once these issues have been determined and the applications have been amended to conform to the policies and conditions adopted herein, we will consider each application on its individual merits and follow such procedures as may be necessary to resolve any remaining questions pertinent to the particular set of applications (e.g., coordination of earth stations and resolution of claims of interference with terrestrial facilities in the 4 and 6 GHz bands). Each applicant will, of course, be required to make a satisfactory showing that it is legally, financially, and technically qualified, and that a grant of its proposal would otherwise serve the public interest, convenience, and necessity.

IV. DISCUSSION AND CONCLUSIONS

40. Although the previous report issued by the Commission in 1970 was not designed to be a statement of policy, it did identify certain considerations and objectives which the Commission regarded as significantly relevant for the guidance of prospective applicants. To this extent, that report has provided a frame of reference for the thinking and planning of the applicants. It will be useful, therefore, to review briefly the report in these respects as a prelude to considering the policy issues presented by the applications.

41. In the 1970 report, the Commission recognized that satellites can be readily adapted to complement existing long-haul point-to-point transmission services; and that they offer unique promise as an economical means (compared to terrestrial techniques) of providing point-to-multipoint services, such as program transmission. The Commission expressed the view that the greater potential may lie in the use of satellites for the development of new services and markets. In this connection, the Commission noted that technological advances in terrestrial transmission facilities over the years have reduced the cost of point-to-point transmission and this trend is likely to continue into the

future. As stated in paragraph 25 (22 FCC 2d 86, 95-96):

The most important value of domestic satellites at the present time appears to lie in their potential for opening new markets, for expanding the beneficial role of competition in the existing markets for specialized communication services, and for developing new and differentiated services that reflect the special characteristics of the satellite technology. Realization of this potential will require innovative technological and service planning and development.

42. As noted at the outset, the Commission was unable to determine, on the basis of the record before it, the kind of system or systems that would most effectively promote the public interest in achieving the maximum benefit from the use of satellite technology in the domestic communications field. Accordingly, to facilitate such determinations, it invited potential applicants to come forward with concrete proposals for the establishment and operation of systems capable of providing multiple or specialized services, stating (paragraph 19, 22 FCC 2d at 95-96):

Applicants may propose the rendition of such services directly to the public on a common carrier basis or by the lease of facilities to other common carriers, or any combination of such arrangements. Applicants may also propose the private ownership and use or the joint cooperative use of the system by the several owners thereof. Applicants may further propose the shared use of some facilities by different systems, or a division in the ownership of various system components (e.g., user ownership of earth stations to afford direct access to the space segment of a common carrier or cooperative system). (Footnote omitted.)

Applicants were further specifically requested to state the terms on which service would be offered to public broadcasting and other educational users, and to address the question of whether the facilities would be capable of providing service to Alaska and Hawaii in the interest of national unity (22 FCC 2d at 100-101). The Commission also announced that it was rejecting the "pilot program" approach by which the Commission would specify the guidelines for an initial system. The Commission noted that it was technically feasible to accommodate more than one system and that it was therefore preferable to permit potential applicants to take the initiative in submitting concrete proposals.

43. The concurrently issued notice of proposed rule making (22 FCC 2d 810) called for comment and suggestions as to the policies that the Commission should follow to resolve possible economic or technical conflicts among applicants, e.g., in such areas as orbital locations and frequency usage. In addition, the commission requested comments on the appropriate initial role of A.T. & T. in the domestic communications satellite field. Specifically, the Commission noted the concerns that A.T. & T., by interservice subsidy, might discourage or foreclose entry by others into the markets for specialized services; that innovative planning by A.T. & T. might

be constrained by its existing terrestrial facilities and services; and that, because of its position as the dominant domestic carrier, A.T. & T.'s expansion into the domestic satellite field might impact unduly upon (if not discourage) the system planning of other potential entrants and the services they seek to provide. Finally, the rule making asked for comments as to whether the Commission should promulgate rules governing procurement, including the authority for and nature of any such rules, and on proposed policies as to earth station ownership, access, and interconnection with terrestrial facilities.

44. As noted above, the 1970 report does not constitute a statement of policy by the Commission. It does, however, reflect the desire of the Commission to give serious consideration to the possible uses of satellite technology in the domestic field as a means of achieving new communications services as well as expansion in the scope and flexibility of existing services. The report also raises the basic question of whether these objectives can be accomplished by satellite facilities being provided by existing carriers or new carriers or private entities. Thus, the Commission announced its intention to give serious consideration to enhancing competition in the development and provision of communications services—existing and new—as well as to enhancing competition between different modes of communications, in a manner consistent with other relevant public interest considerations (see paragraph 20 of the 1970 report, 22 FCC 2d at 94, and paragraphs 54, 57, and 67-70 below).

A. THE NUMBER AND NATURE OF SPACE SEGMENTS TO BE AUTHORIZED INITIALLY

45. To recapitulate briefly, in response to the 1970 report the Commission has received eight applications for domestic satellite systems, proposing a total of 20 in-orbit satellites with a combined capacity of about 600 transponders. Except for Comsat/A.T. & T. and Hughes/GTE, all of the system applications propose multipurpose common carrier systems offering a variety of proposed services to the public—including program distribution for the broadcast networks.

Comsat/A.T. & T.: Comsat proposes to lease three (24-transponder) satellites to A.T. & T. for 7 years for the latter's use, exclusively or primarily as an alternate means of routing A.T. & T.'s terrestrial services with no difference in tariff to the consumer. A.T. & T. would provide its own earth stations and terrestrial interconnection facilities.

Hughes/GTE: Hughes proposes to lease eight (backed up) transponders to GTE operating companies for 7 years. Hughes would use the remaining satellite capacity for a private CATV networking venture (with two backed-up transponders reserved for use by public broadcasting). Hughes and GTE would each own and operate independent earth station facilities.

The broadcast networks have expressed an interest in domestic satellites, but have not yet decided whether to convert to satellite interconnection, in whole or in part, or upon any particular applicant.

46. The proposed satellites vary as to capacity and technology. Four applicants (Hughes/GTE, Western Union, WTCI, and the RCA applicants (as one alternative)) propose 12 transponder satellites. Hughes/GTE and Western Union propose the same technology, based on the Telsat satellite Hughes is currently building for the Canadian domestic system. WTCI has worked with a different satellite manufacturer in preparing its application (North American Rockwell) and the RCA applicants are as yet undecided as to a particular satellite or manufacturer.³³ Two applicants, Comsat and Comsat/A.T. & T., propose 24-transponder satellites which are modified versions of the Intelsat IV satellite of the global system. MCI Lockheed proposes 48-transponder, three-axis stabilized satellites. A demonstration model of this satellite, which would utilize 12/14 GHz as well as 4/6 GHz frequencies, is currently under construction at the Lockheed Missile and Space Center. Fairchild proposes a 120-transponder, three-axis stabilized satellite based largely upon the technology of the ATS-F satellite it is now building under contract to NASA. The Fairchild proposal contemplates narrow beams (e.g., spot beams for individual cities) and reuse of frequencies. In addition to 4/6 GHz, Fairchild contemplates the use of 7/14 and 12 GHz frequencies and offers an option of service to remote areas at 2 GHz.³⁴

1. Options

47. The principal options appear to be these:

- One space segment (selection of either one applicant or a consortium);
- Selection of some of the pending applicants on the basis of the comparative merits of their proposed systems and other relevant public interest considerations; or
- Some form of "open entry" for all applicants except those, if any, found disqualified on policy grounds.

2. Positions of the parties

48. As more fully set forth in the appendix (paragraphs 1-63), most of the applicants and other parties are opposed to a monopoly authorization either to a single applicant or a consortium of all the applicants. Some, including the Department of Justice, OTP and several

³³In the event that the RCA applicants decide upon a 12-transponder spin-stabilized satellite, they propose to use the Hughes Telsat satellite. If three-axis stabilized satellites are to be used, potential suppliers include RCA (Astro Electronics Division) and General Electric Co. The RCA applicants have recently filed amendments proposing as an alternative a higher capacity satellite to be launched by an augmented launch vehicle (Thor-Delta or comparable) with a greater payload capability. This alternative also contemplates the use of 2.5 GHz frequencies to operate with 7-foot diameter earth stations in Alaska.

³⁴Fairchild has recently tendered an additional proposal for satellites to provide program transmission services to the networks utilizing 4 and 6 GHz or 7/14 GHz frequencies (two in-orbit satellites and one ground spare).

applicants (e.g., MCI Lockheed, Hughes, WTCD), support a policy of unlimited open entry on the ground that this is most likely to result in economy in development and innovation in technology and services. Others, while asserting that there is room for several systems, doubt whether the present and immediately foreseeable potential market is sufficient to support all of the pending systems. However, the parties are almost unanimously against comparative hearings, and urge the Commission to arrive at some policy solution which would permit prompt authorization of several systems.

49. One applicant (Comsat) claims that there is need for only a single multipurpose system (plus separate facilities for A.T. & T.) in view of the limited number of orbital locations and basic reliance of many applicants on the same markets for economic support (e.g., the television networks). Though Comsat seeks a monopoly grant, A.T. & T. urges the Commission to authorize the Comsat/A.T. & T. proposal and such other applicants as can reasonably be found in the public interest. Fairchild cautions the Commission to avoid a wasteful multiplicity of systems that might stifle the potential of the technology and result in higher costs, and suggests that its proposal would afford an optimum initial system from the standpoint of orbital and spectrum utilization. In any event, Fairchild requests the Commission to disregard the existing contract between Comsat and A.T. & T. which, it asserts, would render meaningless any policy of competitive open entry.

3. Discussion and analysis

a. Technical considerations:

50. Many of the 20 in-orbit satellite locations as proposed by the applicants conflict with each other and with orbital locations that have been selected by Canada. However, it appears technically feasible to accommodate all of the proposed in-orbit satellites in the orbital arc capable of illuminating the United States at 4 and 6 GHz (i.e., in that portion not used by Canada) by reducing orbital separations to about 3°, by utilizing careful frequency and polarization coordination, and by shifting some satellites from the orbital locations that could serve Alaska and Hawaii as well as Conus (about 6) to orbital locations serving only Conus and more easterly off-shore points (about 14). Further, it appears that none of the system proposals could be disqualified, without hearing, as technically infeasible—although some may entail more risk than others and there may be some question as to whether all of the proposed systems could achieve the performance objectives stated by the applicant.³²

b. Economic considerations:

51. It appears to the Commission that the total initial space segment capacity of the eight proposed systems substantially exceeds the present and foreseeable com-

munications market for domestic satellite service. In combination the applicants have proposed 600 in-orbit transponders,³³ of which 336 would be primary and the rest spare. By their own estimates, the proposed systems (including earth station and other terrestrial facilities—either applied for or contemplated) would require a total initial capital investment on the order of \$1.2 billion, and annual revenue requirements approximating in total about \$400 million.³⁴ A.T. & T. probably has the ability to utilize the capacity proposed in the Comsat/A.T. & T. system (48 primary and 24 spare transponders), and Hughes/GTE may be able to use much of the transponder capacity of their proposed system (12 primary and 12 spare). Some of the other applicants undoubtedly can supply some traffic under their control (e.g., Western Union, the RCA applicants and, perhaps to some extent, MCI Lockheed and WTCD). Comsat and Fairchild have no terrestrial traffic to transfer and no customer commitments (apart from A.T. & T. in the Comsat/A.T. & T. proposal). Most system applicants are relying largely upon speculative business, which they hope will materialize after the facilities become operational, and in some instances on the same potential customer. For example, each of six applicants has proposed capacity to accommodate the commercial broadcast networks. The networks themselves have not yet selected any applicant, or even made clear an intention to convert to satellite interconnection.³⁵ Thus, it seems obvious that the present and immediately foreseeable communications market cannot support all eight systems with all of the facilities proposed.

52. However, the Specialized Common Carrier decision took cognizance of the circumstances that the "demand for communications services is growing very rapidly and can be expected to continue to expand at very high rates," that there is "an increasing public need and demand for the availability of diverse and flexible means of meeting heterogeneous communications requirements," and that the "effect of new entry may well be to expand the size of the total communications markets" by tapping "latent, but undeveloped submarkets" for specialized services (Specialized Common Carrier Services, 29 FCC 2d 870, 904, 906-908). Moreover, as noted in paragraph 41 above, while some potential uses of the

³² A transponder is capable of handling, for example, one color television channel, or 600-900 or more voice circuits, or a one-way digital stream of about 35 Mb/s.

³³ We do not suggest that these estimates are realistic. There are some signs that they may be underestimated (e.g., in the case of Hughes they do not include most of the receive-only stations, and A.T. & T. has not included multiplexing equipment). Moreover, in some instances, the applicants plan additional capital investments within the first few years of operation, which are not included in the above totals.

³⁴ In some areas, the Commission has received applications from miscellaneous terrestrial common carriers for portions of the network interconnection requirements.

satellite technology seem readily apparent, its greatest potential may lie in the development of new markets and services.³⁶ "[Past] experience with new means of providing communications services" led the Commission to state a belief in the 1970 Report that "an operating system or systems may disclose other advantages which cannot now be foreseen" (22 FCC 2d at 83). Accordingly, while the satellite capacity proposed by the applicants appears excessive, there seems to be warrant for a conclusion that some competitive entry in the domestic satellite field may be reasonably feasible—particularly if steps are taken in some instances to minimize the capacity of the initially authorized facilities.

53. This does not mean, of course, that the Commission can guarantee that any particular system would be economically viable either initially or in the long run. As in any new venture, there may be a considerable initial period of operations at a loss, and the extent to which viable operations are realizable may be discernible only after operational development of this new technology in the domestic field. The Commission recognized in the 1970 Report that the satellite technology has risks and uncertainties not ordinarily associated with new terrestrial ventures (e.g., risk of launch failure and the inaccessibility of in-orbit satellites for maintenance and repair purposes). Moreover, neither the generally conceded existence of a large potential communications market nor more extensive data as to the precise nature of its makeup would enable us to predict with any degree of certainty what means the public will pick to meet its needs (whether terrestrial or satellite and, if the latter, which entity). Quite understandably, the consuming public may prefer to defer any commitment to new facilities until they are operational and the quality and terms and conditions of service are demonstrable. We think that the public should not, and indeed cannot, be deprived of that option.

54. We are dealing with the initial implementation of satellite technology for domestic communication. Therefore, the primary objective of any policy should be to maximize the opportunities for the acquisition of technical, operational and marketing data and experience. In the circumstances it appears to us that the public interest would be best served by aiming toward the following objectives:

³⁶ For example, General Electric Co. (GE) has informally indicated to the Commission that it is conducting a study, at considerable cost, as to whether its in-house communications requirements could be better met by decreased reliance on leasing facilities from terrestrial carriers and substituting therefor a mix of private terrestrial microwave and leased satellite transponders to operate with transmit-receive earth stations owned by GE. In the event that it should decide upon such a course, GE estimates it would have a 1975 requirement for leasing about seven transponders with appropriate backup capacity.

³⁵ This conclusion is based on technical advice from the National Aeronautics and Space Administration (NASA).

(a) Early authorization of some domestic satellite facilities.⁴⁰

(b) Avoidance of comparative hearings or other protracted further proceedings at this stage.

(c) Open entry to all pending applicants (except those, if any, found to be disqualified on policy grounds), generally conditioned so as to maintain flexibility to authorize new technology, new usages, and new applicants; and with such special conditions as are deemed necessary and appropriate in the public interest.

c. Discussion of alternatives:

(1) *Options entailing further proceedings.* 55. We do not think that the Commission could, on the basis of this record, select one or a few applicants on the merits on their system proposals without further proceedings (such as comparative evidentiary hearing or the compilation of a much more comprehensive record). The present record contains inadequate information to permit a comparative evaluation of technical, cost and other factors.⁴¹ The applicants have presented information in different forms, some have included items which others have excluded, and many of the estimates do not disclose the precise considerations on which the estimate is based. Moreover, some applicants have challenged various claims in the proposals of others, which they in turn defend. In short, this appears to be a situation where confrontation and cross-examination of witnesses and the compilation of a more comprehensive record would be necessary to resolve factual issues on the merits of the proposals and to make comparative findings.

56. Most of the applicants are against comparative hearings.⁴² Moreover, as the Department of Justice points out, comparative hearings would be particularly unfortunate in this area. Given the number of applicants, the complexity of their proposals, and the importance of the stake, it is unlikely that such a proceeding could be expedited. Moreover, the problem of proprietary information would complicate the procedure and might preclude the compilation of an adequate public record on technical aspects. Further, in order to compare the

⁴⁰ This is not to suggest, of course, that construction permits could be granted by, or simultaneously with, the pending policy determinations. Regardless of whether amendments are necessary to achieve compliance with the Commission's policy decision, processing of the applications has not yet been completed. Some amendments would obviously be required in any event (e.g., to remove orbital location conflicts, to resolve claims of frequency interference between some earth stations and terrestrial facilities, etc.)

⁴¹ While we have received technical assistance from NASA, it has not attempted to evaluate the applicants against each other in considering the technical aspects of their system proposals.

⁴² GTE asserts that comparative hearing is not necessary in the case of its proposal, but may be appropriate for others. The RCA applicants are generally opposed to comparative hearings, but would claim comparative hearing rights in Alaska if any entity other than RCA/Alascom is authorized to serve that State.

proposals, it would be necessary to cutoff amendments to the applications. The rapidly developing technology in this field would probably make obsolete the plans on which the hearing and the Commission's findings would be based. In view of the nature of this new venture with its inherent uncertainties, the applicants should have maximum flexibility to perfect their proposals and to make changes up to the latest practicable time. In addition, some of the pertinent factors involve future uncertainties not subject to evidentiary proof (e.g., the exact size of the potential market for domestic satellite communications or the precise breakdown of the various latent submarkets that might be stimulated and developed by operational facilities). The Commission stated in the Specialized Carrier decision that: "Factors of this kind do not lend themselves to precise prediction, and we would not undertake to make definitive findings as to such future developments even if we were to hold an evidentiary hearing" (29 FCC 2d 870, 919). Most critical, the time consumed in a lengthy comparative proceeding would cause a substantial delay in the provision of any domestic satellite service to the public.

57. Finally, as a matter of policy, we believe that the public interest would not be well served by the selection of a chosen instrument or by a limitation to two or three applicants. In combination, the pending applicants reflect an array of assorted talents and experience, and they have proposed a variety of technical and service features. However, no one proposal stands out as obviously superior to all the other on all counts. Moreover, each of the applicants has potential conflicts of interest or other drawbacks for policy reasons, some more serious than others (see discussion on the claims of disqualification, paragraphs 82-119 below). If a larger number of participants is authorized and the using public has more options, some of the drawbacks may dwindle in importance. Further, for the reasons indicated below, we think that the objectives set forth in the 1970 Report (see paragraphs 40-44 and particularly paragraph 44 above) would be enhanced by the availability of diverse technologies and system operators. In short, in our view, the public interest would be best served by avoiding comparative hearings to choose one or a few applicants.

58. Also, for these reasons and policy objectives, we are of the view that the Commission should not require a single space segment consortium based on one technology. The applicants have proposed a variety of satellite technologies, and are in dispute as to which is best. Unless they should voluntarily agree upon a particular technology, which appears unlikely, it would be up to the Commission to select or prescribe the space segment technology. At the very least, this would require considerable further technical assistance from NASA. Moreover, fairness to the applicants and other potential users might entail an opportunity to be heard on NASA's recommendations.

59. The applicants are generally opposed to a consortium to own and operate a common space segment for all. As they point out, if only one type of space segment is authorized, the design characteristics and technology of the satellites would become a limitation on the system's performance. Compromises would be necessary to incorporate the widely varying system characteristics in one spacecraft design.⁴³ Apart from the claims that one multipurpose system would not meet varied needs, opportunities for diversity and experimentation would be substantially diminished. A premature commitment to a particular technology might impede the introduction of new and different satellite usages and systems. Moreover, the potential benefits to be derived from competition among diverse technologies would be diminished to the extent that service offerings and rates are geared to the use of the same space segment technology and earth stations compatible with that technology. Even assuming a competitive ground environment, all participants would have the same space segment costs and technical constraints, and would therefore have less room to innovate in service offerings and rates.

60. In addition, if only one kind of space segment were to be selected, there would be a natural tendency to follow the safest course, i.e., to choose more conservative, proven technology rather than a more innovative proposal like that of MCI Lockheed or Fairchild. Some parties assert that the technology of these applicants is undemonstrated and more risky. While the Fairchild proposal contemplates accommodation of A.T. & T. growth traffic, this potential user has expressed doubts as to whether the Fairchild proposal could provide the technical quality of service it desires. Some parties, including potential users, have questioned the desirability of using the 12/14 GHz frequencies proposed, in part, by MCI Lockheed. The broadcast networks have indicated a preference for the use of 4/6 GHz for program distribution purposes, whereas Fairchild has proposed 7/14 GHz.⁴⁴ Yet, MCI Lockheed and Fairchild each urge that the technology proposed in the particular application has marked advantages over the Telsat or modified Intelsat IV type of satellite or the use of 4/6 GHz frequencies alone. And Hughes itself says that the "problems inherent in establishing new technology should not be a ground for initial disapproval."

⁴³ For example, if the Commission were to select a space segment utilizing only 4/6 GHz frequencies, that would preclude the MCI Lockheed proposal for 12/14 GHz earth stations located downtown. The low-cost, dual feed (nontracking) receive-only earth stations proposed by Hughes are dependent upon satellites spaced 3° apart, whereas low-cost, small antenna diameter transmit-receive earth stations proposed by another applicant might require somewhat wider satellite spacing.

⁴⁴ Fairchild has recently tendered a proposal for separate satellites for network program distribution at 4 and 6 GHz or 7 and 14 GHz.

61. In the circumstances, we conclude that the public interest would be better served by a policy of permitting any applicant a reasonable opportunity to employ the technology of his choice. Such a course is also more apt to afford users a wider choice of options as to how they may best satisfy their communications requirements—a goal the Commission found to be desirable in the Specialized Carrier proceeding. It would further comport with the Commission's decision in the 1970 Report not to prescribe technical guidelines for an initial system but rather to permit applicants to take the initiative. Accordingly on policy grounds—as well as to avoid procedural delays—we believe that the choice of technology should be a voluntary matter for both applicants and users.

(2) *Options available on the basis of this record.* 62. There are some alternatives which the Commission probably could adopt without further proceedings. First, it might adopt a policy of unlimited open entry, authorizing all of the satellite facilities proposed by all of the applicants who are found qualified and are willing to proceed. Second, it could permit entry by all applicants found qualified, but limit the number of facilities to be authorized initially pending a stronger showing that additional facilities are required to serve the present or future public interest, convenience and necessity. In either event, the Commission could disqualify one or more applicants on policy grounds, and/or impose such conditions on any authorization as are found to be reasonable and necessary in the public interest.

OPEN ENTRY OPTION I

63. As previously indicated, accommodation of all of the proposed satellites would just about fill all of the 4/6 GHz orbital locations with 1971 technology for 7 or more years, and leave little room to accommodate new technology or new applicants at those frequencies.⁴⁵ Moreover, it seems obvious that the proposed satellite capacity is substantially in excess of what would be needed to meet present and foreseeable domestic communications satellite traffic. Of course, under an unlimited open entry policy, some applicants might decide to merge with others or drop out. There have been some indications that Western Union and the RCA applicants might like to combine with GTE, if the latter were not bound by contract to Hughes or if Hughes would permit them to join. If the networks should announce a decision for one applicant or against conversion to satellite transmission at this time, this might lend added impetus to merger efforts. Moreover, some of the applicants (e.g., Western Union, the RCA applicants or Comsat) might reduce their requests for three in-orbit satellites to two—since the motivation for six-fold accommodation of the requirements of one potential customer would disappear.

⁴⁵ There would, of course, be abundant orbital locations for applicants proposing the use of other frequencies alone (e.g., in the 2, 7, 12, 14, 18, and 30 GHz bands).

64. Since the Fairchild proposal is dependent primarily upon acquiring A.T. & T. growth traffic and the networks, that applicant might not pursue its pending proposal if the Comsat/A.T. & T. arrangement is authorized and the networks adhere to their present preference for 4/6 GHz (but see footnote 44). WTCI has stated that it plans to proceed regardless of the number of systems authorized by the Commission. MCI Lockheed, which supports open entry for all found qualified, claims that if 20 of the 48 transponders in its primary satellite carried leased private line traffic, its proposed system would provide adequate revenues to meet system operating costs and depreciation charges, and provide an attractive return on investment. Thus, if WTCI and MCI Lockheed mean what they say, they might elect to proceed as proposed in an unlimited open entry situation.

65. In this connection, it bears noting that domestic satellite may pose a somewhat different situation from that presented in the Specialized Carrier proceeding.⁴⁶ In concluding that unlimited new entry would serve the public interest in that field, the Commission found that the basic public message services provided by A.T. & T., Western Union and independent telephone companies would not be adversely affected. Moreover, the Commission found that in the circumstances there the public would not be adversely affected if one or more new entrants failed, stating (Specialized Common Carrier Services, 29 FCC 2d 870, 926):⁴⁷

Further, and more important, we do not perceive any significant adverse consequences to the public in the event that one or more entrants should fail. In the first place as the Department of Justice and other parties point out, if a weaker entrant should encounter difficulty, a merger with or sale of facilities to, a stronger competitor is a more likely fate than bankruptcy or a removal of facilities from the field. Even assuming bankruptcy, the loss of a carrier who is unable to attract sufficient customers for viable operations in a competitive market of substantial potential size is not a matter of great moment to the public at large. The demand for this type of communications service would undoubtedly be met by another entrant or an established carrier, and the frequencies would revert

⁴⁶ The Commission stressed in the Specialized Carrier proceeding (paragraph 104) that its "policy determination as to new specialized carrier entry terrestrially, does not afford any measure of protection against domestic communications satellite entry or otherwise prejudice our determination in Docket No. 16495 as to what course would best serve the public interest in the domestic satellite field" (29 FCC 2d 870, 920).

⁴⁷ It should be noted also that the applications of the specialized carriers proposed terrestrial microwave facilities of substantially smaller capacity than the proposed domestic satellite facilities (e.g., roughly the equivalent of the capacity of one satellite transponder for each microwave hop, as compared to the 12-120-transponder satellites proposed by the pending applicants).

to the Commission for assignment to others. Any remaining customers could transfer to another carrier at what appears to be minimal inconvenience, and such carrier would be required to permit continued use of customer terminal equipment unless there is risk of network harm. Carterfone, 13 FCC 2d 420 (1968). Loss of investment to any failing entrant is a normal business risk in a competitive situation. While this factor may be important where we are concerned with basic communications services upon which the general public depends, it does not outweigh the public interest and convenience in having a wide range of choices for private line users in satisfying their specialized communications requirements. As stated in paragraph 90 above, we do not contemplate any "protective umbrella to the competitors" or "any artificial holstering of operations that cannot succeed on their own merits." (Footnotes omitted.)

66. The above rationale may be equally applicable here insofar as Fairchild, MCI Lockheed, Hughes and WTCI are concerned.⁴⁸ The proposed A.T. & T. investment and operating costs are obviously de minimis compared to its overall operations, and it can undoubtedly use the facilities to some advantage even if initial costs may not compare favorably with terrestrial facilities. There is greater need for concern that GTE's contractual commitment and earth station and terrestrial interconnection investment might adversely affect subscribers to the basic communications services of the GTE operating companies in the event its proposed satellite venture results in higher costs and less efficient service than maintaining its existing interconnection arrangements with A.T. & T.⁴⁹ If Comsat suffered a substantial loss in its own proposed domestic system (i.e., that apart from the Comsat/A.T. & T. proposal), there might be an adverse impact on its role in the Intelsat system and on the U.S. policy objectives bound up in that organization. In addition to offering specialized terrestrial services, Western Union furnishes public message telegraph and other essential public services which could be adversely affected by an improvident investment of substantial size in domestic satellite technology (assuming that it could obtain the necessary financing). Furthermore, while RCA Corp., the parent of RCA Alascom and RCA Globcom, may be well-to-do, a substantial loss attributable to the activities of these subsidiaries might have adverse consequences for basic communications services in Alaska and affect RCA Globcom's ability to compete as one of the three interna-

⁴⁸ It should be noted, however, that a merger with, or sale of facilities to, a competitor using a different satellite technology may not be quite so easy. Further, a user with his own earth station might find it difficult or impossible to use the satellites of another system without a further investment in earth station equipment.

⁴⁹ See paragraphs 97-99, wherein action would be withheld on any GTE application pending receipt of further information.

tional record carriers. The possibilities of public detriment from unlimited open entry here may vary in importance, but they cannot be ignored.

67. For, as set forth more fully in the Specialized Common Carrier decision (29 FCC 2d at 900-903), the basic touchstone for decision under the public interest, convenience and necessity standard of sections 214 and 309 of the Communications Act is the Commission's mandate to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * * (section 1) and "generally encourage the larger and more effective use of radio in the public interest" (section 303(g)). While "competition is a relevant factor in weighing the public interest" in the communications common carrier field, it cannot be assumed that "competition is bound to be of advantage" or that it is the sole pertinent criterion. FCC v. RCA Communications, Inc., 346 U.S. 86, 90, 93-97 (1953). The "Commission must at least warrant, as it were, that competition will serve some beneficial purpose" and is "reasonably feasible" (id., at 96 and 97). In exercising its discretion in this area, the Commission "should consider the public interest in maintaining the health and stability of existing carriers" (U.S. v. Dixie Highway Express, Inc., 389 U.S. 409, 411-412 (1967)). Even in the noncommon carrier communications field, economic injury resulting from competition, "while not in and of itself a matter of moment, becomes important when on the facts it spells diminution or destruction of service"; and where "competitive effects * * * produce detriment to the public interest," the public interest controls" (Carroll Broadcasting Co. v. F.C.C., 258 F.2d 440, 443-444 (C.A.D.C., 1958)). See also, F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470, 475-476 (1940); WLVA, Inc. v. F.C.C., Case No. 24,702, C.A.D.C. (decided January 4, 1972).

68. Of course, as stated at the outset, the Commission is not in a position to guarantee the viability of any domestic satellite undertaking. But our principal concern and objective is to maximize the opportunity for realization of the public interest goals we have defined above. On the one hand, it is recognized that the satellite technology in the domestic field is likely to develop most effectively, efficiently, and fruitfully in a climate where various entities are free to plan and design systems which they believe would attract customers and to devise service offerings and rate patterns to the same end. On the other hand, it must be remembered that this country has perhaps the most sophisticated and complete system of terrestrial facilities available anywhere in the world; that the Commission has recently enunciated a policy favoring competition in the field of specialized common carriers, and a number of such carriers are proposing to enter

the terrestrial field to provide such services; that satellite communications systems require very heavy initial investment, provide large capacities and involve costs which, relatively speaking, are not related to the distance between earth stations or the traffic obtained by a particular system.

69. Under these circumstances, a policy of unrestricted entry with unlimited facilities presents a real danger, particularly at this initial stage of introducing domestic satellite technology to domestic use, of fragmenting the market for potential satellite services to such an extent that most carrier entrants would fail to come even remotely close to covering their costs. This, in turn, could well discourage entry by those entities who are prepared to take reasonable investment risks to develop and penetrate the market for satellite services. It might also result in the survival only of those entities, such as A.T. & T. which have themselves, or are given through affiliates, massive resources unrelated to the domestic satellite market. This would defeat the situation the Commission is seeking to create where competition would determine how the most efficient survive, where innovative services are given reasonable opportunity to attract a market, and where the development and testing of different satellite technologies are encouraged to the extent practicable.

70. Accordingly, we believe that the best course, both from the point of view of the using public and the applicants themselves, may be to establish a framework of policies within which the applicants would be afforded an opportunity to be grouped in accordance with the particular technologies they have proposed and authorized to share the same basic space segment facilities. This would reduce the required investment and overheads considerably and at the same time leave each entity completely free to be innovative in the type of services and charges therefor which it can devise. We turn now to a more detailed discussion of the methodology whereby this alternative might be achieved, and some of the possible variations that might be incorporated.

OPEN ENTRY OPTION II

71. The Commission could adopt a policy of open entry to all pending and future applicants found qualified, but consolidate in a common space segment those who have proposed the same satellite technology and authorize minimum facilities to each space segment initially pending a stronger public interest justification for additional capacity. By requiring or strongly encouraging those who have proposed the same type of satellite to share a common space segment, several proposed spare satellites (both in-orbit and on the ground) could be eliminated. There would be need for only one tracking, telemetry and control (TT&C) facility per space segment. Common space segments utilizing the same satellite technology would make possible shared use of transmit-receive earth stations in some areas (thereby

reducing the number of such stations and the size of the earth station investment by participating entities), and might facilitate user access to different services via the same receive-only earth station (see paragraphs 125-132). Unnecessary or duplicated capacity for network program transmission could be avoided by not authorizing satellites intended primarily to meet the unique requirements of a large potential user until there is a firm customer commitment to a particular applicant or licensee. Further, it is not necessary to authorize now all of the satellite capacity that might be needed by the end of the decade. Incremental capacity, either of the same type or based on then current technology, can be authorized at any time to any initially authorized participant or to a newcomer—as demand materializes or traffic growth patterns become discernible.

72. It is contemplated that each participant in a common space segment would own a proportionate share of the facilities on a cost-sharing basis. Each participant could use its share of the satellite capacity in whatever manner it desires (including, in the case of Hughes, for private CATV network operations), provided that such operations are not inconsistent with any of the conditions set forth in this second report and order or the provisions of applicable law. No participant would have any commitment to the initial joint venture beyond its proportionate share of the funds required to procure and launch the initially authorized satellites (plus the ground spare if needed), and of the costs of managerial services (e.g., TT&C).⁴⁹ Any participant could at any time, subject to prior approval of the Commission, sell its share to any remaining participant in the initial joint space segment venture or to an independent entity. Each participant could be authorized its own earth station facilities to operate with its share of the satellites, subject to the conditions set forth in section C below concerning earth station ownership, access and interconnection.⁵⁰ Each such space segment participant would be licensed by the Commission upon condition that a single managerial licensee would be authorized to perform TT&C and other

⁴⁹ The obligation to pay a proportionate share of the costs of managerial services would extend for the life of the satellites or until the Commission approved a sale of the participant's share to another entity assuming such obligation.

⁵⁰ It should be noted that the conditions in Section C below include a requirement that common carrier participants in a shared space segment shall proportionately own on a cost-sharing basis a common transmit-receive earth station in any area where another participant in the same space segment has proposed a transmit-receive earth station in reasonable geographic proximity. However, each such space segment owner may be authorized to own an individual earth station in any area where no other participant in the same space segment has applied for a transmit-receive earth station in the same vicinity. (See paragraphs 130-131.)

managerial functions. Such managerial licensee need not necessarily be one of those licensed to own the satellites.

73. Such initial common ventures might have advantages for the participants without hampering their operations, as well as offer benefits to the public.³³ It would afford each participant in a common space segment an opportunity to experiment with the satellite technology at the risk of a comparatively small investment, and with no financial commitment to the common venture beyond its share of the initial facilities and managerial costs (see footnote 49). Indeed, this option may enable entry by some applicants who might otherwise find it difficult to make the required showing of financial qualification for an entirely independent system under Open Entry Option I. If any participant desired to drop-out or was authorized an independent space segment during the life of the initial satellites, it could probably sell its share to the remaining participants or an outsider. And, for the life of the satellites at least, the public would have a variety of satellite services available from multiple entities without substantial risk to any participant in a joint venture. In short, the Commission could extend an opportunity for a demonstration of all the different space segment technologies that have been proposed and permit entry by all of the pending system applicants found qualified, in a manner which would permit most of them to experiment with the technology before becoming committed to an extensive financial investment or to a particular technology, and still retain flexibility to consider new proposals at 4 and 6 GHz (as well as other frequencies) either by the initial licensees or newcomers.

74. As previously indicated, Western Union and Hughes/GTE have proposed the same type of 12 transponder satellite (similar to that of Telsat), and the RCA applicants are undecided whether to use this satellite or a different one.³⁴ WTCI has proposed a similar satellite of the same capacity, but has been working with a different manufacturer. Comsat and Comsat/A.T. & T. have proposed the same 24 transponder satellite (a modified version of the Intelsat IV satellite). MCI Lockheed and Fairchild have proposed satellites substantially different from each other and from those of all other applicants.

75. WTCI, MCI Lockheed and Fairchild are not presently engaged in extensive common carrier services upon which the general public is dependent, and each seeks a minimum quantity of satellites.³⁵ We think that the public in-

terest would be served by affording MCI Lockheed and Fairchild an opportunity to demonstrate the claimed advantages of their more novel, higher capacity satellites as proposed. These applicants could, if desired, voluntarily permit other entities to share ownership in such space segments on the terms specified above for common space segments, subject to prior Commission approval but with no requirement for such sharing. While WTCI has worked with North American Rockwell in preparing its application, the proposed satellite is substantially similar to the Hughes Telsat satellite and the capacity is the same. In the circumstances, we think that WTCI should be afforded the option of proceeding independently with a different manufacturer or of participating in a common space segment with those proposing the Hughes Telsat technology as described in paragraph 77.

76. Except for the foregoing applicants and Hughes (which seeks to use only some transponders rather than exclusive use of a satellite or satellites for its proposed CATV operations), all of the remaining space segment applicants are existing common carriers presently engaged in providing essential communications services to the public. Hence, the considerations discussed in paragraphs 51 and 65-70 above seem to apply with particular force in their case. However, one of the principal policy objectives in the authorization of initial domestic satellite facilities is to gain technical, operational and marketing data and experience to assist future industry and agency decisions in this field. Accordingly, the public interest, convenience and necessity would be served by affording such pending applicants found qualified an opportunity to proceed as specified below (and in accordance with other policies and conditions set forth in this Second Report and Order) without any further showing as to: (1) Whether the capacity of the facilities is justified by traffic under the control of the applicants, firm customer orders, or the potential market reasonably to be predicted for domestic satellite operations in the near future; and (2) whether the cost of the satellite system facilities is the same as or less than the cost of equivalent terrestrial facilities.³⁶

77. The common space segments to be authorized initially without any further showing of public need might consist of

these entities (29 FCC 2d 870, 925-927). Moreover, WTCI, MCI Lockheed and Fairchild have each proposed only two in-orbit satellites and hence could not reduce that number without forfeiting an in-orbit spare. Fairchild has recently tendered an additional proposal for another satellite to provide program transmission services to the networks utilizing 4 and 6 GHz or 7 and 14 GHz frequencies. Since satellites intended primarily for network program transmission service would not be authorized until there is a firm customer commitment, this proposal would in any event be held in abeyance pending a network order to Fairchild.

³⁴ However, see paragraphs 77, 97-99 below concerning the requirements for additional information from GTE, and possibly the RCA applicants.

the following facilities (as well as ground spares and TT&C facilities):

Space Segment A—The Commission could authorize three in-orbit satellites of the type proposed by Western Union and Hughes/GTE, to be proportionately owned by each such applicant on a cost-sharing basis (with an option to WTCI and the RCA applicants to share in this space segment on the same terms or to proceed independently with different satellite technology). In the event that the RCA applicants elect to proceed separately with different technology, such authorization would be upon condition that these applicants participate in Space Segment A to provide service to Alaska until such time as any independent RCA space segment is operational, and upon the further condition that they make a reasonable showing that their existing services to the public would not be adversely affected.³⁷ For good cause shown that three in-orbit satellites would be insufficient for the needs of the participants, the Commission would consider authorization of additional in-orbit satellite capacity. (See paragraphs 97-99.)

Space Segment B—The Commission could authorize two or three in-orbit satellites of the type proposed by Comsat and Comsat/A.T. & T. to be proportionately owned by Comsat and A.T. & T. on a cost-sharing basis. For good cause shown the Commission would consider authorization of additional satellite capacity to either participant.³⁸ (See also, paragraphs 78-79.)

In other words, the number of in-orbit satellites specified above is intended to reflect only what appears prima facie warranted for experimental or demonstration purposes, with no further requirement for any additional showing of public need or lack of potential public detriment. As previously stressed, any space segment licensee, including a participant in a common space segment, may be authorized incremental or independent satellite capacity at any time upon a reasonable showing that the authorization of such capacity would serve the public interest, convenience or necessity.

78. Any applicant grouped in Space Segment A or B above may elect instead to have its pending proposal considered pursuant to such further proceedings as may be deemed necessary by the Commission to enable the requisite public interest finding, or to take advantage of the opportunity here afforded while reserving the right—either simultaneously or in the future—to seek additional or independent space segment facilities for good cause shown: Choice of the latter courses

³⁵ Since the RCA applicants are as yet undecided as to a manufacturer or a satellite design (whereas the Telsat satellite is in production), activation of any independent RCA facilities might take a longer time. Moreover, RCA's latest proposal for a higher capacity satellite to be launched by an augmented launch vehicle with greater payload capability than the present Thor-Delta would entail, among other things, research and development of a new spacecraft. In addition, if such a satellite were intended primarily for network program transmission, action on the application would be held in abeyance pending a firm network commitment.

³⁶ For example, if Comsat should succeed in obtaining the network program transmission business, the Commission might well be in a position to conclude that the public interest would be served by authorizing it an independent space segment.

³³ The Commission has authorized cost-sharing arrangements for facilities in the international field.

³⁴ See footnote 33.

³⁵ While WTCI and MCI are applicants for terrestrial facilities for specialized common carrier services and WTCI is now operating as a miscellaneous common carrier serving CATV systems and others, the Commission determined in the Specialized Common Carrier decision that the public would not be adversely affected by the risk of failure of

would require a much stronger public interest justification than those now pending before the Commission, and might require further proceedings. Moreover, the policies and conditions elsewhere specified in this Second Report and Order would in any event apply, unless the applicant should show good cause for an exception. The Commission would give processing priority to applications submitted in accordance with paragraphs 75-77.

79. As noted above, A.T. & T. proposes to lease the space segment it desires to use from Comsat under a long term lease.⁷⁷ While it is desirable that carriers own the facilities they use to serve the public unless there is some advantage in using the facilities of another entity,⁷⁸ A.T. & T. supports this arrangement by pointing out that it is relying upon the most experienced entity in the design, operation and maintenance of commercial communications satellite facilities. A.T. & T. could, of course, take advantage of Comsat's expertise by entering into arrangements whereby Comsat performed the managerial function for A.T. & T.'s space segment. However, in this relatively new technology, we believe that greater latitude than is applicable to terrestrial facilities should be allowed. There may be practical reasons why A.T. & T. would prefer not to become involved in the responsibilities attendant upon being the direct licensee, even with Comsat as manager, such as sizeable investments required for the space segment.⁷⁹ We will, therefore, not as a matter of policy prohibit such an agreement. However, several caveats should be noted. A.T. & T. as a common carrier is obligated to obtain and operate facilities in the most economical and efficient manner possible. If A.T. & T. opts to acquire its space segment from Comsat, it will be required to demonstrate that the costs are no greater than if it owned the facilities jointly with Comsat or acquired equivalent facilities by other available means. Secondly, we do not feel that Comsat should be in the position of a supplier of satellite services to A.T. & T. and a common carrier to the general public. There are already close relationships between Comsat and A.T. & T. The latter owns 29 percent of Comsat's stock and elects three of the 15 Comsat directors. It also is the prime customer of Comsat's international service accounting for more than 60 percent of Comsat's gross rev-

enues in 1971. If Comsat were to receive the major portion of its revenues from leasing facilities to A.T. & T. in the initial domestic system, it is only natural to expect that it would seek to maximize its opportunity to retain A.T. & T. as its domestic customer. Also, as hereinafter discussed (see paragraphs 101-104), we are proposing, at least in the initial stages, to bar A.T. & T. from providing specialized services via satellite in order to afford a reasonable opportunity for competition to develop between satellite services of others and terrestrial services of A.T. & T. in the field of specialized services. Under all of these circumstances and in particular, with A.T. & T. as a principal source of domestic service revenue that Comsat would seek to retain, it is not realistic to expect Comsat to compete vigorously in the development of specialized services and thereby challenge A.T. & T.'s terrestrial domination in this field. This would defeat the basic objectives of our open entry policy—that is to encourage improvement and innovation in domestic communication services and facilities by exploiting fully the unique characteristics of satellite technology. Accordingly, and subject to the further policy considerations discussed at paragraphs 114-116 below, we propose that Comsat be given the option either of limiting itself to the provision of satellite facilities to A.T. & T. under lease or entering the field as a supplier of satellite services to domestic entities other than A.T. & T. pursuant to tariffs. In the latter instance, it could share ownership in one or more satellites with A.T. & T. and act as the manager for the jointly owned system. In any event, Comsat could be the manager for facilities owned by A.T. & T. or leased by A.T. & T. from Comsat.

4. Findings and conclusions on Issue A

80. In light of all the foregoing, we find and conclude that the public interest, convenience and necessity would be best served by pursuing the alternative of Open Entry Option II. In our judgment, this alternative is most likely to permit the early implementation of domestic satellite service to the public on a competitive basis which is reasonably feasible and equitable, without undue risk of substantial adverse impact on existing communication service to the public. We are further of the opinion that such risks as may be entailed are outweighed by the benefits reasonably to be expected to flow from such initial entry in the form of technical, operational and marketing data and experience which would materially assist future industry and Commission decisions in this field.

81. This policy determination, as earlier noted, concerns pending applicants found legally, technically, financially, and otherwise qualified. We turn now to the question of whether any of the pending system applicants should be disqualified on policy grounds, or have further conditions placed on any authorization to protect the public interest.

B. POSSIBLE DISQUALIFICATION ON POLICY GROUNDS AND/OR CONDITIONS

82. All of the pending system applicants are subject to claims that they should be disqualified as space segment licensees on policy grounds having to do with alleged potential conflicts of interests and/or the achievement of an enhanced competitive position vis-a-vis some one else. Comsat seeks disqualification of satellite equipment suppliers, potential users, and terrestrial carriers, leaving only its own proposal and its arrangement with A.T. & T. (see paragraphs 2-6 of the appendix).⁸⁰ Some other parties (e.g., Western Union, MCI Lockheed, Fairchild, Hughes, and the Department of Justice) urge either outright disqualification of, or the imposition of various conditions on, any grant to Comsat or A.T. & T. (see paragraphs 8-9, 16, 20-21, 28-31, 37-39 of the appendix). Western Union also challenges Hughes and the RCA applicants on undue "concentration of control" grounds (appendix, paragraphs 22-23).

83. None of these policy questions is entirely lacking in merit, though some appear more serious than others for the reasons indicated below. However, almost a year was afforded for the submission of applications and these are the only system applicants who came forth. They have demonstrated an immediate, concrete interest in the field and they are the sole entities now available for early authorization. Moreover, each has some background or experience of a nature that might make a useful contribution toward the activation of this new, and somewhat risky, domestic technology and the expeditious realization of its potential benefits for the public. Indeed, it seems dubious whether an applicant which lacked any experience in terrestrial or satellite communications or in building communications satellites or any stake as a user, would possess the practical know-how needed to bring this sophisticated communications medium into being for domestic use in a prompt, effective and efficient manner. If the Commission were selecting a chosen instrument or limiting entry to a chosen few, we think that the alleged individual drawbacks might give cause for greater concern than under an open entry policy which would afford various options to the public and an opportunity for newcomers. Further, the Commission may be able to minimize the possibilities of adverse consequences to the public by imposing various conditions on the initial authorizations. We believe that the public interest would be best served by avoiding initial disqualification of applicants on policy grounds, unless we are persuaded that the alleged conflict of interest is likely to have substantial prejudicial effect on full realization of the domestic satellite potential or on some other important public interest, and that the possible public detriment could not be adequately avoided by conditions on

⁸⁰ For some reason, Comsat does not seek to disqualify A.T. & T. as a terrestrial carrier with potential conflicts of interest.

⁷⁷ GTE similarly proposes a long-term lease for Hughes. However, as set forth (paragraphs 97-99), we do not propose to act on the proposal pending receipt of additional information and justification. When such are supplied, we will address ourselves further to the GTE proposal, including the long-term lease aspect if it adheres to that proposal.

⁷⁸ See All America Cables and Radio, Inc., 15 FCC 2d 1, 14 (1968).

⁷⁹ We are aware of A.T. & T.'s continuing stress on the problems confronting it in raising the vast sums of capital it needs for the various operations of the Bell System.

the initial authorization or remedied by future action.

1. Equipment suppliers

84. In our view, entry by satellite suppliers should not be barred at this time. As the Department of Justice points out:

Because Comsat's specifications are linked closely to spin stabilized satellites, a field dominated by Hughes, the best hope for a competing satellite supplier is to enter the market directly. Entry bypasses restrictions imposed by operators whose satellite specifications are tied to a different technology, and allows suppliers—at their own risk—to test the technology which they are promoting. Forward integration in these circumstances does increase the barriers to entry for competing suppliers, but at this early stage of development, it may be the only way to encourage the development of rival technologies.

That viewpoint finds support in the circumstance that the most novel space segment technologies in the pending system applications are those proposed by MCI Lockheed and Fairchild. The Hughes record as the predominant supplier to the Intelsat system was achieved under competitive bidding. Even if we were to bar entry to Hughes, several system applicants have proposed space segments based largely on Hughes technology—which would make it very difficult for any other supplier to obtain a prime contract under competitive bidding.

85. In the event of a decision not to permit those relying primarily on Hughes technology (i.e., Hughes/GTE, Western Union, Comsat and Comsat/A.T. & T.) to preempt all of the orbital locations they have proposed (i.e., by adopting Open Entry Option II), there will be an opportunity for entry by other equipment suppliers besides Lockheed, Fairchild (and, possibly, North American Rockwell), and/or some different supplier selected by the RCA applicants. Moreover, if non-supplier applicants are not initially committed to a large investment in Hughes technology and have a chance to witness an operational demonstration of rival technologies, they may be more open to persuasion to try a supplier other than Hughes for incremental or second generation satellites. Further, under Open Entry Option II, Hughes would have such a small space segment investment compared to the magnitude of its business operations as a satellite supplier to others (including Intelsat, Canada and possibly other countries), that it seems unlikely that Hughes would engage in practices which might encourage them to turn to other suppliers. It is the Hughes ability generally to prevail in competitive bidding for spin-stabilized satellites, rather than its proposed relatively small space segment ownership, that appears to be the crucial contributing factor towards its dominant position at this time in the field of commercial communications satellite procurement.

86. Under present circumstances, we think that the public interest would be better served by encouraging entry by different equipment manufacturers to demonstrate rival technologies, rather

than barring equipment suppliers across-the-board or Hughes alone. As the Department of Justice notes, if Hughes should abuse entry by discriminating against Comsat, the Commission could take remedial action. Moreover, we will condition any authorization to an equipment supplier upon the existence or creation of a separate corporate entity to engage in the communications satellite service aspect. Hughes has indicated that it might do so prior to any Commission authorization.⁶¹ While MCI Lockheed is affiliated with an equipment supplier as well as terrestrial carrier interests, it claims that its corporate structure is designed to prevent control by either. The Astro Electronics Division of RCA is separate from RCA Globcom and RCA Alascom. Finally, if Hughes is barred from owning any space segment capacity, the public might well lose the potential benefits that could flow from its private CATV programming venture—one of the most innovative service offerings proposed in these system applications.

2. USERS

87. Nor do we believe that potential users should be disqualified from space segment ownership. It is true that Hughes has various interests in related CATV and program production fields (see paragraphs 5 and 51 of the appendix). However, in the First Report and Order in Docket No. 18397, encouraging CATV program origination and networking, the Commission stated (20 FCC 2d 201, 203):

Our experience in the broadcast field (both commercial and noncommercial), as well as comments filed in this proceeding, leads us to believe that the successful inauguration of any new network is not an easy matter, to a significant extent because of the high cost and other difficulties in producing or otherwise procuring programming in sufficient quantity and quality for network operations. Moreover, CATV faces an additional hurdle in that its present subscriber base, while affording fees not available to broadcasters, is nevertheless far smaller than the potential audience open to a new broadcast network.

It may take an entrepreneur with the aggressiveness, imagination, and resources of Hughes to pioneer CATV network operations.⁶² If Hughes' ownership of communications satellite facilities would further its objective of making available to the CATV viewing public a

⁶¹ The Hughes/GTE agreement (paragraph 12) recognizes that: "Hughes may form another corporation to which it will transfer, prior to the receipt of the requisite authorizations [i.e., the construction permits] from the Federal Communications Commission * * * any or all of its obligations hereunder" provided that Hughes satisfies GTE that such corporation would have "adequate technical and financial resources to discharge the obligations transferred."

⁶² We note also that in the broadcast field the Commission has not precluded RCA from owning a network although it is also an equipment supplier. Further, since the Commission does not require broadcast networks to operate as common carriers or regulate their rates to affiliated stations, we see no distinguishing reason for regulating the rates of a CATV network to its affiliates or requiring it to operate as a common carrier.

wide diversity of special interest programs, and is willing to undertake that investment, we fail to see why it should be deterred from doing so.

88. While Hughes desires to own the associated receive-only earth stations, it has stated that this is not necessary in every case and that it would be willing to guarantee access to its system by CATV systems owning receive-only earth stations at a lower rate than that charged to CATV system customers who do not (appendix, paragraph 52). Moreover, under Open Entry Option II there would be abundant common carrier space segment capacity available for use by others desiring to transmit CATV programming via satellite. Those utilizing some of the common carrier transponders in Space Segment A could have access to the same receive-only earth stations. We would so condition any earth station authorization to Hughes and its customers (see paragraphs 126-127).

89. The broadcast networks have requested that an opportunity remain available for the submission of a separate system proposal by or on behalf of the network companies, in the event that their negotiations with pending system applicants do not lead to satisfactory arrangements and they still desire to utilize satellite interconnection, in whole or in part. If, as we believe, the public interest is served by affording users a wider choice of options as to how best they may satisfy their communications requirements (e.g., the Specialized Carrier decision) and if a CATV network operator is afforded the opportunity to own private satellite distribution facilities, we see no logical distinction to justify disqualifying broadcast networks as potential space segment licensees. Nor do we think that RCA Globcom/RCA Alascom should be disqualified solely because RCA owns the NBC network, a potential customer. Under Open Entry Option II, the networks would have a variety of pending and potential applicants among which to choose, and there is no compulsion to select the RCA applicants unless they prefer to do so.⁶³ Even if they should decide upon the RCA applicants, the statutory obligations imposed upon common carriers by section 202(a) of the Communications Act would preclude any preference to NBC or discrimination against CBS and ABC.

3. Terrestrial carriers

(a) Other than A.T. & T.

90. Although Comsat has not included A.T. & T. among the terrestrial carriers it seeks to have disqualified (Western Union, GTE, the RCA applicants, MCI and WTCI), it relies in part on a concern that the Commission expressed in paragraph 26 of the 1970 report in connection with A.T. & T., namely, that a terrestrial carrier might be constrained by its existing terrestrial facilities and services from participating aggressively and

⁶³ It appears unlikely that the broadcast networks would proceed individually. If different networks decided upon different space segments, there might be a problem of duplicate receive-only earth station facilities.

innovatively in the development of satellite technology and service. The Commission noted in the case of A.T. & T. that any "satellite proposal would be supplemental to and compatible with the existing terrestrial network, and would reflect the carrier's necessary and predominant concern over the effect of the satellite technology upon its existing landline investments and markets" (22 FCC 2d 86, 96). To some extent, Comsat may be correct in asserting that this concern is relevant also to other established terrestrial carriers.

91. For example, one of the unique characteristics of the satellite technology is the circumstance that costs are not dependent upon the distance between earth stations. MCI Lockheed, which presently has only a very small investment in terrestrial facilities (the MCI Chicago-St. Louis microwave route and an interest in the Interdata New York-Washington construction permit), has proposed distance-insensitive rates, whereas terrestrial carrier applicants with more extensive existing facilities (e.g., GTE, Western Union, and the RCA applicants) have not.⁶⁴ In some instances or for some services, it may be impracticable for the latter to do so. Thus, the four GTE operating company applicants are proposing to use domestic satellites as a partial substitute for their interconnection through joint route arrangements with A.T. & T.⁶⁵ In the case of message toll telephone service, the GTE companies could hardly charge their subscribers a different rate depending on whether the particular message was routed (say from California to Florida) via GTE satellite facilities or primarily via A.T. & T. terrestrial facilities. The same would seem to hold true for Western Union public message service, whether the alternative to satellite transmission is terrestrial facilities owned by Western Union or acquired from A.T. & T. Even in the case of private line or other specialized service, it might be difficult for a carrier to charge different rates where its use of satellite facilities is only as an alternative to existing terrestrial facilities rather than for an independent or competitive service offering.

92. On the other hand, the domestic satellite technology may afford a carrier now largely or completely dependent upon obtaining inter-city relay service from another carrier, a more efficient and less costly alternative. For example, RCA Globcom plans to use its proposed satellite facilities between its New York City, Washington, D.C., and San Francisco gateway terminals, in connection with its overseas service, in lieu of leas-

ing facilities from A.T. & T. or Western Union.⁶⁶ Moreover, in an open entry situation, the public might have the option of distance-insensitive rates for some services from another carrier such as MCI Lockheed or Comsat if the latter chose to compete on that basis. Further, if the Commission should decide that the public interest requires distance-insensitive rates in a particular situation, it can so condition any relevant authorization for domestic satellite facilities. In addition, even if a terrestrial carrier were somewhat constrained by existing facilities and services in offering the same services by both terrestrial and satellite media, the authorization of satellite facilities might enable such a carrier to offer in addition different services from those it is providing terrestrially.

93. Comsat further argues that a domestic satellite authorization to MCI Lockheed, WTCI or RCA Globcom would enhance their competitive position vis-à-vis other carriers. Insofar as MCI Lockheed and WTCI are concerned, the contention would seem to apply equally to Western Union and A.T. & T., to the extent that A.T. & T. is now engaged in the provision of specialized services on a much larger scale than anyone else. In any event, an open entry policy might afford other specialized terrestrial and international record carriers an opportunity to obtain domestic satellite service from independent licensees (such as Comsat and/or Fairchild in the case of specialized terrestrial carriers, and any applicant other than RCA Globcom in the case of international record carriers). Further, these competitors had the same opportunity to apply as the pending applicants and chose not to, although Datran at one time indicated an initial interest and subsequently changed its mind.⁶⁷ Moreover, under Open Entry Option II and the conditions set forth in paragraph 151 below, orbital locations will be available for accommodation of future applications by terrestrial competitors.⁶⁸ In addition, a flexible

⁶⁴RCA Globcom presently uses terrestrial facilities of A.T. & T. and/or Western Union to retransmit overseas traffic, destined for the San Francisco area, from the San Francisco gateway terminal to its New York terminal for processing and back again to San Francisco, because it is allegedly less expensive to haul and backhaul across the country than it is to install processing equipment in the San Francisco gateway terminal.

⁶⁵As previously noted, the Commission stressed in the Specialized Carrier proceeding that its "policy determination as to new specialized carrier entry terrestrially, does not afford any protection against domestic communications satellite entry" (29 FCC 2d at 920).

⁶⁶While ITT and WUI request an opportunity to obtain capacity in the space segment of an operating system on an indefinite right of use (IRU) basis, there is considerable merit in RCA Globcom's position that such an arrangement would unjustly place all of the risks on the pioneering carrier and afford others an opportunity to acquire an ownership interest if the system were successfully inaugurated and to refrain from doing so if the contrary appeared. It

policy as to earth station ownership would permit them to have access to space segments owned by others by means of their own earth stations, if authorized (see paragraphs 128-129, 142 below).

94. It is further asserted that section 222 of the Communications Act would preclude RCA Globcom from engaging in domestic service, as well as preclude Western Union from owning an earth station in Hawaii (since it is stated in section 222(a)(10) that the term "Continental United States" means the District of Columbia and the States of the Union, except Hawaii). That section prohibits consolidations (including acquisition of facilities) between an international telegraph carrier and a domestic telegraph carrier. It also required Western Union to divest its international telegraph operations as a condition for acquiring Postal Telegraph Co. and thereby becoming the monopoly domestic telegraph carrier upon which other international telegraph carriers must depend for domestic pickup and delivery of the bulk of their international telegraph traffic. However, while section 222 bars mergers or other facilities acquisitions between existing firms; it has little, if anything, to do with a carrier embarking on an entirely new and different venture of its own.⁶⁹ RCA Globcom already has a domestic arm in the form of RCA Alascom. Moreover, it states in its application that it is not requesting authority to provide telegraph or telex service within or among the contiguous states (Vol. 1, p. 14). In the event we determine as a matter of policy that Hawaii should be included in a domestic system, there would seem to be no warrant for disqualifying Western Union alone from having any earth station interest there, particularly if the principal use of the earth station is for television program reception and other specialized services and Western Union is precluded from providing telegraph service between Conus and Hawaii.

95. The broader policy question as to whether any international carrier should be permitted to engage in domestic service, or vice versa, is not limited to RCA Globcom but encompasses even more seriously A.T. & T. and Comsat. While A.T. & T.'s domestic operations vastly overshadow its international operations, it is nevertheless the largest international carrier. Moreover, Comsat has a monopoly position insofar as ownership

would also appear unfair to the pending applicants to force them to grant IRU's to outsiders at this stage, who would thereby gain a wind-fall from the applicant's work in preparing the application, unless the applicant itself voluntarily afforded non-applicants an ownership interest. Such an option has been afforded to MCI Lockheed and Fairchild in paragraph 75. Moreover, the cutoff date for new applications for space segment facilities entitled to be considered in this proceeding has long since passed.

⁶⁹The Department of Justice takes a similar position in stating that its "Merger Guidelines" apply to the acquisition of existing firms and provide no normative guidance where, as here, de novo expansion is being considered.

⁶⁴We do not suggest that MCI Lockheed might abandon its distance-insensitive rate proposal if all the pending MCI applications for terrestrial specialized carrier facilities were to be granted.

⁶⁵The GTE operating companies would still rely on A.T. & T. for its existing interconnection arrangements with the interstate transmission of a predominant proportion of traffic originating in their operating territories.

of international commercial communication satellite space segment facilities by United States entities is concerned. It is difficult to see how we could equitably disqualify RCA Globcom from owning any domestic satellite facilities, solely because it is an international carrier, without acting consistently as to A.T. & T. and Comsat.

96. Comsat further asserts that Western Union should not be authorized to undertake any new responsibility until it has demonstrated that it can properly discharge its present responsibilities in the provision of terrestrial public message service. We have previously indicated our belief that the effect of a possible failure in the domestic satellite field on the existing operations of an established carrier, is a relevant factor which the Commission should not ignore. However, as the Commission noted in the Specialized Carrier decision (29 FCC 2d at 913, fn. 35):

The plight of the telegraph message service has been a continuing and growing problem even in the absence of any new entry. The arbitrary exclusion of new entry into the developing market for specialized services is certainly neither a practical or a justifiable solution to the problem, assuming that a solution is called for in the public interest.

While the context was different (involving new entry by others rather than the use of a new technology by Western Union), the foregoing rationale seems relevant to the question of whether Western Union should be afforded the same opportunity as other carriers engaged in specialized communications services to own domestic satellite facilities. Moreover, Open Entry Option II would minimize the risk of adverse consequences on Western Union's terrestrial operations.

97. Apart from the foregoing, there is a further concern with respect to GTE. It proposes to acquire satellite facilities to handle certain message toll traffic which originates at its exchanges in different parts of the country and which terminates either within its own exchanges or beyond. At present, GTE relies on the inter-exchange switched network of A.T. & T. for the transmission of all such traffic. GTE, like other independents, maintains its own inter-exchange facilities in only a few situations to interconnect its exchanges which are contiguous to each other and are located within a common geographical area. The Commission has heretofore carefully distinguished between the interstate switched network telephone services (MTT) of A.T. & T. and other services of A.T. & T. in formulating its policy of encouraging competitive entry of specialized service carriers. Thus, GTE represents the first serious attempt by a non-Bell carrier to provide MTT facilities which will supplant, at least in part, the A.T. & T. nationwide switched network.

98. We are aware of the potential or theoretical values of GTE's proposal, particularly in providing some basis upon which to compare the costs and other factors related to efficiency and quality

in handling MTT traffic by alternative methods and different suppliers. On the other hand, the proposal presents various uncertainties as to its effects upon the integrity and efficiency of an integrated nationwide switched MTT network and, hence, the proposal should not be embarked upon without an effective showing of the expected and potential benefits to be derived therefrom, as well as some estimate as to the implication of the effect of a grant (particularly if it were to become a general policy) upon the efficiency, reliability and cost of the present integrated nationwide switched network.

99. We will therefore require GTE, whether it elects to take advantage of Open Entry Option II or to pursue its original proposal, to make a showing which we will evaluate prior to taking definitive action on its applications—in terms of its best estimates of costs and revenues—as to the effect of the arrangement on the efficiency and quality of MTT service. In this connection we expect GTE to submit detailed data as to how it proposes to alter or amend its present contracts for settlement with A.T. & T.; the present of total traffic it originates destined to the points to be served by satellite which will, in fact, be handled by satellite; and what plans it has for handling of the traffic in case of temporary outages or catastrophic failures of its satellite facilities. Also, as a condition precedent to authorizing any GTE proposal, there shall be an affirmative showing by GTE of the kinds of data it intends to gather and report as a basis for an evaluation of the efficiency and economy of the proposed operations compared to its continued reliance of existing interexchange facilities of A.T. & T. It should also be required to make a full showing of what other public benefits may reasonably be expected from its proposal and how it intends to treat the costs of the system for accounting and ratemaking purposes. At the same time we invite A.T. & T. to submit its comments on each of the foregoing matters.

(b) A.T. & T.:

100. The concern that established domestic carriers might be constrained by existing terrestrial facilities and service from participating aggressively and innovatively in the development of satellite technology and service, while pertinent to other established domestic carriers, obviously applies with far greater force to the dominant domestic carrier, A.T. & T. Indeed, the nature of its application confirms the Commission's view in the 1970 Report (22 FCC 2d at 96) that any A.T. & T. "satellite proposal would be supplemental to and compatible with the existing terrestrial network, and would reflect the carrier's necessary and predominant concern over the effect of the satellite technology upon its existing landline investments and markets." As we have noted before, A.T. & T. proposes to use the system for alternate routing of its terrestrial services, for more efficient handling of peak-hour traffic loads which shift from time zone to time zone, and to experiment with 20 and 30 GHz

technology. In the latter connection, A.T. & T. has indicated that its principal interest in the domestic satellite technology lies in the potential afforded by the large number of frequencies allocated for communications satellite use in the 20 and 30 GHz regions of the spectrum (if the WARC recommendations become effective). Its application states that a grant would facilitate advanced satellite system research at 20/30 GHz "which may yield great savings in future generations of satellites" (A.T. & T. application, p. 25). Inasmuch as the use of the satellite technology may eventually make it possible for A.T. & T. to achieve significant savings or other important advantages in the provision of its communications services to the public, the public interest would not be served by barring A.T. & T. from use of technology for MTT service at this time even if no new or innovative services are offered.

101. However, the 1970 Report raised a further question as to whether domestic satellite facilities initially authorized to A.T. & T. should be without restriction as to the type of service or limited to the provision of public message service. Before attempting to resolve this question, it is relevant to note the basic policy objective stated by the Commission in the 1970 Report with respect to specialized services (22 FCC 2d at 95):

The most important value of domestic satellites at the present time appears to lie in their potential for opening new communications markets, for expanding the beneficial role of competition in the existing markets for specialized communication services, and for developing new and differentiated services that reflect the special characteristics of the satellite technology.

The Commission's concern arose from A.T. & T.'s dominant position in the sale of communications service, and the possible adverse impact that A.T. & T.'s use of satellites for the provision of services other than MTT might have on realization of the aforementioned public interest benefits. A.T. & T.'s total annual revenues exceed \$18 billion and are growing at an annual rate of more than 10 percent. About 30 percent of its total revenues, or \$6 billion, is derived from interstate services. Of this amount, some 85 percent is produced by services which A.T. & T. provides without any competition, principally message toll telephone and WATS services. On the other hand, 15 percent or \$900 million are derived from nonmessage services, most of which may be offered by competing entities under the Specialized Carrier decision in Docket No. 18920. Under these circumstances, there is legitimate cause for concern at A.T. & T.'s unrestricted expansion into the domestic satellite field might well deter or discourage entry by those entities who are prepared to take reasonable investment risks in order to exploit the unique economic and operational features of satellite technology for intercity specialized services. Compared to message toll services, the market for specialized services, even though growing significantly, is still a most limited one at this time. Thus, A.T. & T.'s early participation, via satellite facilities, in

the competitive markets for specialized services could well result in its preemption of that market to an extent that would make it economically impractical for other entities to become established. The construction and operation of satellite systems require substantial fixed investments and risks. With A.T. & T.'s vast economic resources and its ability to load a satellite system with message toll traffic from its monopoly market almost immediately, A.T. & T. will have a distinct advantage over potential competitors who are attempting entry with no established base of communication revenues from monopoly markets. Under these circumstances, the prospect of market preemption by A.T. & T. poses a real deterrent to the entry or viable operation by others in the field of satellite services.

102. There is also the concern that by choosing the number of message toll circuits A.T. & T. will operate via any satellite, A.T. & T. will be able arbitrarily to dictate the costs that it desires to allocate to those circuits it devotes to specialized services in which it faces competition. The problem of allocating A.T. & T.'s terrestrial costs between its monopoly and competitive services on an efficient and equitable basis so as to avoid interservice subsidy is a complex and troublesome one. The issue has been the subject of extended controversy and regulatory proceedings for a number of years. The problem is still unresolved, but is the subject of our pending proceeding in Docket No. 18128. The use by A.T. & T. of satellite technology for the total mix of its competitive and noncompetitive services will, of course, add an additional dimension of complexity to the problem.

103. It is stressed that the Commission is seeking to afford a reasonable opportunity for a demonstration of how the unique characteristics of satellite technology can meet user requirements more efficiently than the terrestrial network of A.T. & T., particularly in the existing and emerging markets for intercity specialized communications services—markets now dominated by A.T. & T. In this respect, the Commission seeks to complement or extend the policies it formulated in the Specialized Carrier proceeding (Docket No. 18920). Those policies are designed to increase the competitive sources of supply among which users with specialized communication requirements may make a selection on the basis of the cost and quality of service offered. It might be argued that this limitation on A.T. & T.'s use of authorized satellite facilities is inconsistent with a policy of competitive entry. However, the limitation is not designed to curtail competition; but rather to afford an opportunity for the development and growth of competition, not only between all other entrants but also between satellite services and A.T. & T.'s terrestrial services in the field of specialized intercity communication.

104. In view of all of the foregoing, it is our judgment that realization of the potential public benefits from satellite technology can best be achieved by limit-

ing A.T. & T., at least in its initial system proposal for the use of satellites, to those of its services that are essentially monopoly services, such as message toll and wide area telephone services. This limitation should continue for the length of time required by other entrants in accordance with this second report and order, to establish their satellite systems and services and, in any event, until the Commission has approved an appropriate set of principles and methods governing the allocation of A.T. & T.'s costs among its various classes of services. The Commission will condition any satellite system authorized for A.T. & T.'s use accordingly.

4. Comsat:

105. Many of the concerns expressed by some parties about Comsat entry into the domestic satellite field, due to its ties with A.T. & T. and procurement history with Hughes, should be substantially dissipated by the adoption of an open entry policy which: (1) Affords an opportunity for development of rival technology by those proposing a different equipment supplier; and (2) requires Comsat to elect between serving A.T. & T. or other entities. There still remain the important questions of whether Comsat's role in Intelsat would create a conflict of interest such as to impede its ability fully to exploit the potential of this technology to serve the domestic public interest or prejudice others in doing so, and whether domestic entry by Comsat would adversely affect the effective discharge of its responsibilities as the U.S. chosen instrument in the global system or the realization of the national policy objectives declared in section 102 of the Communications Satellite Act of 1962. In the 1970 report the Commission concluded that Comsat is not legally disqualified from entering the domestic field because of its involvement in Intelsat, but recognized that the "possible advantages or disadvantages accruing from Comsat's relationship with Intelsat are considerations to be weighed as a matter of policy" (22 FCC 2d 86 (paragraph 3), 132-133).

106. With respect to the potential impact of Comsat's international role in the domestic scene, MCI Lockheed asserts that as a member of the Intelsat Board of Governors and as manager of the global system, Comsat would be in a position to pass on such questions as technical compatibility of the proposed system of its domestic competitors with the existing or planned space segment of Intelsat and whether it would avoid significant economic harm to the global system. We note first that the phrase "avoid significant economic harm" appears only in Article XIV(d) of the definitive arrangements,⁷¹ having to do with facilities separate from the Intelsat space segment to meet "international public telecommunications services requirements." No international service is proposed in any of the pending domestic satellite applications. The only standard

⁷¹ Article XIV of the Intergovernmental Agreement establishing definitive arrangements for Intelsat.

in Article XIV (c) and (e), concerning the establishment of separate facilities to meet domestic public or specialized telecommunications services requirements, is the "technical compatibility of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned Intelsat space segment." Further, while Comsat is solely responsible to Intelsat in its functions as manager, it is subject to instructions from the U.S. Government insofar as its vote on the Board of Governors is concerned and those instructions would be based on the Government's view as to the best interest of the United States on an overall basis. In addition, while the Commission has stated in the 1970 report its intention to cooperate fully with Intelsat in such matters, it bears noting that the definitive arrangements empower the Board of Governors and/or the Assembly of Parties⁷² to express their findings regarding technical compatibility in the form of recommendations only; they do not confer a veto power.

107. MCI Lockheed also alleges that Comsat's role in Intelsat could inhibit technical and service innovation and cost reductions for any domestic system owned or operated by Comsat. It points as an example to the circumstances that Comsat's proposed satellites are a variant of the Intelsat IV design, and it is thus obligated to reimburse Intelsat partially for its rights in research and development on a retroactive, pro rata basis, which in turn would redound to Comsat's benefit. Of course, that is also true to the extent that anyone else is using a technology (such as the Hughes Telsat satellite)⁷³ based in part on technology for which Intelsat has acquired ownership or licensing rights.⁷⁴ The circumstance that Intelsat is able retroactively to reduce its research and development costs by sharing them with others taking advantage of the technology, is of some benefit to Intelsat and consonant with the U.S. objectives set forth in section 102 of the 1962 Act. Further, to the extent that there may be some concern that an applicant may achieve some more advantageous position over other applicants, such as reduced costs, where a technology in which it has some patent rights is used by itself or others,

⁷² The Government, rather than Comsat, sits in the Assembly of Parties.

⁷³ While Hughes and Intelsat have not yet settled upon what technology in the Telsat satellite is derived from Intelsat technology and data or the terms of the royalty, Hughes has not disavowed its obligation to reimburse Intelsat.

⁷⁴ Under Article 17 of the operating agreement of the definitive arrangements, Comsat would have no greater rights than any other domestic applicant insofar as disclosure of inventions and technical information for domestic satellite purposes, whether the ownership rights were retained by a contractor or acquired by Intelsat. Of course, in any instance where the Board of Governors has discretion to deviate, or would be party to the settlement as to "fair and reasonable terms," Comsat's vote could be subject to Government instructions.

Comsat appears not much different from Hughes—except that Comsat paid for its rights whereas Hughes is paid by others. Fairchild has an advantage over other applicants stemming from a different factor, i.e., that NASA is paying it over \$25 million for research and development of the ATS-F satellite on which the technology of Fairchild's proposed domestic satellite is largely based.⁷⁴ Lockheed and Hughes have had other research and development contracts paid for by NASA and/or defense agencies. Indeed, all of the applicants are the recipients of the benefits of satellite and launch vehicle research and development financed by NASA and other Government agencies, and ultimately by all U.S. taxpayers.

108. Insofar as alleged inhibition of technical innovation by Comsat is concerned, it bears noting that Comsat itself has improved on the Intelsat IV technology through cross-polarization techniques and lightweight filters, achieving twice the transponder capacity in essentially the same size spacecraft. For other experimental programs underway at the Comsat Laboratories, for international and proposed domestic use, see footnotes 20 and 21 in the appendix. Moreover, quite apart from reduced costs to Comsat, the choice of the modified Intelsat IV technology appears on its merits to be well within the range of reasonable business discretion. This proposed satellite lacks some of the risks allegedly associated in the higher capacity satellites proposed by MCI Lockheed and Fairchild, and may offer some advantages over the use of 12-transponder primary satellites for any entity that has traffic requirements for a larger number of primary transponders.⁷⁵

⁷⁴ NASA's contract with Fairchild for research and development of ATS-F and ATS-G is on the order of \$58.6 million, of which the larger portion is for ATS-F. While NASA makes ATS technology available without patent charge, Fairchild has a head start on others since it is the entity doing (or subcontracting out) the research and development whereas others must wait until the results are made available by NASA. Moreover, Fairchild would have some practical engineering experience with the technology as opposed to the theoretical knowledge of others.

⁷⁵ There appears to be no significant difference, in terms of efficient use of orbital space and spectrum, between the use of one 24-transponder cross-polarized satellite and the use of two 12-transponder satellites (with cross or orthogonal polarization) in one orbital location. Moreover, there is general consensus among the parties that the investment per channel in orbit is essentially the same for 12- and 24-channel satellites, though the total investment per satellite is significantly higher for 24-transponder satellites. Thus, there would be a cost advantage in using a smaller satellite if an applicant had prospects of obtaining only enough revenue producing traffic to fill 12 or fewer transponders. Of course, other factors might enter into the choice between the use of one 24-transponder or two 12-transponder satellites. For example, a launch failure in the case of one 12-transponder satellite has no bearing on the possible loss of the other, whereas a launch failure of the 24-transponder satellite entails a total loss of all transponders and launch costs.

109. Further, on the question of potential technical and service innovation by Comsat in the domestic field, it seems fairly obvious that Comsat has derived experience from its pioneering role in Intelsat, and attracted technical talent, of a type presently unexcelled by any other domestic applicant. It has the potential for making a very significant contribution toward the innovative development of this technology domestically, if it should elect to serve the general public rather than A.T. & T. Without the constraining factor of having A.T. & T. as a domestic customer, we see no compelling reason why Comsat, simply because of its role in Intelsat, would not compete to the full extent of its ability in the provision of specialized and new services within Conus, which offers a much larger market potential than that available to Comsat internationally.⁷⁶

110. It would run counter to the promotion of that goal to place restrictions on Comsat's domestic service offerings of the nature suggested by some parties to this proceeding. The Department of Justice has recommended that Comsat, as well as A.T. & T., be precluded from offering service to the television networks. The latter have stated that they would "favor the opportunity to consider any proposals submitted by A.T. & T. as well as the proposals submitted by other applicants" (appendix, paragraph 43). However, A.T. & T. has advised the networks that it does not intend to respond to their most recent request for proposals. In the event that Comsat should elect to serve the general public rather than A.T. & T., we see no public interest reason for further narrowing the networks' choice of options by excluding Comsat. It is not beyond the realm of possibility that Comsat might out-do its competitors and make an offer which the networks would consider most technically and/or economically advantageous to them.

111. While Western Union seeks to exclude Comsat from the domestic sphere, it urges that Comsat should, in any event, be permitted to operate only as a

⁷⁶ We recognize, of course, that A.T. & T. presently owns 29 percent of Comsat's stock and elects 20 percent of its board of directors (i.e., three out of 15 members), and further that it is the largest international customer of Comsat. However, the requirement for a separate corporate entity to engage in the domestic satellite operations and the limitation to service within CONUS only (see paragraph 116) will tend to reduce the significance of the corporate and commercial ties. Moreover, in view of Comsat's monopoly position as the U.S. chosen instrument in Intelsat, A.T. & T. has no choice but to obtain international communications satellite service from Comsat even if Comsat's activities in the domestic field cause it displeasure. While A.T. & T. does have the alternative of resorting to international cables to some extent, the appropriate division of traffic between international satellites and cables is a matter the Commission can address in the context of authorizing the cables. See, e.g., A.T. & T., 13 FCC 2d 235 (1968); Comsat, 29 FCC 2d 252 (1971); Statement of Policies and Guidelines in Docket No. 18875, 30 FCC 2d 571 (1971); Comsat 32 FCC 2d 103 (1971).

carrier's carrier. It relies on an alleged congressional intent, as expressed in sections 103(7) and 305(a)(2) of the Communications Satellite Act of 1962, to so limit Comsat's participation in international communications satellites, and claims that there is no reason to suppose a different intent in the domestic field. Though it appears dubious that the cited sections on their face warrant so narrow an interpretation, there are policy and legal differences between the international and domestic satellite situations.

112. When the 1962 Act was enacted, it was generally assumed that it would be technically and economically impracticable (particularly with the use of random-orbit satellites) to have a multiplicity of competing international systems, or to authorize a separate space segment to each of the competing U.S. international carriers. Congress determined that "U.S. participation in the global system shall be in the form of a private corporation," Comsat, which it authorized to "furnish, for hire, channels of communication to U.S. communications common carriers and to other authorized entities, foreign and domestic" (sections 102, 201(c)(7), and 305(a)(2)). Moreover, the Commission itself adopted an "authorized user" policy in the international field which generally limits U.S. authorized users to terrestrial international carriers except in special cases. Comsat, 1 FCC 2d 82, 85; Comsat, 2 FCC 2d 41, 45. By contrast, in the 1970 Report the Commission concluded as a matter of law (22 FCC 2d at 86, 128-133) that the authorization of domestic satellite facilities is governed by the Communications Act of 1934, which affords greater flexibility. The Commission also proposed not to apply its international "authorized user" restriction in the domestic field as a matter of policy (22 FCC 2d at 96, paragraph 27).

113. Since we have decided to adopt an open-entry policy in the domestic field, it makes scant sense to permit all competing common carrier entrants, except Comsat, to offer communications services directly to the using public. Neither Western Union nor any other carrier applicant except A.T. & T. has indicated a desire to lease satellite facilities from Comsat. Moreover, to deny Comsat direct access to other consumers would foreclose any independent contribution it might make in providing new or different services to the public. As set forth in paragraphs 133-141 below one of our principal policy objectives here is generally to encourage the provision of end-to-end service to the customer by domestic satellite system licensees, and we would expect Comsat to make every effort to promote that objective in the event that it elects to serve the general public rather than A.T. & T.

114. MCI Lockheed has, however, made one troublesome argument. It claims that there would be potential conflicts of interest in the event that Comsat should provide domestic service to Hawaii, Alaska, Puerto Rico and other off-shore points both via Intelsat facilities and also by means of its own domestic facilities. It is obviously difficult for any

entity to engage in full direct competition with itself, particularly where it may be subject to conflicting motivations. For instance, Comsat's decisions as to what type of facilities and services would be offered to points like Alaska and Hawaii on its domestic system, or whether traffic should go via international or domestic facilities, might be influenced by its stake in Intelsat (e.g., the status of its voting power or its existing investment in international earth stations) rather than solely by the consideration of what is in the best interest of those domestic customers. Moreover, as manager for Intelsat, Comsat has an obligation to endeavor to maximize the use of the global system. The possibilities for conflicts of interest between Comsat's international and domestic roles, and the potential for adverse consequences to the public, appear much greater in any area served by dual Comsat facilities than they do in Conus. However, if any domestic authorization to Comsat were limited to Conus and conditioned upon a prohibition against establishing domestic earth stations in any overseas area served by Intelsat facilities, this particular cause for concern would be virtually or entirely eliminated. Of course, Comsat could still provide domestic service via Intelsat facilities in such areas, in competition with any independent applicant authorized to serve Alaska, Hawaii, Puerto Rico or some other overseas domestic point.

115. We turn now to the reverse side of the situation, whether the authorization of domestic satellite facilities to Comsat might adversely affect its participation in Intelsat or the furtherance of the objectives set forth in section 102 of the 1962 Act. The Comsat applications contemplate an initial investment on the order of \$244 million for its proposed multipurpose system with approximately 132 earth stations. There is, of course, the possibility that a loss of most or a substantial portion of an investment of that magnitude might have a serious impact on its financial qualifications insofar as Intelsat is concerned, as well as adversely affect the stockholders who invested in it on the basis of its Government-sponsored role in the global system. However, the authorization of minimum facilities under Open Entry Option II would reduce the size of the investment risk, particularly since the extensive space segment and earth station facilities for the use of the television networks will not be authorized until they have definitely decided to convert to satellite transmission and have selected an entity to provide such service. Moreover, the size of the proposed earth station investment would be substan-

tially reduced since we will afford local broadcast stations the option of owning receive-only earth stations, as the Network Affiliates have requested (see paragraphs 120-125). Further, if Comsat should elect to serve only A.T. & T., the risk of loss would be relatively small.

116. In any event, Comsat's liability for loss due to a domestic satellite venture could be limited by a condition requiring the formation of a separate subsidiary corporation to engage in this enterprise, e.g., with separate officers, separate operating personnel, separate books of account, but permitting access to the services of the Comsat laboratories and other technical personnel on charges that are reasonable, as well as fair and equitable, to Comsat's domestic subsidiary and Intelsat. The Commission should so condition any domestic satellite authorization to Comsat. Comsat has excess capital (presently having unused capital on the order of \$90 million, almost half of its original paid-in capital), and it has no debt. The Commission could also limit the amount of equity capital acquired for Intelsat purposes that Comsat could devote to financing a separate domestic subsidiary corporation, pursuant to its powers under section 201(c)(8) of the 1962 Act, in order to insure that the Comsat investment in such corporation is consistent with the objectives of that Act.⁷⁶ Moreover, separate corporate organizations should tend to ameliorate the potential substantive conflict of interest with the Intelsat aspect of Comsat's operations.

117. Finally, if Comsat were to be restricted solely to participation in Intelsat, the possibility of a dwindling role in that organization under the definitive arrangements, coupled with the lack of an opportunity for growth in the domestic field, might adversely affect its incentive to innovate in service and technology as well as its ability to attract top technical talent to the long-run detriment of Intelsat. Entry into the domestic field to serve others than A.T. & T. would permit Comsat to experiment with different service offerings, which might beneficially be put to use for Intelsat purposes. Indeed, the experience of competing with other domestic space segment licensees might spur Comsat on to more efficient and cost effective operations in both the international and the domestic fields. Moreover, even if Comsat should elect to serve only A.T. & T., it would have an opportunity to experiment with different

⁷⁶ Section 201(c) of the 1962 Act provides that the Commission, "in its administration of the provisions of the Communications Act of 1934, as supplemented by this Act, shall * * * (8) authorize the corporation to issue any shares of capital stock, except the initial issue of capital stock referred to in section 304(a) or to borrow any moneys, or to assume any obligation in respect to the securities of any other person, upon a finding that such issuance, borrowing, or assumption is compatible with the public interest, convenience, and necessity and is necessary or appropriate for or consistent with carrying out the purposes and objectives of this Act by the corporation; * * *"

technology as well as for substantial growth.

118. On balance, and in the light of all the foregoing, it is our judgment that the public interest would be better served by placing appropriate special conditions on any initial domestic satellite authorization to Comsat, rather than disqualifying it altogether from entry into the domestic field.

119. In short, while none of the applicants is free from challenge, there is substantial merit to each of their proposals. The public might suffer some potential loss if any were to be disqualified at the outset without an opportunity to show what contribution it might make toward the effective and innovative exploitation of this technology in the national interest. We have ample authority to impose conditions designed to minimize the possibility of adverse consequences to the public in those instances where a potential conflict of interest or other drawback appears most serious, as well as to promote affirmatively its policy goals in this field. Any authorized space segment would have a relatively short life (estimated, perhaps conservatively, to run from 7-10 years). If any applicant should abuse the privilege of entry, we can decline to authorize incremental or second generation satellites or impose such further conditions as then appear necessary or appropriate to protect the public interest or to effectuate policy objectives. In the circumstances, we find and conclude that the public interest would be best served by affording an opportunity for all of the pending system applicants to proceed initially, subject to the conditions and requirements set forth in this Second Report and Order and any that might be specified in the particular instrument of authorization.

C. EARTH STATION OWNERSHIP, ACCESS, AND INTERCONNECTION

1. Ownership

120. As set forth in the Appendix (paragraphs 65-70), there is fairly widespread support in the record for the Commission's proposal in the 1970 report to adopt a flexible ground environment policy which would permit, among other things, user ownership of special purpose earth stations. The user ownership issue is most immediately presented by the Phoenix "prototype" application for a receive-only earth station (see paragraph 33 above), and by the applications for receive-only earth stations filed by CATV interests (paragraphs 30-32 above).

121. The Phoenix "prototype," which has the strong support of the three Network Affiliates Associations, contemplates a cooperative, joint-ownership venture by local television broadcast stations to gain direct access to all programming distributed via satellite (both network and independent) that such local stations have been authorized to broadcast. Existing and future independent stations would be permitted to participate in ownership or to use the earth station on a nondiscriminatory basis

⁷⁷ For example, the Network Affiliates note that Comsat's proposal would locate a receive-only at Talkeetna, Alaska (where it has an international earth station), with microwave interconnection to Anchorage and Fairbanks. The Network Affiliates state that this may be adequate for public message service, but these two cities (located about 250 air miles apart) should have their own receive-only stations for television reception purposes.

without ownership participation. Public broadcasting stations could use the earth station without charge, but would—like other users—supply their own terrestrial interconnection facilities. Phoenix and the Affiliates Associations claim that local ownership would enhance the broadcasters' independence and flexibility to determine their own program schedules, free them from carrier or network determined construction timetables and site selections (asserted to be especially important for stations in sparsely populated areas), and provide a broader financial source of earth station investment which would not be included in the rate base of the space segment carrier (see Appendix, paragraphs 65-66).

122. It seems clear that local broadcast stations (even those that are network affiliated) have interests and public responsibilities that differ somewhat from those of the network companies or any carrier that might have such companies as customers. Affording broadcasters the option of local ownership of receive-only earth stations would be consistent with long-standing Commission policy in the broadcast field. The table of television channel assignments is "predicated upon the social desirability of having a large number of local outlets with diversity of control over disseminating sources" (Rules re Microwave-Served CATV, 38 FCC 683, 699-700) and reflects the Commission's view in paragraph 79 of the Sixth Report and Order on Television Assignments (41 FCC 148, 171-172) that "as many communities as possible should have the opportunity of enjoying the advantages that derive from having local outlets that will be responsive to local needs." Local ownership of earth stations might facilitate broadcaster access to non-network sources of programming, as well as the formulation of new national, regional or specialized networks. To this extent, it would accord with the policies underlying § 73.658 of the Commission's rules relating to affiliation agreements and network program practices (e.g., paragraph (d) prohibiting option time, paragraph (e) preserving the local affiliate's right to reject network programs, paragraph (j) concerning network syndication and program practices, and paragraph (k) incorporating the prime time rule). It might also further the Commission's policy of promoting new and diverse sources of programming for independent stations. In addition, local ownership would comport with the Commission's stated objective in the 1970 report to give serious consideration to possible uses of the satellite technology in the domestic field as a means of achieving new communications services, as well as expansion in the scope and flexibility of existing services.

123. Accordingly, regardless of whether the commercial network companies decide to convert to satellite transmission, we find that the public interest would be served by a policy permitting the authorization of receive-only earth stations requested by local broadcasters to gain access to diverse program companies do decide upon program transmission. In the event that the network com-

mission via satellite, we further find that the public interest would be best served by conditioning the authorization of facilities to the chosen carrier upon a requirement that the matter of receive-only stations be handled independently of any tariff offering (or network-carrier arrangement) to the network companies for program transmission service. This would accord local stations the option of applying for receive-only earth stations, either directly or by application of an independent carrier on their behalf, or of requesting the space segment carrier to provide earth station service. If the space segment carrier deals directly with the local stations, rather than the network companies, we think that this would be more apt to result in receive-only earth station facilities tailored to the requirements of users in the particular area, at sites of their choice, and on their desired time schedule. Such a requirement might also stimulate the space segment carrier to be more attentive to the program transmission needs of nonnetwork program origination sources desiring access to local stations.

124. While it may be more simple administratively for the space segment carrier to deal with the network companies concerning receive-only facilities, there is no apparent reason why direct dealing with the local stations (possibly with the assistance of the Affiliates Associations) would impose technical difficulties. The prototype applicant, Phoenix, has stated that user owners would take all necessary and appropriate steps to make these facilities technically compatible with satellite and ground facilities operated by the space segment carrier, and would cooperate in establishing specifications, planning construction, testing and operation of such facilities. Moreover, one system applicant, MCI Lockheed, states that it would assist broadcast stations and CATV systems desiring to own their own earth stations by providing engineering standards and specifications. MCI Lockheed is also prepared to offer receive-only facilities for purchase or long-term lease on a turn key basis, with a maintenance contract and option to purchase provisions in the lease, if desired. It is further willing to cooperate with several users (e.g., network affiliates, independent stations, CATV systems, etc.) to establish joint lease or ownership arrangements.

125. The Phoenix prototype is concerned solely with television broadcast stations. We think that any authorization of such arrangements should be upon condition that a reasonable opportunity be afforded for nondiscriminatory access to such stations by other local entities desiring receive-only service (e.g., local radio stations, the press, and possibly CATV systems) if there are no other earth station reception facilities in that area to meet their requirements and the space segment operating with such broadcaster-owned earth stations has transmissions for other users.⁷⁹

⁷⁹ As the Department of Justice has recommended with respect to dedicated satellites (Appendix, paragraph 34), we will require that any user owned, joint earth station

126. It may be unlikely that CATV systems would seek access to broadcaster owned receive-only earth stations on any extensive basis.⁸⁰ They have not requested such an opportunity in this proceeding. Rather, the position of the CATV applicants and NCTA is that CATV systems, and CATV carriers who are not affiliated with the space segment licensees, should have an opportunity to own and operate receive-only earth stations with one or more satellite systems (see Appendix, paragraphs 67-68). Since broadcaster ownership of receive-only earth stations will be permitted, we see no reason why CATV interests should not be accorded a similar opportunity to own receive-only earth stations—both for reception of programming distributed by Hughes and any transmitted by common carriers for other CATV program sources. While the Hughes CATV proposal contemplates Hughes-owned earth stations, it has stated that such ownership is not essential in every case. Hughes has no objection to CATV systems owning earth stations when desired, and is willing to guarantee access to programming distributed on its space segment facilities by CATV owned receive-only earth stations at a lower rate than that charged to CATV systems not owning earth stations. We will so condition any authorization to Hughes.

127. As previously indicated, under Open Entry Option II, a CATV-owned earth station could receive CATV programming transmitted by a common carrier utilizing the same space segment as Hughes, without the expense of adding another earth station antenna to operate with a different satellite.⁸¹ Any authorization to Hughes will be upon the further condition that any common carrier sharing the same space segment and offering program transmission service to other CATV program originators shall be ac-

venture has reasonable capacity to meet all firm commitments. However, once all the earth station capacity is committed, existing users will not be required to reduce their use to make room for latecomers. Rather, with each increment in earth station capacity or upon the advent of second-generation earth stations, outsiders shall again be afforded an opportunity on equitable terms to become members of the joint venture or to use the earth station on a nondiscriminatory basis without ownership participation.

⁸⁰ Since the networks alone have a stated requirement for 11 regular and 11 additional weekend transponders, broadcaster-owned receive-only earth stations might well operate with different satellites from those used for the Hughes CATV distribution proposal, or other satellites initially authorized in space segment A. However, conceivably there might be some CATV program transmissions from other sources on the same satellites used for broadcast program distribution purposes.

⁸¹ This is on the assumption that the satellite orbital locations used by Hughes and common carriers sharing the same space segment will be separated by three degrees. Thus, a nontracking receive-only earth station could operate with the satellite used by Hughes and either one or the other of the two additional satellites. However, the receive-only earth station could not operate with all three satellites without adding an antenna.

corded reasonable access to all transmit-receive and receive-only earth stations owned by Hughes on an equitable and nondiscriminatory basis; provided, however, that access to Hughes-owned transmit-receive earth stations need not be afforded if such carrier has transmit-receive facilities capable of obtaining access to Hughes and CATV-owned receive-only earth stations, at reasonable cost. In the event that there is no other common carrier sharing the same space segment and offering program transmission service to other program originators in a manner such that it can be received at the earth stations described above without the addition of another antenna, we think that any authorization to GTE should include a requirement that it offer such service. Further, as in the case of broadcaster-owned receive-only earth stations, we will authorize CATV-owned receive-only earth stations upon conditions similar to those set forth in paragraph 125.

128. It may further be desirable in some circumstances to afford other special-purpose users, for example a business entity such as GE (see footnote 39) that might be furnished transponders by a space segment carrier for in-house communications purposes, an opportunity to own earth stations, either receive-only or transmit-receive (subject, of course, to appropriate technical coordination with the space segment carrier). Such a user might have communications requirements at points located at such a distance from the multipurpose earth stations of the space segment carrier that the savings in terrestrial interconnection would make earth station ownership economically advantageous to the user. The same might hold true for a specialized terrestrial common carrier such as Datran, if it were to use satellite transponders as an adjunct to its proposed terrestrial operations.

129. There are, of course, the concerns that a proliferation of independently owned earth stations might compound the difficulties of satellite-terrestrial interference coordination and dissipate any economies of scale in large multipurpose earth stations owned by the space segment carriers. However, if an earth station is to be established solely for the joint use of a particular group of similar users or for the exclusive use of a particular user, it makes little difference for coordination or economy of scale purposes whether the facility is owned by the users or the space segment carrier. Moreover, there are overriding reasons of public policy for permitting the option of broadcaster and CATV ownership of receive-only earth stations even if the space segment operator (whether common carrier or not) would prefer to perform this function. Nevertheless, we are of the view that the public interest would be served by an initial policy of not authorizing independent transmitting earth station facilities utilizing 4 and 6 GHz frequencies in any area reasonably proximate to a multipurpose transmit-receive earth station owned by the space segment carrier fur-

nishing the transponders, except upon a showing that the authorization of independent transmission facilities is necessary in the public interest. The Hughes transmit-receive earth stations to be operated in conjunction with the program operating centers for its private CATV network operations fall in a separate category since Hughes is proposing to own, rather than to obtain from a common carrier, the space segment transponders.

130. A related, and perhaps more serious, concern is the possibility of a multiplicity of large multipurpose transmit-receive earth stations owned by different licensees utilizing the same space segment to serve the same metropolitan area (through associated terrestrial interconnection facilities). For example, all of the common carrier system applicants (except GTE) have applied for 4-6 GHz transmit-receive earth stations in the vicinity of New York City,³² and all (including GTE) near Los Angeles, the two metropolitan areas now most heavily congested with terrestrial access facilities. Moreover, while the earth stations can be expected to have a longer life than the satellites, they may become obsolete by the time of second-generation satellites or require extensive modification to operate with such satellites. Further, considerations such as curtailing initial excessive capacity or undue investment risks by some existing carriers (see paragraphs 65-73 above) seem equally applicable here. And, finally, there is the concern about coordination with existing and future terrestrial systems at 4 and 6 GHz in heavily congested areas.

131. In the circumstances, we think the public interest would be served by adoption of an initial policy requiring reasonable sharing of 4-6 GHz transmit-receive earth stations by common carriers sharing the same space segment. Each participant in a joint space segment may be authorized its own earth stations to operate with its share of the satellite transponders, subject to the following conditions:

(a) Common carrier participants in space segments A and B (paragraph 77) shall proportionately own on a cost-sharing basis a common transmit-receive earth station in any area where another participant in the same space segment has proposed a transmit-receive earth station in reasonable proximity.

(b) Each such space segment owner may be authorized to own an individual earth station in any area where no other participant in the same space segment has applied for a transmit-receive earth station in the vicinity, or for other good cause shown.

As in the case of shared space segments, each common carrier participant sharing a transmit-receive earth station would be licensed by the Commission. Moreover, a single entity would be authorized to perform managerial functions.

³² An operating company of GTE has applied for a transmit-receive earth station near Indiantown Gap, Pa., somewhat more remotely located from New York City than those of the other applicants.

132. In short, we conclude that the public interest would be well served by adopting GE's suggestion (appendix, paragraph 70) that the Commission make possible a variety of earth station ownership patterns to afford the most diversified access to space segments, tempered only by constraints of a truly practical nature.

2. Access and interconnection

133. The Commission's proposal in the 1970 report to permit space segment carriers to deal directly with customers for their services (i.e., not to apply the international so-called "authorized user" support in the record. The Commission further proposed (1970 report, paragraph 27) a flexible policy with respect to access to earth stations and interconnection, which would permit new construction by the system operator or users, the purchase or lease of access facilities from terrestrial carriers, and arrangements between satellite and terrestrial carriers for joint through service. The only real problem that has arisen in this respect has to do with the terms on which terrestrial carriers shall interconnect with satellite carriers, and other carriers or users with earth station access facilities.

134. The problem is threefold, exemplified in one aspect by the situation of Comsat.³³ Comsat prefers not to construct its own terrestrial interconnection facilities to afford access to earth stations. In the case of Comsat's New York City transmit-receive earth station (located near Southbury, Conn.), A.T. & T. has applied for terrestrial microwave facilities for Comsat's use. Similarly, an operating company of GTE has applied for microwave facilities to afford access to Comsat's Los Angeles earth station (located near Santa Paula, Calif.). However, neither is willing to provide such interconnection on a long-term, fixed price, carrier-to-carrier basis, which is what Comsat desires. Rather, they are insisting that the interconnection facilities be leased by Comsat on a tariff basis. Thus, the controversy here is not of a technical nature, since the microwave facilities for which A.T. & T. and GTE have applied would be the same whether furnished to Comsat on a tariff or carrier-to-carrier through route arrangement.

135. Another facet of the problem is illustrated by GTE. The GTE operating companies have applied for terrestrial microwave between their respective earth stations and GTE operating territories and/or the landline network facilities of the Bell System. A.T. & T. claims that the GTE companies have not yet supplied sufficient information to enable a decision as to whether such interconnection will be permitted (see appendix, paragraph 74). It states: "Before A.T. & T. is prepared to interconnect with another carrier for provision of a service in which

³³ The RCA applicants also proposed to use earth station terrestrial interconnection facilities owned by others in CONUS. However, so far they have not indicated that they face any difficulty as to interconnection terms.

A.T. & T. participates, especially switched service, much more detailed information and justification of costs and possible penalties to be incurred will be required to permit an evaluation of the benefits to be realized."

136. The third respect in which a problem may arise has to do with the circumstances that in most instances (except perhaps for receive-only earth stations) the entity—whether space segment carrier, other carrier, or user—furnishing interconnection facilities between an earth station and the premises of the user may desire or find it necessary to obtain "local loop" service through access to the exchange facilities of a local telephone carrier.

137. Effective development and use of satellite technology and the service potential thereof depend upon the ability of all licensees to deliver such services to their customers. By virtue of the Bell System's dominant control of the terrestrial facilities required for this purpose, Bell would have a distinct advantage over all licensees in the promotion and sale of services (particularly if offered directly to the public) and, in fact, will be in a position to inhibit or obstruct the marketing efforts of such other licensees. The result could well be a nullification of the Commission's policies and objectives which are intended to provide maximum opportunity for development of competitive services.

138. In the 1970 report (paragraph 27), the Commission stated its "expectation that existing carriers will not thwart or hinder the development of new and expanded common carrier services envisaged by this policy by the imposition of arbitrary restrictions on interconnection or through route arrangements or so-called exchange of facilities among carriers—established and new—other means of accomplishing the desired objective of providing service directly to the customer." Moreover, in the Specialized Carrier decision, the Commission reaffirmed the view that "established carriers with exchange facilities should, upon request, permit interconnection or leased channel arrangements on reasonable terms and conditions to be negotiated with the new carriers" (29 FCC 2d at 940). The Commission further stressed that "where a carrier has monopoly control over essential facilities we will not condone any policy or practice whereby such carrier would discriminate in favor of an affiliated carrier or show favoritism among competitors" (id.).

139. In agreement with the position of the Department of Justice, we think that the Commission has authority under sections 201(a) and 202(a) of the Communications Act (and other provisions such as sections 4 (i) and (j), 214, and 303) to adopt such interconnection policies in this rule making proceeding as it finds necessary or desirable to promote the public interest in the domestic satellite field, and to condition any satellite

system authorizations upon compliance with such policies.²⁴

140. In general, we believe that carriers should own, to the extent practicable, the facilities used to provide end-to-end services to their customers.²⁵ Accordingly, we think that satellite systems users (whether such entities be satellite system carriers, other carriers, or users) should themselves undertake any construction of new facilities required for access to earth stations. Where it is necessary or appropriate to use the terrestrial facilities and services of the Bell System or another terrestrial carrier, particularly where such terrestrial carrier has a ready supply of the necessary facilities, we think that such facilities should be subject to lease arrangements under terms which will promote the concept of end-to-end service by the satellite system or earth station carrier. Where a carrier-to-carrier through route arrangement is necessary for the provision of end-to-end telephone service (e.g., between A.T. & T. and GTE), we would expect such carriers to work out fair and reasonable arrangements for interconnection between their respective operating territories, with no unreasonable discrimination because of the circumstance that some of the traffic involved may have been partially transmitted over domestic satellite facilities. (However, see paragraphs 97-99 above.)

141. In the circumstances, the public interest would be served by a policy requiring that any existing carrier, as a condition to its use of satellites, shall make available to all other authorized users of satellites on reasonable and non-discriminatory terms and conditions, subject to prior Commission approval, available terrestrial facilities and services that may be required by such other

²⁴ Section 201(a) provides: "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." The matter of through routes was included among the issues in the notice of proposed rule making (22 FCC 2d 810, 811 (which referred to paragraph 27 of the 1970 report, 22 FCC 2d at 96-97)), and the parties have had an opportunity to be heard on this question. Section 202(a) makes it "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

²⁵ See All America Cables and Radio, Inc., 15 FCC 2d 1, 14.

licensees to deliver their satellite services to their customers for such services. We will expect each existing carrier to submit with its application for facilities in accordance with this second report and order a full description and explanation of the kinds of arrangements it will make available to other satellite system or earth station licensees to meet their interconnection requirements. In no event shall the charges made by the Bell System to other satellite system or earth station licensees exceed: (a) In the case of local loop, the interstate tariff rates applicable to such loop; and (b) in the case of an interexchange channel at some other junction point on Bell System facilities under a leased channel arrangement, the charges shall be computed on a basis that is no less favorable than the basis used for the computation of interstate charges to A.T. & T.'s customers for service between the points involved or on the same terms that service between such points is made available to other carriers. Since we are retaining full jurisdiction over all aspects of this proceeding, we will at that time determine whether any more specific policy guidelines are necessary.

142. We further believe that the public interest would be served by the adoption of general requirements that:

(a) Any common carrier space segment offering communications satellite service to the public shall permit non-discriminatory and equitable access to such space segment by means of earth stations authorized by the Commission to other carriers and users.

(b) Any common carrier earth station licensee shall permit nondiscriminatory and equitable access to such earth station facilities by means of terrestrial interconnection facilities authorized by the Commission to other carriers and users.

The requirements pertaining to access by others to user-owned space segment and earth station facilities have already been set forth in the discussion on earth station ownership (see paragraphs 125-127). The question of access by public broadcasting and other noncommercial educational users is discussed in section E (see paragraphs 153-162).

D. ALASKA AND HAWAII; ORBITAL ARC LOCATION ASSIGNMENTS

143. The 1970 report, in requesting each applicant to state whether the proposed system would be capable of providing service to Alaska and Hawaii, stated (paragraph 34(a)):

We believe that national unity will be served if domestic systems have the capability of serving these two States, in the absence of overriding considerations to the contrary. Hawaii is presently receiving communications satellite service via the facilities of Intelsat, though not the type of broadcast program distribution that has been proposed in this proceeding, and we have authorized an earth station in Alaska. Our belief that domestic systems should be capable of serving Hawaii and Alaska does not

reflect any view with respect to the continued use of Intelsat facilities. But unless the capability is built into the domestic facilities at the outset, the possibility of providing any service to these States by means of these facilities will be precluded.

144. For a more complete summary of the views of the parties on this issue, see paragraphs 96-106 of the appendix. In brief, the State of Alaska emphasizes its geographic remoteness from Conus, vast area, small population (with tiny rural pockets called "bush"), and need for comprehensive, inexpensive and reliable communications service, both intrastate and interstate. Against its pressing needs, the State claims that present communications facilities are inadequate or nonexistent. Construction of adequate new terrestrial facilities would be extremely expensive because of distance, mountainous terrain, and rigorous climatic conditions. While Intelsat service is of some value, the high cost and restricted access preclude material assistance. The State asserts that the provision of vitally needed, comprehensive, low cost and reliable communications services in Alaska, as well as between Alaska and Conus, is dependent upon realization of the potential in a domestic system. It desires to participate in a multipurpose system, serving the 50 States, to meet its fourfold communications requirements: (1) Intrastate voice, message and data services; (2) interstate voice message and data services; (3) instructional and educational television; and (4) commercial television. The State's analysis of pending applications tends to lead it to the view that the Comsat and RCA proposals offer the best potential for accommodating its needs, though the optional features in the Fairchild proposal would be particularly attractive to Alaska.⁵⁶

145. The State of Hawaii also wants to be part of a domestic system at this time. It claims that rates between Hawaii and the Western States are more than double mainland rates for service between the most remote location in Conus (and nearly as high as rates between Hawaii and Japan); that Hawaii is not included in the low mainland night rates or provided with Wide Area Telephone Service or direct distance dialing; that TV transmission and other specialized services (e.g., data, facsimile) are so costly as to severely restrict their use; and that, while the State pays taxes to support CPB, Hawaii's public broadcasting stations will not be served by the low cost terrestrial interconnection to be provided by A.T. & T. to mainland public broadcast stations. Domestic satellites can provide interstate communications services to Hawaii at costs no longer related to distance and can afford it direct linkage throughout the United States. Unlike Intelsat or cable facilities connecting Hawaii with the west coast, communications via domestic satellites would no

longer need to transmit Conus terrestrially (e.g., via A.T. & T. Long-lines) in linking the continental hinterlands and the east coast (e.g., New York and Washington) with Hawaii. It is not equitable, the State believes, that the citizens of Hawaii in using interstate communications must carry a heavier burden than citizens in other States for making Comsat or Intelsat profitable and for supporting cost-averaged international communications. The State says: "These objectives are national and the responsibility for achieving them should be shared equally by all."

146. All the proposed systems have the satellite capability of serving Alaska, and all but one (Comsat/A.T. & T.) to serve Hawaii. However, only two system applicants (Comsat and RCA Alascom) have applied for earth stations in Alaska and only three in Hawaii (Western Union, the RCA applicants and Comsat). The fourth applicant for a Hawaiian earth station, Hawaiian Telco, originally took the position that Hawaii should not be part of any domestic system at this time, and A.T. & T. then shared the same view.⁵⁷ Hawaiian Telco stated that new cables between Hawaii and the mainland are planned for 1973 and 1977. It further claimed that diversion of existing traffic from the Intelsat system would allegedly cause a loss to Comsat of about \$10.3 million in annual revenues and a proportionate loss to Intelsat. It also asserted that the Intelsat IV Pacific satellite should make it possible for Comsat to have competitive rates and to provide TV service equal to that proposed by domestic system applicants. Comsat has not commented on the Intelsat aspect, either with respect to Alaska or Hawaii.

147. The RCA applicants urge that there is room for only one domestic satellite carrier in Alaska, and claim comparative hearing rights in the event that any other entity is authorized. They note that Alaska has a land area of some 586,000 square miles, a rigorous terrain and climate, and a 1970 population of only about 302,000 persons. The revenues and return in Alaska are asserted to be smaller than in Conus, and unit costs would be lower if it were part of a multipurpose system serving the 50 states (as urged by the State of Alaska). The RCA applicants claim that any substantial diversion of revenues to other carriers or systems, or fragmentation of the RCA Alascom market, would pose a severe threat to the future of public communications in Alaska.⁵⁸ An authorization to

⁵⁶ However, see footnotes 19 and 26.

⁵⁷ The State of Alaska joins Comsat in disagreeing with RCA Alascom's contention that it is the only entity legally qualified to provide intrastate service in Alaska. The Alaska Public Utilities Commission in franchising RCA Alascom noted that the market was then too thin to warrant general authority to more than one land-lines carrier, but did not purport to foreclose the possibility of competition in the provision of some services should future circumstances permit. The State requests the Commission to reserve room for second generation satellites, e.g., along the lines of those proposed by Fairchild, to meet its needs more fully in the future.

the RCA applicants would relieve other applicants from the obligation of serving Alaska, and remove certain constraints on their proposals (such as the selection of orbital locations capable of serving Alaska, and the need for spot beams to illuminate Alaska). Both the RCA applicants and the State itself request the Commission to reserve the most westerly orbital locations for a system or systems serving Alaska.

148. We find much merit in the comments of Alaska and Hawaii. These are both States of the Union, the equal and peers of all of the other States. Each has unique problems confronting it because of distance from the contiguous 48 States, or severity of climate or relative sparsity of population. Since we have stressed continuously our desire to see in what manner satellites can be used to resolve communications problems by providing services which are difficult or more expensive by terrestrial facilities, we believe the situation in Alaska and Hawaii offers a unique challenge and opportunity. As set forth below, we expect and will require pertinent licensees to make effective use of satellite facilities to serve the requirements of our two newest States.

149. Turning first to Alaska, we note that RCA Alascom has claimed a monopoly position insofar as service to or in Alaska via domestic satellite facilities is concerned. We need not treat this claim other than to note that the open entry policy adopted here does not exclude the possibility of other entry. On the other hand, we recognize that for the present at least, the market in Alaska is very thin but the communication needs are important to the State. We have also noted the State's list of fourfold communication needs for interstate and intrastate voice and message services, as well as for commercial, educational, and instructional television. It would appear that satellite facilities hold the greatest promise for satisfying those needs. We therefore require that RCA Alascom submit with its formal completed application, whether for Space Segment A or an independent system, a detailed plan setting forth:

(a) The number, locations, and schedule of installation of satellite earth stations proposed in light of the stated communication needs of Alaska;

(b) A detailed description of the space segment facilities which will most economically serve Alaska including the type of spot beam, if any, proposed or the reason for not proposing a spot beam;

(c) A detailed analysis of the most efficient and economical use which can be made of the Talkeetna earth station, i.e., whether it should be continued to be used to communicate via the Intelsat system or whether it be devoted to the domestic satellite service with international service to be provided indirectly until such time as traffic justifies a station devoted solely to international traffic;

(d) The basis upon which charges proposed for service over the system, both

⁵⁸ The State of Alaska has not had an opportunity to comment on the MCI Lockheed Alaskan proposal first submitted in its reply comments (see appendix, paragraph 99 and footnotes 42 and 43).

interstate and intrastate, will be computed; and

(e) A statement from the appropriate authorities in Alaska with respect to the RCA Alacom proposal and how it meets the stated requirements of the State.

150. As noted, Hawaii presents different problems. As we read the comments submitted on behalf of the State the major concerns are, first, that charges for message communication service between it and the contiguous 48 States are entirely too high and that it does not enjoy services such as Wide Area Telephone Service (WATS) and Direct Distance Dialing (DDD). It also complains that television transmission and specialized services are much more expensive and that their use is restricted thereby. Here again, we find much merit to the concern of this State. We are aware that at present Hawaii is served by the Intelsat satellite system, as well as two cables to California. There is also pending an application for a third high capacity 840 circuit cable to be installed between Hawaii and California. In light of the comments of the Governor of Hawaii, we feel we must address the question of the role domestic satellites can play in providing Hawaii with economical and efficient service. In this connection, it is relevant to point out that whereas in the contiguous 48 States domestic satellites hold their greatest promise in the nonmessage field, this does not necessarily appear to be the case with respect to Hawaii. The burden of the comments from Hawaiian officials appears addressed to voice message services. We will require that A.T. & T. and GTE/Hawaiian Telco address specifically the request of Hawaiian officials that Hawaii be provided domestic services such as WATS and DDD and be integrated into the general domestic rate pattern, including the manner in which these things might be done, the time frame for accomplishing them, and the cost thereof as well as the rate schedules to be applied. If A.T. & T. and GTE/Hawaiian Telco are of the opinion that for such services it would not be feasible to include Hawaii in the general domestic rate pattern, then some alternate proposals for giving due recognition to Hawaii's special requirements should be presented. In this connection the feasibility of principal reliance on a domestic satellite system to meet Hawaii's service requirements should be considered in light of the fact that transmission via satellite is not sensitive to the distance between earth stations and the claim that its use for domestic services would not involve costs appreciably higher than terrestrial facilities. In any event, we wish to make it clear that proposals for service to Hawaii are and will be considered an important public interest factor in connection with the domestic satellite proposal of the applicants involved.

150a. On March 6, 1972, the Commission received a letter dated February 29, 1972, from Governor Luis A. Ferre of the Commonwealth of Puerto Rico, raising substantially the same matters which

were of concern to the Governor of Hawaii. This is readily understandable as there are numerous similarities in the two situations. Each is an island area at a considerable distance from the 48 contiguous States; each is served by Intelsat and cable facilities (there are 3 U.S. cables serving the Puerto Rico-Virgin Island area and beyond as against 2 cables from the mainland United States to Hawaii). In each case, rates to the contiguous States are very much higher than between points within the contiguous States; and television service is provided only via Intelsat facilities at rates generally applicable to international service. While Puerto Rico is not a State of the Union, its citizens are citizens of the United States and the provisions of the Communications Act of 1934 and the Communications Satellite Act of 1962 apply to Puerto Rico just as to any State. In view of all of the foregoing conclusions, we shall request A.T. & T. as well as the applicants proposing to serve Puerto Rico and the Virgin Islands to address each of the matters set forth in paragraph 150 above with respect to Hawaii as if fully set forth again in this paragraph.

151. It should be noted at this point that the aforementioned conclusions with respect to domestic satellite service for Alaska and Hawaii were reached only after giving careful consideration to the fact that domestic satellite service between the 48 contiguous States and Alaska and Hawaii is now being provided via the facilities of Intelsat and evaluating the potential impact of the loss of such traffic or any part thereof to the Intelsat system. In this connection it must be borne in mind that any domestic system authorized pursuant to this policy statement will probably not be operational until some time in late 1974 or early 1975. According to current estimates the volume of traffic handled via Intelsat facilities should, by the end of 1974 or early 1975, reach 17,064 one-half circuits. This represents an increase of 192 percent over the volume handled at the end of 1971. Furthermore, even if one were to assume that all traffic between the contiguous 48 States and Hawaii and Alaska were to be lost to the Intelsat system at that time, current Intelsat estimates show that this would account for only 1,046 half-circuits out of a total of 17,064 half-circuits, or 6.1 percent of Intelsat's estimated 1975 traffic. Furthermore, it is clear from the draft of the Definitive Arrangements now being ratified by various nations of the world that the prime objective of Intelsat is "the provision, on a commercial basis, of the space segment required for international public telecommunication services * * *". It is true that domestic services between areas separated by areas not under the jurisdiction of the State concerned, or by the high seas, are considered on the same basis as international public telecommunications services. However, as the record of the Intelsat Conference shows, this provision was added as a special exception to meet specific requirements of a certain

number of members of Intelsat. Furthermore, as is set forth above, satellite service requirements, particularly in Alaska, include intrastate needs which may not readily come within the Intelsat definition of international public telecommunication services. Finally, we have sought the views of Department of State insofar as the foreign policy aspects of this matter are concerned and have been advised, in essence, that if the Commission were to decide on other considerations that Alaska and Hawaii should be included in the domestic system, such decision would not necessarily be opposed by the Department.

152. In view of the foregoing circumstances, it does not appear to us that the course proposed herein is inconsistent with this Government's obligations to Intelsat. On the other hand, there are very substantial potential benefits which can reasonably be expected to be realized by the provision of service to Alaska and Hawaii from the contiguous States via a domestic satellite system. Indeed, to exclude Alaska and Hawaii from domestic satellite system service offerings would appear to violate the mandate in section 307(b) of the Communications Act that "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Finally, it should be understood that the decision herein does not necessarily bar the use of Intelsat facilities to provide service between the contiguous States and Alaska and Hawaii. In those instances where carriers can demonstrate that considerations of the efficiency, economy and quality of service would better be served by reliance on Intelsat rather than a domestic system they, of course, would be authorized to provide such service.

152a. The assignment of orbital arc locations will be made by subsequent order of the Commission. We will assign orbital locations for satellites authorized to serve Alaska and Hawaii⁹⁰ in that portion of orbital arc that is five degrees or more west of the orbital locations that have been selected by Canada and is capable of illuminating those States as well as Conus. Other authorized satellites will be assigned orbital locations in that portion of the orbital arc that is five degrees or more east of the Canadian locations and is capable of illuminating Conus. The orbital locations for satellites authorized to utilize 4 and 6 GHz frequencies, in whole or in part, will be separated by no more than 3° (or allow for intervening assignments separated by 3°) unless good cause is shown for a wider separation. In assigning orbital arc locations, the Commission would en-

⁹⁰ Deleted.

⁹¹ In the event that the networks should select Comsat to provide program transmission service, any authorization to Comsat will be upon condition that the earth stations in Alaska and Hawaii be licensed to local broadcasters or an independent carrier (see paragraphs 110, 114).

deavor to make maximum allowance for the authorization of future satellites utilizing 4 and 6 GHz frequencies. The assignment of any orbital location for use by a particular satellite shall not grant the licensee any right to the use of that orbital location for another satellite.¹⁴ Nor shall the initial assignments preclude the Commission from changing orbital location assignments during the life of the initially authorized satellites, as required by the public interest, convenience or necessity.¹⁵

E. TERMS OF ACCESS BY PUBLIC BROADCASTING AND OTHER EDUCATIONAL INTERESTS

153. The 1970 Report (paragraph 34(b) (1) and (2)) requested applicants proposing broadcast program transmission to state the terms and conditions under which domestic satellite facilities would be made available for noncommercial educational networks. Noting that some parties to the proceeding, such as Comsat and the ABC network, had offered to provide satellite channels to public broadcasting without charge, the Commission said: "We believe this to be in the public interest" (22 FCC 2d at 101). The Commission also requested all applicants for multipurpose or specialized systems to indicate the terms and conditions under which satellite services would be available for data and other usage in meeting the instructional, educational, and administrative requirements of educational institutions.

154. The positions of the parties on this issue are summarized in the appendix (paragraphs 81-91). In brief, the Corporation for Public Broadcasting (CPB) and the Public Broadcasting Service (PBS) urge that domestic satellite service for a minimum public broadcasting network (both TV and radio) should be provided without charge.¹⁶ The rationale is essentially as follows:

The American people have invested more than \$20 billion in the space program. Communications satellite technology is derived

from that investment. The public thus has a real and direct interest in the cost-savings inherent in the satellite technology. As the submissions in this docket indicate, the potential cost-savings are substantial. [Footnote omitted.] The bulk of these savings will accrue in any event to private industry. We ask only that a small portion be used to provide the American people with a partial return on their investment, in the form of free interconnection for public broadcasting.

Other parties urge the Commission to recognize also that educational needs are broader—e.g., data transmission needs, library access service, and that facilities should be made equally available for health and other public service oriented purposes. The States of Alaska and Hawaii particularly support free or low-cost service for educational purposes. Reliance is also placed on the provisions in the Public Broadcasting Act of 1967 and Higher Education Act of 1968 to the effect that nothing in the Communications Act shall preclude common carriers from rendering free or reduced rate communications interconnection services to entities of this nature.

155. Some applicants have offered free service. Hughes is willing to afford PBS two satellite transponders (backed up) without charge, and free access to all Hughes earth stations. MCI Lockheed offers the equivalent of five TV channels for educational use (including PBS in Conus) and the services of its downtown earth stations, for 5 years without charge and thereafter at a fraction of commercial rates. Fairchild offers free use of two satellite transponders for public television in Conus, a free shared service to off-shore locations, and free part-time use of two transponders to the medical community. Fairchild also proposes an option of one or two 2-GHz transponders for free use to provide instructional television and message service to remote areas (e.g., Alaska bush) if other entities provide the earth stations. The Phoenix "prototype" contemplates free use by PBS affiliates of receive-only earth stations owned by local broadcasters. On behalf of CATV interests, NCTA opposes free service for educational television.

156. WTCI, the RCA applicants, and Western Union are willing to abide by a Commission decision to supply channels at reduced rates or without charge, provided that the cost is distributed among all satellite systems and users in some fair and equitable manner (or, in the case of Western Union, that the Commission establishes ground rules equally applicable to all contenders for major network business). A.T. & T. and GTE assert that the terms of service to CPB should be the same as for terrestrial interconnection, i.e., on an incremental cost basis. Comsat notes that service to public broadcasting (unless rendered on spare capacity on an as available basis) results in cost to someone. However, it joins Western Union in urging the establishment of ground rules, and hopes that "some form of preferential service can be worked out for public broadcasting in a fashion which meets the genuine requirements of CPB, and produces unit

costs which are acceptable to the yet undecided commercial users of a domestic satellite system."

157. There can be no question but that commercial communications satellite operations in themselves, as well as any savings over terrestrial modes of communication, would not be possible without the very substantial public investment in research and development of technology that has been and continues to be made by the multibillion dollar U.S. space program. This investment is not limited to launch vehicle technology, but extends also to other areas important to communications via satellite, such as research and development paid for by NASA and other government agencies (see, e.g., paragraph 107) and technical information obtained in NASA's ATS program which is made available to all without charge. However, it cannot be denied that other forms of commercial enterprise have also benefited from the Government funding of research and development in other technological areas. This is particularly true of the results that have been produced by the funding of research and development to meet military requirements of all kinds.

158. Although private enterprise may benefit from these technological advances made possible by taxpayer investments for other purposes, such benefits do not necessarily take the form of higher profits for the entrepreneurs exploiting those advances. The benefits are primarily reflected in lower prices for goods and services available to the public because the research and development costs have been funded by sources other than the purveyor of such goods and services. This has been the case of the commercial applications that have thus far been made of satellite technology in the area of international communications services. For example, government funds are almost entirely responsible for the basic research included in the development of launch vehicles; the manufacturing costs and sales prices of such vehicles do not reflect those costs. This, in turn, means lesser investment commitments by commercial users of launch vehicles (e.g., Comsat and Intelsat) and fewer costs to be recovered by such users from the rates charged the public for satellite services. In this fashion, the investment of the taxpayer in research and development leading to commercial exploitation is returned in a significant measure to the public in the form of better service at lower charges. We expect that the uses of satellite technology in the domestic communications area will produce similar, if not more substantial, returns to the public for the governmental investments made in the development of space technology.

159. Thus, we do not believe that the public investment in space technology research and development constrains us to exercise our discretion so as to require, as a matter of policy, that all communications satellite system licensees, as a condition of their licenses, offer free or reduced rates to the various educational groups identified in various proposals.

¹⁴ In determining whether a space segment licensee will be permitted to use the same orbital location for another satellite (such as an existing ground spare) to replace a satellite that has failed short of its design life, the Commission will be guided by the circumstances then prevailing (including the length of time, if any, the failed satellite was operational, the current state of the technology, and the then existing demands on that portion of the orbital arc available for assignment).

¹⁵ In the event that changes in orbital location assignments are found necessary, the Commission will endeavor to make such reassignments in a manner which will be least prejudicial to the affected licensees, all relevant factors considered.

¹⁶ This minimum requirement is stated as (see paragraph 37): full-time use of two satellite transponders (fully backed up and nonpreemptible), plus access to a third transponder for 31 hours a week at specified hours and up to 7 more hours, subject to availability, for occasional use. They also desire access to all earth stations (transmit and receive) serving commercial broadcast and CATV customers. This requirement does not include terrestrial interconnection, any facilities required for educational use alone, or allow for future growth.

160. However, there is a well-established national policy which encourages and makes it lawful for communications common carriers to provide free or reduced rate interconnection services to noncommercial broadcasting networks and educational institutions. Thus, section 396(h) of the Communications Act provides:

Nothing in the Communications Act of 1934, as amended, or in any other provision of law shall be construed to prevent U.S. communications common carriers from rendering free or reduced rate communications interconnection services for noncommercial educational or radio services, subject to such rules and regulations as the Federal Communications Commission may prescribe.

The Higher Education Act of 1968 also provided for similar rate benefits being extended to institutions of higher learning.

161. Although these statutes do not operate automatically to give preferential rate treatment to the educational interests involved, they clearly make it possible for the Commission to prescribe such rate treatment in accordance with the applicable procedures and processes of the Communications Act, as well as for individual common carriers to offer such preferential rate treatment at their own initiative.

162. On the basis of the limited information now before us and the obvious uncertainties as to the specific nature, capacity and costs of the satellite facilities that will eventually emerge, we are in no position at this time to initiate any definitive proposal looking toward preferential rate treatment or to even specify the types of entities within the educational and non-commercial broadcasting services that should be eligible for such rate treatment. The Commission will, however, entertain specific proposals by carriers or users for the prescription of preferential rate classification in accordance with sections 201, 202, 205, and 396(h) of the Communications Act. The carriers are of course free at any time to file tariffs providing for such preferential rate treatment subject to review by the Commission in accordance with the applicable statutory process and the rules adopted by the Commission pursuant thereto. Notwithstanding the foregoing, the non-carrier applicants (such as Hughes and Phoenix) who have offered free access to any facilities authorized to them to public broadcasting and other educational entities are, of course, expected to implement the proposals made in their applications.

F. PROCUREMENT

163. In paragraph 28 of the 1970 report, the Commission requested comments on its authority to adopt domestic satellite system procurement rules patterned after those promulgated under the 1962 Act for some facilities used in conjunction with the Intelsat system (Part 24, Subpart B), and on whether any modifications would be appropriate if similar rules were found desirable in

the domestic field. As indicated in paragraphs 76-80 of the Appendix, most parties who commented on this question either disputed or doubted the Commission's authority to adopt procurement rules in the domestic satellite field, in light of the provisions of section 215(a) of the Communications Act and various statements of Commission representatives to Congress preceding the enactment of the 1962 Act. Some applicants (e.g., Western Union, Comsat, and the RCA applicants) indicated that they would voluntarily follow a policy of competitive bidding in any event. The Department of Justice took no position on whether the Commission could require competitive bidding in light of section 215, but stated that the Commission could deny a section 214 authorization where a carrier applicant fails to demonstrate that it is fulfilling its needs in the most efficient manner through a "least cost supplier." The Department further urged that competitive procurement is required by the 1962 Act in the case of Comsat.⁶⁴

164. Apart from the Commission's authority, several parties question the desirability of issuing procurement rules in the domestic field under an open entry policy. Some, including the Department of Justice, doubt the effectiveness of any rules for equipment supplier applicants (e.g., Hughes, Fairchild, and Lockheed) who can be expected to use their own equipment even under competitive bidding. WTCI states that it wants to exercise its own business judgment in a competitive situation. Western Union and MCI Lockheed claim that there is no need to treat this type of procurement differently from other domestic communications procurement, and they see no warrant for imposing on the applicants the expense and administrative burden of complying with detailed rules. General Electric Co. (GE), a satellite equipment supplier which is not an applicant in this proceeding, states that procurement rules would be imperative for a monopoly or near monopoly situation, but are unnecessary (or should be only minimal) under an open entry policy.

165. For purposes of this proceeding we will assume the Commission's authority (under sections 4(d), 201(b), 214, 303, 307-309, and 313-314 of the Communications Act of 1934, viewed in the light of the congressional policy expressed in the Communications Satellite Act of 1962, particularly sections 102(c) and 201(c)(1) thereof) to condition any authorization for a domestic communications satellite system upon appropriate requirements, such as competitive bidding, to promote competition in the provision of equipment to such a system, as the public interest, convenience or ne-

⁶⁴ We think that section 201(c)(1) applies to "the communications satellite system and satellite terminal stations" authorized under the 1962 Act for Intelsat purposes, but does not necessarily apply to Comsat for independent facilities authorized under the 1934 Act and section 102(d) of the 1962 Act.

cessity requires.⁶⁵ We are further of the opinion that it would be appropriate to exercise such authority and to require competitive procurement in the interest of the public if we were to authorize only

⁶⁵ The legislative history of section 215 of the 1934 Act reflects the concern of Congress about procurement transactions between a telephone carrier and its manufacturing affiliate (e.g., the Bell System and Western Electric Co.). As first introduced section 215 (b) and (c) would have authorized the Commission to approve all such transactions and to require competitive bidding (S. 2910 and H.R. 8301, 73d Cong., second session, (1934)). Instead, Congress decided to direct the Commission to study the matter and report its recommendations as to whether legislation on this subject would be desirable. Hearings on S. 2910 before the Senate Interstate Commerce Committee, 73d Cong., second session, pp. 77, 81, 83 (1934); hearings on H.R. 8301 before the House Interstate Commerce Committee, 73d Cong., second session (1934); 78 Cong. Rec. 8824 (remarks of Senator Dill); H.R. Rep. No. 1850, 73d Cong., second session, p. 3 (1934). Although the Commission subsequently reported to Congress, no legislation was enacted requiring competitive bidding for carrier-affiliate procurement transactions. H.R. Doc. No. 340, 76th Cong., first session (1939).

In enacting the 1962 Act Congress made clear its intent to protect the public interest by requiring competitive procurement in the communications satellite field for facilities of the global system, both in the case of the U.S. chosen instrument for participation in space segment ownership (Comsat) and also for procurement by terrestrial carriers for earth stations operating with such system (section 201(c)(1)). Some views were expressed that the Commission already possessed such authority under the 1934 Act. See e.g., 108 Cong. Rec. 9980; 108 Cong. Rec. 10251; 108 Cong. Rec. 10252; Hearings on S. 2814 and S. 2814 amendment before the Senate Committee on Commerce 87th Cong., second session, pp. 267-268 (1962). In view of the explicit Congressional intent that competitive procurement should apply in the case of a single global communications satellite system, the Commission could properly take account of that policy if we were similarly to establish a single system in the domestic field. As the Supreme Court put it in *Southern Steamship Company, v. NLRB*, 316 U.S. 31, 47:

Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis on its immediate task.

Further, it would be particularly inappropriate to effectuate the policies of the 1934 Act "so single-mindedly" as to "wholly ignore other and equally important Congressional objectives" (*id.*) in the 1962 Act in light of the statement in section 401 of the 1962 Act that: "Whenever the application of the provisions of this Act shall be inconsistent with the application of the provisions of the Communications Act, the provisions of this Act shall govern." The Commission is not precluded from exercising such power because it has in the past expressed doubts as to its authority under the 1934 Act alone and/or sought clarifying legislation. *United States v. Southwestern Cable Co.*, 392 U.S. 157, 164-165, 170-171 (1968); *American Trucking Association v. Atchison, Topeka and S. F. Ry. Co.*, 387 U.S. 397, 415-418 (1967).

a single space segment—either to one applicant or to a consortium of the pending applicants. However, we do not believe that such a requirement is presently necessary or desirable as a prerequisite to the initial implementation of an open entry policy which would afford an opportunity for the development of competitive domestic systems.

166. We think so primarily for these reasons. First, the authorization of several systems to serve a competitive market affords a natural incentive to each licensee to select the equipment most satisfactory for its purpose in terms of cost and performance. There is much to be said for WTCI's desire to exercise its own business judgment in a competitive situation. Second, an open entry policy with potential for future new entry would afford equipment suppliers an opportunity to vie for the business of different customers, rather than restricting them to competition for the business of a single entity or system. To be sure, those applicants that are themselves equipment suppliers can be expected generally to use their own equipment. However, as the Department of Justice and Comsat point out, it is unlikely that competitive bidding would remedy that situation. Further, the circumstance that there are equipment supplier applicants in addition to Hughes (as well as applicants dealing, or apparently willing to deal, with other suppliers) may permit an operational demonstration of different equipment that might enhance the opportunity for future supplier competition. Indeed, as previously noted, entry by equipment licensees may be the only realistic way to encourage the development of rival technologies at this stage in light of the Hughes preeminence in the commercial spin-stabilized communications satellite field.

167. Some space segment and earth station applicants may decide that their interests would be best served by a voluntary practice of seeking competitive bids. We exhort applicants to give serious consideration to that possibility. However, in the present circumstances it does not appear that any benefits that might be derived from a Commission-imposed requirement would outweigh the burden of formulating and administering procurement regulations or the expense, burden, and delay to the applicants in complying with formal and detailed rules. We are of the view that the public interest would be better served for now if we devote our limited manpower and other resources to more pressing matters of higher priority in the authorization of initial domestic satellite facilities, toward the end of an early realization of domestic satellite service to the public. If competitive systems do not materialize or if procurement regulation otherwise should in the future appear imperative in the public interest, we will exercise whatever authority we possess in this area to protect the public.

PROPOSED ORDER

168. Authority for the policies and conditions adopted herein is contained

in sections 1, 2, 3, 4 (i) and (j), 201, 202, 203, 212, 213, 214, 218, 219, 220, 301, 303, 307-309, 310(b), 319, 396, 403, and 605 of the Communications Act of 1934 and sections 102 and 201(c) (8) of the Communications Satellite Act of 1962.

169. Accordingly, it is ordered, That:

a. The policies and conditions set forth herein are adopted, effective -----, 1972.

b. Western Union, Hughes, GTE, WT CI, the RCA applicants, Comsat and A.T. & T. shall apprise the Commission on or before -----, as to whether they desire to take advantage of the opportunity for initial entry under the policies and conditions specified in this second report and order and, if so, how much time would be desired for the submission of space segment proposals consistent with such policies and conditions for the Commission's approval. Pending Commission action on such proposals, it is not necessary to submit amended or new applications for earth station facilities, unless the applicants so desire.

c. MCI Lockheed and Fairchild shall apprise the Commission, within 30 days after the statements filed by other system applicants pursuant to subparagraph (b) above, as to whether they intend to pursue their pending system applications in light of the statements of such applicants and the policies and conditions specified in this second report and order; and, if so, how much time is desired for the submission of proposals consistent with such policies and conditions, for the Commission's approval. Pending Commission action on such proposals, it is not necessary to submit amended or new applications for earth station facilities, unless the applicants so desire.

d. The Commission retains full jurisdiction over all aspects of this proceeding.

APPENDIX

Summary of the Comments of the Parties in Docket No. 16495

1. In their comments, the system applicants have posed as the key issue for threshold resolution by the Commission the question of the number and nature of the systems to be authorized. While each urges that its own proposal should be authorized and some advocate a policy of limited or complete open entry (within the confines of orbital arc and frequency availability), there are claims that each of the pending applicants should be disqualified on various policy grounds. Moreover, in commenting on these questions, the applicants and other parties have relied on some arguments reflecting their positions on other issues involved in this proceeding; e.g., technical and economic conflicts among system proposals, the appropriate initial role of A.T. & T., ownership of and access to earth stations, service to Alaska and Hawaii, the terms of service to noncommercial broadcasters and other educational users, procurement policies, etc. We shall therefore summarize first the positions of the parties on the threshold issue, and then supplement as necessary with their views on other issues.

I. THE NUMBER AND NATURE OF THE SYSTEMS TO BE AUTHORIZED; ALLEGATIONS OF DISQUALIFICATION

A. Positions of the system applicants

2. One applicant, Comsat, urges that there is need for only a single multipurpose sys-

tem, and separate facilities for A.T. & T.—given the size of its requirements and desired use of dedicated facilities. Comsat claims that all of the applications cannot be granted for technical and economic reasons, e.g., an alleged scarcity of orbital locations and basic reliance on the same markets for economic support. Although conceding that applicants such as Hughes/GTE or Western Union might generate enough traffic for smaller systems, Comsat argues that such systems would be less cost-effective than a fully loaded larger multipurpose system and would be less efficient in orbital arc utilization. It does not undertake to assess the potential advantages or disadvantages of the even larger capacity systems proposed by MCI Lockheed and Fairchild, in view of what Comsat calls "technological risks" and "conjectural cost estimates."¹ However, Comsat asserts that meaningful competition among large multipurpose systems is not a realistic possibility, and that the market should not be fragmented at the expense of economies of scale.

3. Comsat further takes the position that it alone, among the pending applicants, lacks conflicting interests and is otherwise fully qualified to be selected as the chosen instrument for the space segment.² Comsat urges that all of the other applicants should be disqualified because each is affiliated with manufacturing, user, or terrestrial carrier interests, or some combination thereof, and would—if given exclusive or primary responsibility for meeting domestic communications satellite needs—enjoy a position that could have anticompetitive consequences in at least one major market.

4. With respect to satellite equipment suppliers (Hughes, RCA, Fairchild, and Lockheed), Comsat claims that as the owner of a system a supplier would have substantial economic power in the satellite service field and the ability to use the leverage of this power. Such a licensee, Comsat alleges, would have obvious incentives to use its own equipment, and might engage in price squeezes (i.e., maintain higher prices for equipment sold to others) or provide less efficient service to others, or reserve for itself the benefits of research and development. Comsat argues that any procurement policies that might be adopted by the Commission would not avoid such potential consequences, because meaningful competitive bidding is an impossibility when one of the bidders is the purchaser (unless the purchaser is barred from bidding—in itself an anticompetitive solution). It further asserts that no manufacturer applicant has demonstrated that vertical integration would result in any significant economies, and that vertical integration is contrary to the policies underlying the "Vertical Merger Guidelines" of the Department of Justice. Comsat also urges that authorization of a supplier applicant would deter potential new suppliers in a field which is now fairly limited.³

¹ Comsat and other parties have made some comments on the merits of specific technical or other features in the applicants' proposals. We do not attempt to describe such comments in this summary in view of the considerations set forth in the policy discussion in the second report and order (paragraphs 50-61).

² Comsat argues that earth station ownership should be limited to it and other common carriers.

³ According to Comsat, less than ten manufacturers have produced unmanned satellites and only three of these have produced synchronous non-experimental satellites (Hughes, TRW and Philco-Ford). Comsat's most recent request for procurement elicited only four responses (Hughes, RCA, TRW, and Lockheed).

5. With respect to user applicants (e.g., Hughes for CATV programming and RCA Globcom/RCA Alascom for television network program distribution service), Comsat points to other possible adverse consequences. It argues that such an authorization would enable RCA to enhance the competitive position of NBC vis-a-vis other networks. In addition to asserting that Hughes would obtain an enhanced position vis-a-vis other CATV program distributors, Comsat notes various Hughes interests in related CATV and program production fields.⁴

6. With respect to terrestrial carrier applicants (MCI, RCA, WTCI, GTE, and Western Union), Comsat notes that each (except for GTE) proposes to serve itself as well as others. To the extent that others are competitors, Comsat asserts that this would raise problems similar to those it has indicated for user applicants. For example, a satellite system authorization might enhance the position of MCI or WTCI vis-a-vis other specialized terrestrial carriers. RCA Globcom would have "bestowed upon it the advantage of being the only one of three United States international record carrier competitors that has a domestic arm." Western Union, according to Comsat, should not be authorized to undertake a major new responsibility until it has demonstrated that it can properly discharge its present responsibilities in the provision of terrestrial public message service. From the standpoint of competition between satellite and terrestrial systems, Comsat further suggests that a terrestrial carrier might be reluctant to participate aggressively and innovatively in the development of satellite technology and service (citing paragraph 26 of the 1970 report herein, 22 FCC 2d at 96).

7. None of the other applicants or parties to this proceeding (with a few exceptions among the latter)⁵ has supported the au-

⁴Comsat lists as examples: The Hughes Sports Network, TelePrompTer Corp., and Theata Cable of California, Theata-Com Corp. (CATV communications equipment), and the role of Howard R. Hughes and "Hughes Production" (an operating division of Hughes Tool Co.) in the motion picture field (licensing motion pictures and stars, and the ownership of scripts, stories, films, and formerly produced motion pictures).

⁵United Telephone System urges the Commission to authorize just one space segment to be owned by a new carrier or one now in existence, with the earth stations and terrestrial links owned by those who use the space segment. Western Union International states that it would be desirable to have a single, multipurpose system with the space segment and earth stations owned by all authorized carriers. In the event that the Commission should decide upon this approach, WUI is interested in ownership participation to link its gateway operations with hinterland subscribers in the United States and to meet its growing requirements for the transmission of communications to various gateway centers. TVC of California, Inc., and Consumers TVC, Inc. suggests exploration of a consortium combining the technical know-how of all applicants, including A.T. & T. The United States Independent Telephone Association (USITA) urges that in order to be considered for a grant, each applicant must demonstrate economic viability. USITA sees no reason for introducing new carriers, and believes it inefficient to divide responsibility between carriers and noncarriers. ITT World Communications, Inc. favors multipurpose systems offering a full range of communications services, provided that authorizations are conditioned upon the grant of indefeasible rights of use to authorized carriers in satellites and earth stations.

thorization of a space segment monopoly. A.T. & T., which claims that the public interest requires that it be authorized to use satellites as an integral part of its nationwide communications network (see paragraphs 56-63), asserts that its participation will aid innovation, and will not inhibit innovation by others—as shown by the various proposals submitted in this proceeding. It urges the Commission to authorize Comsat/A.T. & T. and such other applicants as can reasonably be found in the public interest.

8. Fairchild, while recommending a limited open grant policy, cautions the Commission to avoid a wasteful multiplicity of systems that might stifle potential and result in higher costs. It suggests that its proposed high capacity satellites, reusing available spectrum several times from each orbital location, would afford an optimum initial system from the standpoint of orbital and spectrum utilization. It also claims that its system could offer major economies in costs per transponder,⁶ and that this—together with the satellite capacity—would permit its offering of free public interest services without burden on other users. Fairchild, whose proposal looks toward accommodation of A.T. & T. growth traffic, urges the Commission to disregard existing contracts or understandings between applicants, and to require A.T. & T. and other carriers to use satellites where economy and efficiency demonstrate this would best serve the public interest.

9. In urging the adoption of a policy which assures access to all whose entry (or threatened entry) would encourage technical innovation, efficient production and lower costs to consumers, Fairchild summarizes its position against the grant of an exclusive authorization to Comsat as follows:

"In view of the interlocking relationship between Comsat and A.T. & T. and in light of the prior procurement history of Comsat and its close association with Hughes, there is little doubt that a license grant based on the current Comsat application would result in an unhealthy perpetuation of this existing triumvirate which would discourage present applicants from future attempts to enter the market * * * Absent effective competition, [this] combination would tend towards a dangerous monopoly encompassing international and domestic satellite markets."

It also cautions against an open entry policy based on the present proposals of the pending applicants, stating:

"Considering the concentrated nature of the user market—largely dominated by A.T. & T. and the TV networks—and the existence of prior agreements tying major users into specific systems—the Comsat/A.T. & T. and Hughes/GTE combinations—the open grant policy in this instance would lead to a severely restricted marketplace and would not guarantee the lowest cost to the ultimate user."

10. Fairchild's suggested solution is the following:

"In developing policies and guidelines for the granting of domestic communications satellite licenses the Federal Communications Commission can best serve the public interest by conducting a meaningful competition among all applicants. This competition should be based on objective criteria promulgated by the FCC—realistic traffic models, minimum performance standards and guaranteed maximum per channel rates—criteria recognizing the facts of limited orbital space and usable spectrum, as

⁶Fairchild asserts that its system would be competitive with representative 12 and 24 transponder satellite systems with a 40 channel fill, would exhibit significant cost savings with a 72 channel fill, and would require the use of fewer earth station antennas.

well as the need for reliable service. Satellite licenses should be granted to those applicants who can meet the criteria set by the FCC and whose satellite systems will result in lower costs to the user than existing terrestrial networks."

11. Hughes takes the position that the Commission should authorize a minimum of three domestic systems rather than a monopoly which it states would result in an inferior U.S. system. Hughes argues that the authorization of several systems would bring in the advantages of competition and provide a strong impetus for economy in development and innovation in planning. Noting that the pending proposals reflect different service objectives and technology, it asserts that these can be better accommodated by authorizing several systems. According to Hughes, this newly emerging communications environment is in a period of experimentation calling for boldness. If only one system is authorized, the design characteristics and technology of that system would become a limitation on the system's performance. Hughes indicates that a severe compromise in design would be necessary to incorporate all in one spacecraft design, whereas several systems with specialized configurations would not need to make such a compromise. Concerning claims by some parties that the technology proposed by some applicants may be too risky to warrant an authorization at this stage, Hughes urges the Commission to make a grant to such applicants if it finds (with the technical assistance of NASA) that the technology is sufficiently mature to warrant commercial application. While requesting the Commission not to delay authorizations to others, Hughes states that the "problems inherent in establishing new technology should not be a ground for initial disapproval."

12. Hughes further states that claims as to orbital space limitations have been exaggerated and that this is not a realistic constraint. By reducing orbital location separations to 3° (as proposed for its own application), utilizing alternate polarized transmission between systems, and by frequency plan changes, Hughes claims that all of the proposed systems except Comsat and Fairchild could be accommodated within orbital locations capable of illuminating all 50 States (i.e., without using other orbital locations that could illuminate Conus). If service to Alaska and Hawaii was not required for all systems, this would further facilitate the accommodation of multiple systems.

13. Hughes also challenges the economies of scale argument. Its own analysis indicates that hardware costs per transponder are virtually the same for all the applications (exclusive of Fairchild, which Hughes says it finds difficult to compare), regardless of the size or number of spacecraft. In other words, Hughes is of the belief that for any given number of transponders, the total space hardware costs would be comparable. Hughes concedes that there would be a modest cost saving per prime channel if one spare in-orbit satellite backs up two rather than one primary satellite. However, it asserts that one for two is not as high quality back up as one for one, and further points out that if used for interruptible services, a spare would be earning revenue for the system (whether backing up one or two satellites). With respect to the alleged economies in sharing earth stations, Hughes states that a single, multipurpose earth station may be more economical—though the economies would vary from situation to situation and might be offset by other factors. Hughes notes that there may be added administrative, accounting, legal and operational problems in shared ownership, and that interconnection costs to users may reduce many of the economies, especially in the case of CATV.

14. On the question of smaller versus larger capacity satellites, Hughes argues that the public would benefit from minimizing launch and operational failure risks and from closely relating an increase in capacity to an increase in user demand. It claims that these benefits could be more easily achieved by using several smaller rather than fewer larger satellites. Hughes also asserts that in a large satellite, capacity would far exceed initial demand and that most transponders would simply lie fallow until demand develops. In this connection Hughes states: "If one assumes a 10 to 20 percent growth each year, typical of many communications services, there is no way to key this rate of growth with either the number or timing of the large satellite launches. There will normally be too little or too much traffic demand. This situation need not occur if several systems are authorized."

15. While noting that presumably A.T. & T. could supply enough traffic to support a system, Hughes alleges that there is not otherwise sufficient demonstrated traffic to support all the facilities proposed by the remaining seven applicants. It claims that there is clearly enough traffic to support at least two systems, exclusive of A.T. & T. As one of the criteria for an authorization, Hughes originally urged the Commission to require each applicant to demonstrate a substantial likelihood that sufficient traffic exists to support that system. Upon further reflection in its reply comments, Hughes came to the belief that a need to pinpoint specific customers in advance would be unnecessarily restrictive, since the industry has not yet developed and the market for its services is still unproven in scope and quantity. It states: "To require applicants for satellite systems to prove in advance the services they will offer and the precise customers they will serve might in and of itself artificially stunt the development of that market." It now favors a policy of free competition and control by the marketplace. Hughes says that it shares the belief of several other applicants that comparative hearings on a variety of decision factors can and should be avoided. In its view, this would result only in a substantial delay in the realization of the benefits of satellite service, and could serve no useful countervailing public interest purpose.¹

16. With respect to the initial role of A.T. & T., Hughes states that A.T. & T. could, by domination of the satellite market, smother opportunities for development of new and different services by others. This could occur, Hughes says, whether A.T. & T. owned space facilities or leased the entire channel capacity of a space segment owned by an affiliated entity. However, Hughes supports a grant of the Comsat/A.T. & T. proposal as in the public interest, provided that the Commission: (1) Bars use of the facilities for at least 2 years for services other than switched public message; (2) does not authorize use of the facilities for specialized services until after a hearing on the question of cross-subsidy; and (3) permanently precludes A.T. & T. from leasing entire satellite transponders to others.

¹ In commenting on the differences in the parties' statements as to comparative costs, Hughes reaffirms its belief that there is not much difference and states further that the differences are not significant when compared to the inherent uncertainties in the basic cost data and life expectancy. Hughes asserts that the differences among them would not support arguments for preference of one applicant over another on a cost effectiveness basis, and that actual differences will emerge only when the systems are operational and life expectancy is proven in orbit.

17. GTE argues against a monopoly authorization to a single entity or to a consortium composed of all the applicants. It urges that several of the pending applications appear to be viable and should be granted, but warns against the authorization of excessive channel capacity that might result in nonviable systems. According to GTE, the applicants have proposed a total of 600 in-orbit transponders, of which 336 would be primary and the rest spare. GTE classifies the applicants' proposed traffic into two categories—(1) firmly committed or controlled, and (2) speculative. It claims that A.T. & T., GTE/Hughes, and possibly Western Union and RCA have demonstrable traffic loads (sufficient to fill 67 primary transponders),² and that the remaining proposed traffic is speculative. While several applicants have made proposals relying in part on the availability of television network transmission, GTE notes that the networks themselves have made no commitment to use satellites or to any particular applicant. It further notes that one or two applicants appear to be relying on a monopoly or near monopoly status, so that traffic for which they have no commitments will somehow be made available to them.

18. GTE takes the position that the Commission should first address the question of how many and what kind of systems to authorize and then evaluate the applicants on the basis of such criteria as financial ability, technical soundness of the proposal, willingness to serve others on a nondiscriminatory basis, and economic viability—granting such as meet the criteria. It states that when there is a valid claim of economic exclusivity between applicants, comparative hearings should be held. GTE urges that it is not necessary for the Commission to handicap artificially the use of space technology at this time by in any way limiting the role of A.T. & T. or any other carrier. It asserts that carriers should be permitted to provide authorized services to the public by any practical means, subject only to the necessity of showing public need for the service and economic justification. In essence, as GTE puts it: "Some combined method of meeting the public's felt need for a satellite system and the expectations of interested applicants must be arrived at, without excessive authorization of channel capacity."

19. Western Union also takes the position that a monopoly is unnecessary and that no applicant should be given a grant with a promise, either express or implied, that other systems will not be authorized now and in the future. The more difficult question, Western Union says, is whether the market is sufficient to accommodate all of the pending applications. Admittedly, the communications market is growing fast and will continue to grow. Noting, however, that undue fragmentation can adversely affect the public interest, Western Union doubts that unlimited entry would be a sound policy. Western Union recommends that the Commission adopt a policy (for pending and future applications) of giving favorable consideration to all applicants who can demonstrate a need for communications satellite facilities for their existing and continuing business purposes. For example, Western Union states, the Commission could authorize existing common carriers to expand to the satellite field, make a grant to a business enterprise showing a need and intention to use satellite

² GTE divides these 67 transponders as follows (Further Comments of May 22, 1971, p. 9): eight for GTE, eight for Western Union, 22 for A.T. & T. switched message, 24 for A.T. & T. Picturephone and/or high speed data, and five for RCA traffic of an unidentified nature.

facilities for its private business purposes, and could permit grants to groups that join together in a cooperative sharing arrangement for construction and operating costs to meet the private communications needs of the participants. It further states that the Commission should, of course, require that all such applicants be technically and financially qualified, and not subject to any legal infirmity that might bar their operation of satellite facilities.

20. Western Union would make an exception for A.T. & T.³ In its view, A.T. & T. apparently takes a position that its proposed domestic satellite facilities are not important to its ability to serve its customers and would provide no significant economic benefits to them. In this connection, Western Union notes that the A.T. & T. application (p. 25) concedes that the proposed service could be provided by terrestrial means at less cost. Western Union urges that the public interest would be best served, at least for an initial period, by limiting A.T. & T.'s role to leasing channels for message toll telephone in systems established, owned and operated by others. It alleges that as the dominant domestic carrier A.T. & T., with its vast investment in terrestrial facilities, might be constrained—consciously or subconsciously—in satellite innovation and planning. Moreover, A.T. & T. might pose a substantial constraining factor to other applicants, including Western Union, as to the kinds of systems and types of services and markets that may be developed. According to Western Union, if A.T. & T. is permitted to provide video service via satellite, it would be difficult or impossible for Western Union or any other authorized applicant to compete for such business. Private line service is now dominated by A.T. & T., and this domination would be further enhanced if A.T. & T. provides private line service via satellite. If the Commission should nevertheless authorize satellite system facilities to A.T. & T., Western Union requests that they be limited to public message service only.

21. With respect to the qualifications of Comsat, Hughes, and the RCA applicants, Western Union comments: Comsat should be excluded from competing in the domestic sphere because of the congressional intent, as expressed in section 103(7) and 305(2) of the Communications Satellite Act of 1962, to limit Comsat's participation in international communications satellites to the role of a carrier's carrier. There is no reason to suppose a different intent in the domestic sphere. See also, Comsat, 1 FCC 2d 82, 85; Comsat, 2 FCC 2d 41, 45. Moreover, there would be a conflict-of-interest situation if Comsat is authorized to compete with other carriers whose representatives sit on the Comsat Board of Directors.

22. The broad role proposed by Hughes—manufacturer of hardware, owner and operator of a CATV program distribution system, program creator and editor, and lessor of channels to GTE—places a tremendous responsibility and advantage in the hands of a single entity, and this is not in the public interest. Moreover, Hughes proposes that its rates for programing and delivery would not be subject to Government regulation. Any successful applicant who leases satellite channels or provides satellite service to the public should be subject to common carrier regulation.

23. RCA Globecom/RCA Alascom present a combination of an intrastate carrier with a major international record carrier, and there is a serious question whether RCA Globecom is legally qualified in view of section 222 of

³ Western Union also urges that A.T. & T. should not be permitted to own major earth stations.

the Communications Act of 1934 and its legislative history. Moreover, in addition to being an equipment supplier RCA has widespread communications interests already, including: a large international carrier, an Alaskan intrastate carrier, nationwide radio and television networks, and the ownership and operation of five VHF stations and seven AM stations, all in major markets. Departing now from Western Union's comments, we continue with the positions of other parties.

24. RCA Globcom/RCA Alascom urge that there is room for only one carrier in Alaska, which presents a special situation (see paragraphs 100-101), and state their intention to claim section 309 hearing rights if any entity other than RCA Alascom is authorized to serve Alaska. With that exception, they are opposed to a monopoly grant. Their position is that the Commission should grant all applications¹⁰ which meet absolute, rather than comparative, criteria—i.e., those that establish technical, financial and legal qualifications and the general sufficiency of the proposal, including economic viability. The RCA applicants note that while most applicants generally agree that there is not enough traffic for all eight systems as proposed, they do not (except for GTE in part) urge that comparative evidentiary hearings are required and all (except Comsat) agree that more than one system could be authorized. Moreover, all of the applicants, except for Comsat, believe that technical conflicts can be settled among the applicants, once the question of economic conflicts is resolved.

25. RCA Globcom/RCA Alascom state that if applicants were required to show a public requirement for the proposed services and a reasonable probability that an economically and technically viable system would be established, this "would not preclude joint arrangements among applicants." They suggest that once minimum criteria are established, the remaining applicants should be encouraged to negotiate to eliminate conflicts (e.g., through the joining together of a number of individual applicants), subject to monitoring by the Commission to insure that the public interest is cared for and to resolve disputes where voluntary efforts fail. If all authorized systems are faced with a substantial degree of competition from other systems, including the risk of loss and failure, then the RCA applicants believe it inappropriate to grant future indefeasible rights of use to other carriers desiring to use the space segment. Such an arrangement would place all of the risks on the pioneering carrier, and would afford others an opportunity to acquire indefeasible rights of use after the system proved successful and to refrain from doing so if the contrary appeared. The RCA applicants state: "If a carrier desires an ownership interest in the space segment of earth stations, and if it is willing to acquire that interest from the outset so that it shares fully in the risks as well as the possible benefits, we would be willing to negotiate that participation now."

26. WTCI, which believes that the public interest would be best served by the establishment of multipurpose systems, is against a monopoly grant. It claims that one multipurpose system would not meet varied needs and would discourage diversity and experimentation. Like Hughes, WTCI sees no economies of scale, since costs per transponder

appear about the same, and no real shortage of orbital locations. It also asserts that any cost advantages in unnecessary combining of earth stations would be offset by additional terrestrial interconnection facilities and other complexities. WTCI urges that only by the creation of a competitive atmosphere will this new technology be able to realize its maximum potential in innovation, learning curve, flexibility in service offerings and general benefits to the public. It would place restrictions on the number of systems only on the basis of technical constraints. WTCI states that it plans to construct, if authorized, regardless of the number of pending applications authorized by the Commission. It says that the proposed satellite facilities would complement its terrestrial network, enable it to provide a variety of services, and have elicited interest from various miscellaneous common carriers. WTCI has no objection to equal consideration of A.T. & T., provided that there are regulations which would prohibit cross-subsidization with monopoly services (though WTCI does express some concern about the mechanics of enforcement of such regulations).

27. MCI Lockheed says the Commission should exercise its best efforts to promote accommodation, avoid prolonged hearings and produce an early system or systems. It urges that the public would be best served by the creation of an environment which would result in the lowest transmission cost per unit of time for reliable communications of acceptable quality. Taking the position that the public benefits most from competition, provided all have equal opportunity, MCI Lockheed states: "Judgments made by prudent businessmen are the best means of determining whether, given a number of potential competitors, there is sufficient economic support for all to have a reasonable opportunity to operate profitably." It points out that if there were open entry for all found qualified, the Commission would have no need to make prior judgments on the size of the potential market, and hence need not hold hearings on economic issues. MCI Lockheed considers this to be the preferable approach, if there is no cross-subsidy by A.T. & T. and if applicants not affiliated with or controlled by A.T. & T. have an opportunity to compete.¹¹

28. Judged in the light of the Commission's expectation that domestic satellites would open new markets and stimulate innovation, the A.T. & T. application does not qualify for a grant, according to MCI Lock-

¹¹ MCI Lockheed notes that all of the applicants are proposing to embark on a venture with greater risks than terrestrial facilities, and urges that once an applicant has demonstrated that its proposed system is designed by companies with demonstrated competence in their field, the Commission should allow the marketplace to test reliability. It has included in its application a market study by Booz, Allen & Hamilton, which purports to show a very large potential market between 1975 and 1985. MCI Lockheed is of the view that the potential market is sufficient to support a number of larger capacity satellites. It claims that less than 20 transponders in its proposed system, carrying leased traffic, would provide adequate revenues to meet system operating costs and depreciation charges, and provide an attractive return on investment. Because its proposed system can allegedly earn an attractive rate of return at a relatively low level of utilization, MCI Lockheed urges that the consequences of unused capacity are minimal. It further notes that idle transponders could be used to extend system lifetime by providing redundant units and reducing electrical power requirements.

heed. It argues that A.T. & T. has proposed no new services or reduction in rates for existing services, and indeed concedes that equivalent services could be provided at slightly lower cost by means of terrestrial facilities.¹² Considering, in addition, A.T. & T.'s involvement with Comsat, MCI Lockheed urges that A.T. & T. should not be authorized at this stage, or be a grantee with Comsat. However, MCI Lockheed states that A.T. & T. should be able, at an appropriate time when shown to be advantageous to it, to use satellite systems owned by unaffiliated carriers.

29. MCI Lockheed urges even more strongly that Comsat should be excluded because of its relationship with A.T. & T. and conflicts of interest created by its role in the Intelsat system. It alleges that Comsat and A.T. & T. could fix the price for A.T. & T.'s lease without regard to cost, since all cost would be passed on to A.T. & T.'s customers with little effect on volume of service in view of A.T. & T.'s monopoly position in message toll and wide area telephone service and its very large share of the private line market. Moreover, MCI Lockheed contends that Comsat's agreement with A.T. & T. gives them an assured first entry in light of A.T. & T.'s complete control over traffic. It also asserts that the reasoning underlying section 222 of the Act—fear that a domestic carrier might favor its affiliated international carrier over other international carriers—should give further pause to a Comsat authorization. For example, MCI Lockheed asserts, A.T. & T. has international facilities and Comsat might be motivated to favor it against others as an international forwarder for its domestic traffic. MCI Lockheed further urges that A.T. & T. and Comsat should bear the burden of showing that a Comsat space monopoly would not inhibit competition between Comsat and A.T. & T. If A.T. & T. is content to be the sole customer of the Comsat I system and does not mind the prospect of activation of the Comsat II system, then MCI Lockheed presumes that A.T. & T. does not consider Comsat II to be a competitive threat.

30. According to MCI Lockheed, some of the same reasons for not extending A.T. & T.'s terrestrial monopoly into space argue against extending Comsat's international space monopoly (as the United States chosen instrument) into the domestic scene. MCI Lockheed alleges that Comsat's role in Intelsat could inhibit service and technical innovation and cost reductions for any domestic system owned or operated by Comsat. As an example, MCI Lockheed states that Comsat's proposed satellites are a variant of the Intelsat IV design, and it is thus obligated to reimburse Intelsat partially for original research and development on a retroactive, pro rata basis, which in turn would redound to Comsat's benefit. It also claims potential conflicts of interest in the event that Comsat should provide domestic service to Hawaii, Alaska and Puerto Rico both via Intelsat facilities and also by means of its own domestic facilities. Other conflicts of interest could arise because of Comsat's role on the Intelsat Board of Governors, and as management services contractor, in making recommendations on the compatibility of the Intelsat space segment with those of other systems and as to whether

¹² MCI Lockheed charges that A.T. & T.'s entry into the satellite equipment manufacturing market for 18 and 30 GHz could have serious anticompetitive effects. It asserts that if A.T. & T. spends \$200 million in research and development (as suggested in its supplemental comments, pp. 8-10, 16-17, and 19), its patent position—together with being the largest customer—would give it virtual monopoly control.

¹⁰ While not urging the disqualification of any applicant on policy grounds, the RCA applicants assert that all authorized systems should be required to operate under common carrier regulation. Otherwise, they state, the system operator could negotiate with customers and discriminate, even among those who compete with each other.

a domestic system would avoid significant economic harm to the international system. If the Commission adopts a policy of open entry, MCI Lockheed asserts that Comsat would thus be in a position to pass upon its competitors. If only Comsat and A.T. & T. are authorized, there would still be allegedly irreconcilable conflicts between Comsat's duties as manager for Intelsat, its obligations as the United States chosen instrument, and its role as the sole stockholder of a domestic system or systems.

31. MCI Lockheed concludes that the Commission cannot change Comsat's international role, but it can refuse to authorize any domestic system for Comsat and should not be inhibited from doing so since there are six alternative systems and owners.

B. Positions of other parties

32. The Department of Justice is of the belief that the development of domestic satellites should be controlled fundamentally by competition in a free market. It asserts that this would produce superior economic results, encourage service and product innovation, create cost control and lead to lower rates. According to the Department, the diversity in the pending applications (in terms of proposed services, technology and costs) attests to this. While it thinks there would initially be only a few systems—a number reflecting the market's evaluation of existing commercial alternatives, the Commission should leave the door open to new entry which would also put the initial systems under continued pressure to innovate and reduce costs.

33. The Department is opposed to holding comparative hearings on economic exclusivity. Although many proposals rely to some degree on the networks, it sees no public interest in binding the networks through regulation to any particular applicant chosen in advance by the Commission. Rather they should be permitted to determine through free negotiation what system would best meet their needs. The Department notes that comparative hearings are time consuming, would delay a resolution of this matter as well as the provision of satellite service to the public, and might—because of the expense and uncertainty—significantly increase the cost of any ultimate facilities. Moreover, such a procedure would be particularly unfortunate in an area, like this, of rapidly developing technology which would make obsolete the plans on which the hearing was based. Instead, the Department urges the Commission to make clear that systems must succeed or fail on their commercial merits, without public subsidy either through rate regulation or restrictions on competition.

34. The Department does not oppose the authorization of a system dedicated to the exclusive use of a carrier or noncarrier entity. However, it suggests that each system, whether common carrier or not, should be required to provide nondiscriminatory access to comparable classes of customers (within the limits of facility capacity). In this connection the Department urges that if dedicated facilities are authorized to participants (like networks), the Commission should make approval conditional upon other interested parties being given an opportunity to join and participate, or to lease channel space on an equitable basis. There should be a requirement that any joint venture have sufficient satellite capacity to meet all firm commitments. However, once the satellite is in operation and all capacity is committed, existing users should not be required to reduce their use to make room for latecomers. With each increment in capacity, outsiders should again have the right on equitable terms to become members of

the joint venture or to lease channels in the incremental units.

35. With respect to the various claims of applicant disqualification, the Department states that "we completely fail to understand" the reasoning underlying Comsat's argument that it should be granted a monopoly because of alleged economies of scale and competitive dangers posed by the entry of applicants that are equipment suppliers or users. The Department points to studies of the applicants, which allegedly indicate that with proven technology there are not such clear cut economies of scale between any of the systems to warrant a monopoly franchise to any applicant. While recognizing that there may be competitive dangers in authorizing suppliers or users to construct and own satellite systems, the Department believes that such dangers are outweighed by the competitive benefits of permitting such entry.

36. In urging that vertical integration should not be excluded at this time, the Department states:

"[At] this preliminary stage in satellite development, we do not feel that the entry of satellite suppliers as system operators creates a substantial competitive danger; indeed, the prohibition of such entry could well have adverse competitive effects.

In evaluating the entry of suppliers, it must be realized that here, unlike some markets, each operator will be effectively committed to a single supplier during the system's life so that the maximum diversity of actual manufacturers is limited by the number of independent systems. A regulatory scheme which divorces operators from suppliers thus will not at this time increase the diversity of satellite technologies in use. In fact it may do the opposite by making it more likely that Comsat will be the sole domestic operator. If Comsat provides A.T. & T.'s requirements as well as operates its proposed general purpose system—systems with virtually identical technical requirements—one would expect a single supplier to furnish satellites for both. Indeed, diversity is likely to be further diminished inasmuch as the satellites which Comsat expects to use in its domestic system draw heavily upon the technology already employed in its international system. This technological similarity gives Comsat's international supplier an inside position in supplying Comsat with satellites domestically even though Comsat nominally uses competitive procurement. Consequently, reservation of the domestic market to Comsat could give a single manufacturer virtual domination of the satellite market for civilian communication systems, both domestically and internationally.

Because Comsat's specifications are linked closely to spin stabilized satellites, a field dominated by Hughes, the best hope for a competing satellite supplier is to enter the market directly. Entry bypasses restrictions imposed by operators whose satellite specifications are tied to a different technology, and allows suppliers—at their own risk—to test the technology which they are promoting. Forward integration in these circumstances does increase the barriers to entry for competing suppliers, but at this early stage of development, it may be the only way to encourage the development of rival technologies."

The Department further states that supplier entry is not barred by its "Merger Guidelines" which apply to acquisition of existing firms and provide no normative guidance when, as here, de novo expansion is being considered. With respect to its position in favor of system ownership by satellite users and terrestrial carriers, provided that such authorizations are upon condition that the

operators avoid discrimination against other users, the Department notes that the power to abuse depends largely on the absence of competing systems. For both supplier and user applicants, the Department suggests that the Commission could monitor the situation and take measures in the event that demonstrated abuses occur.¹²

that the role of A.T. & T. must be subject to source of business for satellites and since its substantial investment in terrestrial facilities makes it the largest potential competitor to satellite systems, the Department urges that the role of A.T. & T. must be subject to special scrutiny. While not asserting that A.T. & T. should be precluded from owning or otherwise operating a satellite system, the Department recommends that A.T. & T. should be permitted to enter only if competitive systems are authorized and are likely to become operative. It states that the emergence of multiple systems would tend to check the extension, or entrenchment of A.T. & T.'s monopoly power, and thus would provide a surer base for the long-run development of a competitive satellite industry.

38. In this connection, the Department comments that the Comsat/A.T. & T. joint application and contractual arrangement, unless carefully circumscribed, could pose a number of impediments. While the contract does not preclude either from owning and operating earth stations or space segments, it "makes the ability of Comsat to offer any communications services depend upon Comsat's power to generate enough business to support an entirely separate system." The Department notes that the agreement need not have been so restrictive. Moreover, even if Comsat is successful in establishing a separate system, the Department asserts that it may be reluctant to enter into full competition with its major customer and stockholder. Since A.T. & T. is not committed to renewal or future requirements, future contracts between them may depend largely upon the continuation of goodwill. Under the circumstances, Comsat might settle on service to the networks and not compete with A.T. & T. in providing other services. Even if not, the force of competition between them would be constrained by close corporate and commercial ties. In addition, the Department states, the A.T. & T. contractual relationship with Comsat forecloses others from competing to supply A.T. & T. with satellite services. This may increase the cost of public message and other communications services, because what is involved is basically a cost plus service. The pressures for rapid technological and service innovation would be less if the contract forecloses the development of independent systems. It is possible that the only general purpose system and the A.T. & T. system would be substantially identical in technology and management. Moreover, Comsat's role as an international carrier and reliance on Hughes compound the situation.

¹² The Department says, for example, that if Hughes abuses entry by placing a price squeeze on equipment for Comsat, the Commission could require divestment by Hughes. It further notes that the Commission could consider requiring some or all of the following measures, which might make any discrimination in favor of affiliates easier to detect and control: separate corporate entities, separate books and account, separate officers and separate physical facilities. In view of the limited number of expected systems, the Department states that it would be undesirable to require systems not to deal with affiliates.

39. In light of the foregoing, the Department recommends that the Commission disallow the Comsat/A.T. & T. contract unless it is satisfied that Comsat is the least cost supplier.¹¹ It further urges that both A.T. & T. and Comsat should be barred from providing network program transmission service, at least for an initial period, since this business could provide the nucleus for a viable competitive system. While stating that the Commission should consider the problem of cross-subsidy between A.T. & T. public message and other service offerings, the Department takes the position that if the Commission follows its suggestion as to least cost supplier, the problem of cross-subsidy can be dealt with independently of the domestic satellite proceeding since the question already exists terrestrially.

40. The comments of the State of Alaska are directed primarily towards the particular interests of the State (see also paragraphs 94-97). It points out that the people of Alaska have immediate and imperative social and economic needs for a reliable multipurpose domestic satellite system capable of serving all Alaska with high EIRP¹² and sensitivity and employing a demand assigned multiple access system. Its analysis of the pending applications indicates that the Comsat and RCA proposals offer the best potential for accommodating these needs. If the Commission finds a proliferation of systems economically feasible, the features in the Fairchild proposal would be particularly attractive to Alaska. It further urges the Commission not to grant exclusive authorizations, but rather to follow a policy of continued open entry which would allow new carriers to enter the field to meet expanded demands.

41. The State further notes that the applications and supplemental filings reveal the possibility of a joint venture or coownership in the launching or operation of satellite facilities. The State believes that such a joint venture of coownership might permit economies of costs while assuring maximum utilization of the space segment. While indicating that it may be in the public interest for the Commission to approve or encourage such a venture, the State says the needs of Alaska must be clearly defined. Since the State's market demand is minimal compared to that of Conus, a joint venture (like any commercial enterprise) might delay service to Alaska in order to take advantage of market opportunities in other areas. Criteria must be established within the certificate itself which would assure total and continuing service to Alaska. The State emphasizes that "if the necessities of life in the rest of the nation are to be even approximated in Alaska, such special consideration is both required and entirely proper as an incident of Union."

42. The Postmaster General, noting that some applicants project some type of electronic "mail" transmissions and that no joint position with the Postal Service exists, desires to clarify its position. While the U.S. Postal Service has a vital interest in technological developments in electronic communications and has several concepts under review involving electronic mail handling, it has not arrived at a point where a policy concerning the extent of use of domestic satellites for either data traffic or new services can be formulated.

¹¹ The Department also suggests that an existing common carrier providing monopoly services to the public should not include any satellite system investment in its rate base until it demonstrates that the cost is comparable to the provision of similar services by existing or prospective terrestrial technology.

¹² Equivalent isotropically radiated power.

43. With the exception of the parties referred to in footnote 5 above, other parties addressing the key issue are generally opposed to a monopoly approach. For example, the ABC, CBS, and NBC networks support a multiple grant policy. They state that the detailed proposals already received by the network companies from various applicants reflect the competitive framework under which they were developed, and assert further that the continued availability of alternative sources of supply will undoubtedly benefit all satellite users, including networks. While several parties have urged a limited role for A.T. & T., the networks would "favor the opportunity to consider any proposals submitted by A.T. & T. as well as the proposals submitted by other applicants." CPB and PBS also support a policy of open entry. However, they claim that A.T. & T. should be restricted to leasing channels rather than leasing an entire system. Whether or not A.T. & T.'s satellite traffic would be made available to help support other systems, CPB and PBS urge that the public interest would not be served by permitting A.T. & T. to lease an entire satellite system.

44. The National Cable Television Association, Inc. (NCTA), on behalf of potential users, believe that competition between satellite systems and with terrestrial facilities will encourage innovative marketing and technical concepts and will provide for reliable and low-cost alternatives to present systems. NCTA states that economic conflicts, if any, should not be subject to regulatory resolution by the FCC but rather should be left to the business judgments of those who choose to enter the market.¹³ TelePrompTer supports a similar policy, with a special qualification in the case of A.T. & T. which would restrict it to the provision of public message service only, on a limited number of satellite channels in systems established by others.

45. General Electric Co. (GE) cautions the Commission to avoid a premature commitment to a type or types of domestic service which would technically, economically or administratively impede the introduction of new and different satellite usages and systems. In addition to whatever is initially authorized, GE urges the Commission to recognize the desirability of a continued opportunity to develop uses and systems not yet formalized in the pending applications.

C. Replies of the System Applicants to Claims of Disqualification

46. Those applicants who are equipment suppliers, potential users and/or terrestrial carriers—in responding to assertions that they should be disqualified—rely on many of the same arguments made by the Department of Justice as well as on their positions already summarized above. In addition, Western Union states that as a terrestrial common carrier, it has an obligation to expand its services and facilities to meet evolving needs for communications services and should be afforded an opportunity to serve these needs through the latest in modern technology, such as satellite facilities. Moreover, ownership of satellite facilities would enable Western Union to expand its transmission plant and provide additional route capabilities at less than would otherwise be possible.

¹³ NCTA says that its members should have an opportunity to acquire at least one satellite channel on an indefeasible right of use basis, and should in any event have a guaranteed right of access to domestic satellite systems on a reasonable cost basis. It further urges the Commission to allow competition to limit the rates, provided that rates to CATV are not related to distance. (See also paragraph 68.)

47. The RCA applicants address particularly the argument that RCA Globcom, an international voice-record carrier, is precluded under section 222 of the Communications Act from engaging in domestic service. They note that the Commission has held that that section prohibits consolidation between an international telegraph carrier and a domestic telegraph carrier.¹⁴ The RCA applicants also point out that their application states they are not requesting authority to provide telegram or telex service within or among the contiguous states (vol. 1, p. 14).¹⁵

48. In addition to urging that only through encouraging the entry of equipment suppliers (including Hughes) will the Commission be able to create a truly competitive market, MCI Lockheed denies that it is either an equipment manufacturer or a terrestrial carrier. While admittedly a new entity affiliated with such, MCI Lockheed claims (reply comments, pp. 32-33) that its corporate structure is designed to prevent the kind of control to which Comsat alludes.

49. Fairchild, in asserting that equipment suppliers should not be barred, cites Levin, Organization and Control of Communications Satellites, 113 U. Pa. Law Review, pp. 315-357 (1965), as indicating that there are "some sixty hardware companies which manufacture the equipment needed for space devices, ground stations, and booster facilities" and "view the system as a market for their output." Fairchild states that a grant to it would stimulate the satellite supplier market by opening the field to a significant number of major subcontractors and lower-tier suppliers not presently tied with the existing Comsat/Hughes procurement arrangement.

50. Hughes claims that its own market power as an equipment supplier is strictly limited to the extent that there are competitors in that market. The field is one characterized by competitive bidding, and any entity capable of competing for U.S. military or NASA space programs is fully capable of competing for the manufacture of communications satellites. Its reply comments (p. 36, footnote 5) list nine contractors whom Hughes considers to be major in space programs and in direct competition with it. Hughes asserts that its sale of satellite hardware has ranged between 2-5 percent of the total market.

51. With respect to its relationship with TelePrompTer, Hughes says that it owns less than 6 percent of TelePrompTer's stock and is represented by only one person on the 15-man board of directors. In 1967 Hughes entered into a long-term voting agreement under which it is required to give all voting rights to a party over whom it has no control. It does own 50 percent of one CATV system (Theta Cable of California) and 49 percent of TelePrompTer Manhattan CATV Corp., with TelePrompTer owning the balance. Those companies in aggregate, Hughes states, account for only slightly more than 1 percent of the total CATV subscriber market.

52. Concerning its own proposal to distribute CATV programming on a noncarrier basis, Hughes represents as follows: It is willing to take responsibility for acquiring

¹⁴ Citing File No. 2121-C2-A1-69 (re a request of WUI for consent to acquire a domestic radio common carrier), FCC 70-900, released Aug. 31, 1970.

¹⁵ The RCA applicants urge that they should be allowed to include in their rate base the reasonable and necessary costs necessary to implement the system. It would impede advancement, particularly at this early stage, to do otherwise. Whatever policy the Commission may adopt as to A.T. & T., the RCA applicants assert, should not be made generally applicable.

and assembling a multiple program offering and arranging for the nationwide distribution of that offering to cable systems. While this will require it to stake a substantial private financial commitment, the promise of CATV—plus its contract with GTE—makes this risk acceptable. Hughes is anxious to offer its service to all CATV systems at equitable rates. It wants to build and own the receive-only stations in order to achieve an early program offering capability and because of its belief that operating economies and management efficiency favor ownership by the satellite operator. But it is not essential that Hughes be the owner in every case, and Hughes has no objection to CATV systems owning earth stations when desired. Hughes will guarantee access to its system by these privately owned receive-only earth stations at a lower rate than that charged to CATV systems not owning earth stations.

53. Insofar as access by other CATV program distributors is concerned, Hughes takes the position that they should go to a multipurpose system which would afford a better fit. Prime evening time is valuable to the Hughes program distribution plan, but on a multipurpose common carrier system daytime hours are critical for message and data traffic and a CATV program distributor request for prime time hours could be more easily accommodated. There would be potential savings also to an occasional transmitter through shared use of earth stations. The Hughes system will be subject to FCC licensing regulation and Justice oversight, so that unfair competitive advantages are unlikely. Hughes has no desire to compete with other satellite systems for this business. However, if in fact it is not available, competitively and fairly on other systems, "Hughes will take all reasonable steps necessary as imposed by the Commission to provide fair access on the Hughes 'leased/private use' system to cable program distributors."

54. Comsat states the following as to its relationship with A.T. & T.: Presently, A.T. & T. holds 29 percent of Comsat's stock and elects 20 percent of its board of directors. This, as well as Comsat's role in the Intelsat system, are not matters over which Comsat has any control, since it was authorized by the 1963 Act (with Comsat notes, the blessing of the Department of Justice). Comsat's rates to others would be fully comparable to those A.T. & T. would pay for comparable services, and there is no foundation for the argument that A.T. & T. would pay less to an independent entity. Comsat asserts that in light of section 215 of the Communications Act, legislation would be necessary for requiring A.T. & T. to use a least cost supplier. However, it concedes that the Commission is not barred from considering cost factors in making public interest determinations under section 214 of that Act. A.T. & T. could not lease channels in several systems without sacrificing real economies of scale. The Comsat/A.T. & T. contractual arrangement does not preclude A.T. & T. from obtaining additional requirements from others, and A.T. & T. is not committed to renewal. If competition is a genuine goal, then all—including any operator providing satellite service to A.T. & T.—should be allowed to compete for the network program transmission business on a long-term contractual basis during the initial period of development. Comsat states that the Department of Justice is ambivalent in proposing that there be almost unlimited entry, and then recommending that shackles be placed on the ability of a satellite operator to provide service to customers of its own choosing and upon the freedom of terrestrial carriers to contract for services.²²

²² Comsat also asserts that the Department is inconsistent in condemning the Comsat/A.T. & T. contract but not the Hughes/GTE contract.

55. Comsat further sees no merit to the suggestion that A.T. & T. and Comsat would be reluctant to compete vigorously with each other. Its reply comments (pp. 17-25) cite several instances where Comsat claims they have done so. Nor is there merit to the suggestion that A.T. & T. might deter Comsat from making major technical innovations in the satellite field. Comsat has a multimillion dollar laboratory facility with a professional staff of about 140 engineers and scientists and an additional 200 support personnel, whose efforts are directed solely to applied research and development in the field of communications satellite technology. Comsat gives examples of innovations it has promoted²³ and of programs now underway at the Comsat Laboratories with potential application both to the global satellite system and to domestic satellite facilities.²⁴

56. A.T. & T. states that as a carrier providing a wide variety of communications services, and in order for the general public (including the individual telephone user) to gain the maximum benefits from the use of satellites for communications purposes, it is essential that A.T. & T. be authorized to use satellites as an integral part of its nationwide communications network. Large increases in communications capacity will be needed during the 1970's to provide for the growth of existing services and new services, such as Picturephone. Satellites can be of considerable benefit in meeting this need, particularly the ability to shift capacity at different times between various pairs of earth stations to meet changing traffic loads and unexpected overloads. A.T. & T.'s terrestrial network is a complex of interconnected and interchangeable facilities. Its proposed satellite system has been planned in relation to the existing network and expected expansions thereof. Other applicants have planned on the basis of their special purposes, not to meet A.T. & T.'s needs as part of its overall system. Integration of satellite facilities into A.T. & T.'s total network is a dynamic process involving careful planning as to future expansion of such network and as to the most economical way of meeting its total service requirements. To make effective use of satellites, A.T. & T. must have reasonable assurance as to the types of facilities that will be available to it, and confidence in the timing of new facilities and their subsequent operation. Arbitrary restrictions on the use of satellite facilities for particular types of services would lead to inefficiency and excess costs. A.T. & T. must exercise its general re-

²³ E.g., wideband antenna feeds, low-noise parametric amplifiers, and high-power traveling wave tube amplifiers in the past, and now—frequency reuse and Spade and time division multiple access techniques.

²⁴ E.g., (1) in the basic spacecraft area: The development of advanced stabilization systems, improved thrusters, high efficiency solar cells, and advanced battery techniques and fuel cells; and (2) in communications technology: the development of compression systems for digital voice communications, echo suppression techniques for multihop satellites, high reliability earth terminal equipment, improved lightweight filters, components for use in systems operating above 10 GHz, and the conduct of original studies in intersymbol interference in digital communications. Comsat also states that experimental operations are planned for the types of small-aperture earth stations that might be employed with its proposed multipurpose domestic system. It has proposed experiments in its domestic satellites in the 12/13 and 20/30 GHz bands, and is now performing a major propagation experiment for NASA to obtain data in the 12 and 18 GHz bands both on signal attenuation and on optimum spacing for diversity stations.

sponsibility to employ the best and most economical mix of facilities and should be free to employ, for its services, its own facilities—both satellite and terrestrial—in order to provide the highest quality service at the lowest overall cost.

57. In response to the contention that it should be limited to leasing channel capacity in systems of others, A.T. & T. claims that leasing communications capacity from other suppliers "is not the most efficient or economical way of providing communications services to the general public on a nationwide basis." According to A.T. & T., none of the such parties has made any attempt to show how A.T. & T. could piece together an efficient and economical domestic satellite system from the capacity available from others, nor have they shown how A.T. & T. could integrate those facilities efficiently and economically into its intercity network.²⁵ If A.T. & T. were limited to leasing satellite channels from other systems, this would impair its managerial flexibility which is essential to efficient and economical engineering, planning and operation of its network facilities. Leasing would substitute therefor reliance on piecemeal additions of transmission channels obtained from others, operated at uncertain performance objectives over which A.T. & T. had little, if any, control (e.g., worry about the potential noise performance of certain other systems). Leasing is not only operationally impractical, but it would also stifle participation by A.T. & T. in the development of new generations of satellites at the higher frequencies. Therefore, A.T. & T. is "firmly opposed to leasing satellite capacity from others regardless of the rate base treatment of lease costs." It suggests, moreover, that this is a "thinly disguised effort by other applicants to support their systems at the expense of message telecommunications users."

58. A.T. & T. also objects to the limitations the Department of Justice would have imposed on its entry. It states that the argument that investment in satellite facilities should not be included in A.T. & T.'s rate base unless such cost is demonstrably comparable to the provision of similar service by existing or prospective terrestrial technology, is unrealistic, unworkable and should be rejected. This argument does not take into account the manner in which new technology is developed—i.e., that it must be planned for, tested, experimented with, and developed in use. The benefits can be realized only after operational development of new technology. Moreover, while cost is relevant, it is not the only factor to be considered in an investment decision in new facilities; other factors include diversification of facilities, flexibility, and adaptability of facilities. The Department's suggested cost standard of comparability, which could lead unfairly to the retroactive rejection of the carrier's book cost of new plant, is too indefinite to be capable of rational application. The Department does not define com-

²⁵ A.T. & T. notes that Fairchild is the only applicant to propose a single, high-capacity, multiple-use system which would probably foreclose all other applicants including A.T. & T. It questions the overall technical feasibility of the Fairchild proposal for A.T. & T.'s purposes, and urges that all should not be required to go to Fairchild. This would result in unnecessary operational compromises for the users, reduce their incentive to engineer the best system for their current and future needs, and discourage their efforts towards better second generation systems. A.T. & T. also notes that Fairchild's costs are not capable of comparison with those in A.T. & T.'s 1970 Annual Report, which include other items such as signaling, multiplex and test equipment as well.

parability, propose guidelines for judging comparability, or suggest at what point in time it should be applied. The same standard, if it were to govern other types of facilities, would impede the introduction of new technology there as well.

59. A.T. & T. further asserts that the "least cost supplier" proposal is even more stringent and undesirable since it is rigidly based on a single unrealistic standard—cost. It does not take account of other factors such as product performance and quality, reliability, and the experience of the supplier. Moreover, standards of cost comparison would be extremely difficult to administer. Such a standard is unprecedented even in formal competitive bidding procedures. For example, § 25.172(d) of the Commission's rules uses the standard: "Most advantageous to the procurer, price and other factors considered." The Armed Services Procurement Regulations (§ 2-407.1) are similar: "Most advantageous to the government, price and other factors considered." A project of this type requires great expertise, resources and judgment available from only a few organizations in the industry. The capital risks are so great that any applicant should be free to require the highest standard in its performance specifications and in the selection of contractors. A.T. & T.'s selection of Comsat was a reasoned decision to acquire by contract the services of the most experienced overall designer and operator of commercial communications satellites in the world. It places at A.T. & T.'s disposal the necessary expertise to establish the spacecraft portion of its system in the shortest possible time with the most efficient utilization of resources and capital.

60. The concern of some parties over the A.T. & T./Comsat relationship may reflect a misunderstanding as to the nature of the relationship. As Comsat points out, the relationship was established pursuant to the 1962 Act, was authorized by the Commission, and A.T. & T. is entitled to elect only three directors. There is no evidence that this arrangement permits A.T. & T. to exert control over Comsat or that Comsat defers to A.T. & T. If Congress should decide that the arrangement is no longer necessary or in the public interest, it can and presumably would amend the 1962 Act. Until that time, it would be unfair to penalize either Comsat or A.T. & T. for that reason.

61. In responding to claims that its services provided by satellite should be restricted, A.T. & T. states that the proposed limitation against program transmission service by it or its lessor is unnecessary and would result in less rather than more competition. The network interests are adequately protected in the competitive environment which has arisen in this proceeding. The exclusion of private line services is unrealistic, undesirable, and should be rejected by the Commission. Private line services are now mixed on intercity facilities and separated only at junction stations and operations centers to be routed through private line terminal equipment. If excluded from satellite, these services would be additional expense to A.T. & T. to insure physical separation, ultimately increasing the cost to the consumer. Such segregation is not consistent with recognized principles of sound network engineering and management, and would lead to an uneconomic use of facilities.

62. A.T. & T. states that it "will not adopt or practice a policy of interservice subsidy and its proposed use of satellites will not be such as to discourage or foreclose entry by potential entrants because of such policy." No change in existing tariffs is contemplated as a result of its use of satellites. Like the Department of Justice, A.T. & T. believes that the question of cross-subsidy is more appro-

priately addressed in a rate inquiry since it is relevant to satellites in precisely the same way as it is relevant to terrestrial transmission facilities. The Commission has ample authority to deal with the question of interservice subsidy in the normal course of regulation, and now has pending proceedings in which the relative rate levels of different classes of service are at issue (Dockets Nos. 18128, 18684, 18718 and Phase I-B of Docket No. 16258). There is no need to impose special limitations for satellites at this time. Of course, A.T. & T. will have incentive to reduce satellite costs in order to achieve more attractive rates for competitive and public message services alike, and thereby to promote the greater usage of all.

63. Finally, A.T. & T. states that there is no basis for concern that A.T. & T. will be constrained as to innovation or will constrain others. It has been a leader in innovation and this leadership will continue if it is allowed freedom to use satellites. Moreover, its liberal patent policies would permit others to share in its technical developments. A.T. & T.'s application has not foreclosed others from applying for systems with technical and service innovations. The Commission should not impose artificial barriers to entry or handicap one competitor in favor of another.

II. EARTH STATION OWNERSHIP, ACCESS, AND INTERCONNECTION

64. In the 1970 Report (paragraph 19) the Commission stated that applicants might propose "the shared use of some facilities by different systems, or a division in the ownership of various system components (e.g., user ownership of earth stations to afford direct access to the space segment of a common carrier or cooperative system.)" It was further contemplated that a carrier entrant in the space segment would be capable of dealing directly with customers for its services, i.e., that the so-called "authorized user" policy in the international communications satellite field would not be applied to domestic service (paragraph 27). The Commission proposed (id.) a flexible policy with respect to access to earth stations and interconnection, including new construction by the system operator or users, the purchase or lease of access facilities from terrestrial carriers, and arrangements between satellite and terrestrial carriers for joint through service. The 1970 Report (paragraph 27) stated the Commission's "expectation that existing carriers will not thwart or hinder the development of new and expanded common carrier services envisaged by this policy by the imposition of arbitrary restrictions on interconnection or through route arrangements or so-called exchange of facilities among carriers—established and new—or other means of accomplishing the desired objective of providing service directly to the customer."

A. Earth Station Ownership

65. Both broadcast station and CATV interests urge the Commission to permit user ownership of special purpose earth stations. The Network Affiliates believe strongly that local television stations should be permitted to own or control any receive-only earth stations used to provide television interconnection to them via satellite. They support the prototype application filed by Phoenix (paragraph 33), and assert that the principle there reflected is the most practicable way of assuring that broadcast station users receive some of the benefits expected to result from the domestic satellite technology. Pointing to the difference between the needs of the networks and those of the independently-owned affiliated stations, the Network Affiliates further assert that local ownership would preserve the broadcasters' independence and flexibility to determine their nonlocal pro-

gram schedules in the best interests of the public they serve. Since the programming distributed via satellite may include non-network programming, the local stations allegedly need control over channel switching. Moreover, ownership of receive-only earth stations would permit broadcasters to choose optimum sites for their purposes, a factor claimed to be especially important in sparsely settled areas,²² and free them from carrier-determined construction timetables. Further, most stations are staffed with highly qualified electronic engineers with experience in microwave distribution of video signals—experience readily transferable to earth station operations.

66. While relying on the foregoing comments, applicant Phoenix amplifies its position as follows: In addition to national network programs, local affiliated and non-affiliated stations need flexibility to gain access to satellite channels carrying television programs from various sources (local and area originated programs, nationally syndicated programs, and specialized programming networks) that they have been authorized to broadcast. User-owned earth stations could facilitate the establishment of new and diverse commercial and noncommercial networks, since the costs and complexity of interconnection would be substantially reduced. User ownership would be a matter of economic necessity to stations in smaller markets which are not now connected by terrestrial carriers and have been providing their own intercity relay facilities. Moreover, since costs are not a function of distance in satellite relay, the technology is particularly suitable for providing interconnection to stations in sparsely settled, remote areas. There is no assurance that network or carrier owned stations would be located close enough to stations in such areas. In addition, user ownership would provide a broader economic base for raising money and might bring widespread use sooner than from a monopoly owner. Further, user-owned earth stations would not be part of a carrier's rate base, and would therefore serve to lower overall rates of the satellite carrier. Finally, Phoenix asserts that user owners would take all necessary and appropriate steps to make these facilities technically compatible with satellite and ground facilities operated by carriers or other entities, and would cooperate in establishing specifications, planning construction, testing and operation of such facilities.

67. The CATV earth station applicants (TelePrompTer, Twin County, LVO Cable and United Video) urge the Commission to permit qualified parties, including CATV systems and CATV carriers, who are not affiliated with the system licensee to own and operate receive-only earth stations with one or more systems. They state: "Subject to applicable law, CATV owned earth terminals should have access to programming transmitted by all satellite systems, thus increasing the sources from which diverse programming could be obtained." CATV ownership would ease the financial burden on the system operator, and since such earth stations would probably be purchased on a turn key basis, any economies of scale in mass production would be realized.

²² The Network Affiliates note, for example, that Comsat's proposed initial configuration of earth stations does not include any in North Dakota, Montana, Wyoming, and Idaho, and only one each in South Dakota, Utah, Nevada, and Arkansas. Moreover, Comsat's proposal would locate a receive-only station at Talkeetna, Alaska, with microwave interconnection to Anchorage and Fairbanks. While this may be adequate for public message service, the Network Affiliates assert that these two cities should have their own receive-only earth stations.

While satellite system users should have the option of using their own or common carrier receive-only earth stations, they should not be required to subsidize large multipurpose earth stations. CATV systems may accept a higher level of interference, and do not need the degree of quality that might be required by other users. Further, if a satellite system operator controls not only the space segment, but also the programing to be carried, the earth stations (including location, priority in construction schedules, and access) and portions of the terrestrial distribution system as well, there would be too much control in one entity. Regardless of ownership, however, the Commission should guarantee to CATV and others the right of access to satellite channels, as well as access to transmit-receive earth stations, under fair conditions and distance insensitive rates.

68. The position of the CATV applicants is supported by NCTA and other CATV interests. NCTA urges, in addition, that competitive earth stations would serve to lower rates and spread responsibility for financing. Operators of CATV systems should have the right to own earth stations, or to participate with other local users in each community in the ownership of earth stations. If an opportunity for ownership is not provided, the Commission should in any event guarantee a right of access to the entire domestic satellite system, including earth stations, on a reasonable cost basis.²⁴ Comments in a similar vein were filed by entities such as American Cable Television, Inc., et al.; Service Electric Cable TV; and Time, Inc.²⁵ Parties who are miscellaneous carriers serving CATV systems (e.g., Frank K. Spain, et al., and Racom, Inc.) urge further than such carriers should be permitted to have access to earth stations via their own facilities and to share in earth station ownership on a basis proportionate to use. One such party (OPI Telecommunications, Inc., an affiliate of West Texas Microwave Co.) asserts that regional specialized carriers, rather than broadcast stations and/or CATV systems, should own receive-only facilities.

69. All of the system applicants except Comsat have either affirmatively indicated a willingness to afford users the option of owning receive-only earth stations or have expressed no opinion on the subject. In urging that only its proposed systems should be authorized, Comsat argues that earth station ownership should be limited to it and other common carriers. It claims that a multiplicity of earth stations would dissipate economies of scale. Comsat further states that all receive-only earth stations should be regarded as potential transmit-receive earth stations, and should be authorized only to common carriers. A.T. & T. would permit access to its space segment through earth stations of others. GTE (which does not propose program transmission service to broadcast stations or CATV systems) asserts that

²⁴ While not advocating common carrier operation only, NCTA requests the Commission to make clear that members of the CATV industry, as well as others, have the opportunity to acquire on an indefeasible right of use basis at least one satellite channel and until such acquisition have guaranteed access to domestic satellite facilities.

²⁵ Service Electric Cable TV, Inc., which has a CATV system in the Allentown-Bethlehem market competitive with that of applicant Twin County, urges the Commission to condition any grant on non-discriminatory access by other local users of the same type. Time, Inc. asserts that CATV operators should have the option of owning earth terminals (receive-only or transmit-receive) and of leasing satellite channels on a fully dedicated or occasional use basis.

the Commission should not authorize earth stations to a few large users to the detriment of the vast majority of users. For the position of Hughes, see paragraphs 52-53. Most system applicants (e.g., Fairchild, MCI Lockheed, Western Union, the RCA applicants) would be willing to afford system access through earth stations owned by other carriers or users, and/or to share earth station ownership on the basis of use.²⁶ Further, most support the principle of non-discriminatory and equitable access to earth stations.

70. As for other parties, the Department of Justice sees no problem in user ownership of receive-only earth stations, but states that transmit stations should be considered along with system applications since spectrum usage is involved. However, even here the Department envisages that a variety of ownership patterns might emerge. The United States Independent Telephone Association (USITA) asserts that earth station ownership should be limited to existing carriers, with participation by the carrier in whose operating territory the earth station is located. ITT World Communications, Inc., Western Union International, and United Telephone System indicate an interest in participating in earth station ownership. One party, TVC of California, Inc., and Con Sumers, Inc., apparently is of the view that space segment ownership should be divorced from earth station ownership. GE suggests that the Commission should make possible the most diversified access, tempered only by constraints of a truly practical nature.

B. Access and interconnection

71. With few exceptions (notably, GTE) the parties are generally in favor of the Commission's proposal not to apply the "authorized user" policy in the domestic field. Most system applicants have applied for their own terrestrial interconnection facilities, in whole or in part. GTE proposes to use its own facilities to interconnect with existing terrestrial routes of A.T. & T. Some applicants (e.g., MCI Lockheed, Fairchild, the RCA applicants) are willing to afford users the option of end-to-end service by the system operator (either through its own facilities or through facilities leased by it) or of interconnection in whole or in part through facilities of terrestrial carriers or private systems.

72. Comsat, which prefers not to provide its own terrestrial interconnection facilities, urges that rule making is necessary in this area because neither A.T. & T. nor GTE is willing to provide such interconnection on a long-term, fixed price, carrier-to-carrier basis. According to Comsat, the provision of interconnection facilities on a tariff basis is not consistent with the concept of end-to-

²⁶ While willing to permit broadcaster ownership of receive-only earth stations, Western Union urges the Commission not to adopt rules in this area but rather to permit the affected entities to resolve this question. The RCA applicants are against joint ownership, since it would allegedly be undesirable to withdraw control from the system carrier responsible for providing service. MCI Lockheed states that it would assist broadcast stations and CATV systems desiring to own earth stations by providing engineering standards and specifications, and would offer for purchase or long-term lease receive-only facilities on a turn key basis (with a maintenance contract). The lease could include option-to-purchase provisions if desired. It is also willing to cooperate with several users (e.g., network affiliates, independent broadcasters, CATV systems, etc.) to establish joint lease or ownership arrangements.

end service. WTCI also asserts that A.T. & T. should be required to interconnect with satellite carriers on a carrier-to-carrier basis, without undue administrative delays. MCI Lockheed shares the view that existing carriers should cooperate. In view of Comsat's difficulties and the GTE position (restricting access to authorized users),²⁷ the Department of Justice urges the Commission to reaffirm paragraph 27 of the 1970 report, which it endorses. The Department further asserts that the Commission has power, under section 201(a) of the Communications Act, to adopt rules requiring common carriers not to inhibit the connection of customers with earth stations through arbitrary restrictions or tariffs.²⁸

73. A.T. & T. states that other carriers or private customers could have access to A.T. & T. earth stations most efficiently and economically on A.T. & T. terrestrial connecting facilities. While access by other means is not precluded, it does not appear practical since A.T. & T. does not contemplate the installation of multiplex equipment at its earth stations.²⁹ As for supplying interconnection service to other systems, A.T. & T. believes that regulated carriers should, to the extent practicable, assume responsibility for end-to-end service. However, subject to availability, A.T. & T. will lease to such carriers the terrestrial facilities that may be required to reach their customers' premises.

74. A.T. & T. states that the "terms and conditions of interconnection of such other systems with the Bell System intercity network should be established on a basis to maintain economical means of routing communications, to avoid subsidy of any such satellite system, and to conform to principles of sound engineering, operations and control." While asserting that policies and practices should be the same as for the terrestrial field, A.T. & T. claims that it would be premature to attempt to formulate specific rules and guidelines when the types, number and configuration of systems to be established and their customers are unknown. It states: "Before A.T. & T. is prepared to interconnect with another carrier for provision of a service in which A.T. & T. participates, especially switched service, much more detailed information and justification of the costs and possible penalties to be incurred will be required to permit an evaluation of the benefits to be realized."³⁰

²⁷ Apart from asserting that the authorized user policy should apply and that "all authorized users should have nondiscriminatory and equitable access to earth stations," GTE does not discuss the question of interconnection.

²⁸ The Department further asserts that the Commission is not precluded from exercising such power because it has sought clarifying legislation in the past, citing: *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *American Trucking Association v. Atchison, Topeka and S.F. Ry. Co.*, 387 U.S. 397 (1967).

²⁹ A.T. & T. further notes that a multiplicity of interconnection routes would compound frequency coordination difficulties.

³⁰ With respect to the GTE companies, A.T. & T. states that they have not yet supplied detailed information regarding arrangements for handling traffic from their operating territories to the entire Numbering Plan Areas in the general region of their proposed earth stations. Moreover, they have allegedly not given adequate consideration to costs and other problems of terminating, or to requirements for establishing and operating terrestrial links to the landline network, or to the impact of changes in the routing and switching of GTE traffic on the intercity network.

75. Western Union states that its policy requires reasonable safeguards against harm to personnel and facilities, where necessary, as well as network control and compatible equipment. Within that framework, Western Union will "meet all reasonable requests for interconnection of customer provided facilities and equipment." Where, after a reasonable start up period, Western Union is offering satellite channel service directly to the public, it intends to permit interconnection with other common carriers to reach customer locations or with customer provided facilities and equipment under the policy described above.

III. PROCUREMENT

76. In paragraph 28 of the 1970 report, the Commission requested comments on its authority to adopt domestic procurement rules patterned after those promulgated under the 1962 Act for some facilities used in conjunction with the Intelsat system (Part 25, Subpart B), and on whether any modifications would be appropriate. Two system applicants, Hughes and Fairchild, did not comment on this question. Western Union, A.T. & T., and GTE assert that the Commission lacks authority in light of the provisions of section 215(a) of the Communications Act and various statements of Commission representatives to Congressional committees. MCI Lockheed and Comsat also doubt the Commission's authority under the 1934 Act (see also paragraph 54). Western Union, Comsat, and the RCA applicants state that they will, in any event, follow a policy of competitive bidding. The RCA applicants further take the position that competitive bidding should be required for all system hardware and services.

77. Apart from the Commission's authority, several parties question the desirability of procurement rules in the domestic field. WTCI says that it wants to exercise its own decisional process as to procurement. Comsat questions the effectiveness of any rules that might be adopted insofar as Hughes, Fairchild, MCI Lockheed and RCA are concerned. Western Union asserts that unlike in the international satellite area, no unique situation is presented by domestic satellite which would make procurement rules necessary or desirable. It claims that section 35.03-7 of the rules³¹ give the Commission adequate surveillance without the necessity of promulgating detailed procurement rules. Moreover, Western Union states that the administration to the carrier would be time-consuming and involve added expense. GE states that the Commission need not resolve the question of its jurisdiction over procurement until after it decides on the number and nature of the systems to be authorized. If there is to be a monopoly or near monopoly, then procurement rules are almost imperative. However, if there is open entry, GE believes that procurement rules are unnecessary or should be only minimal in nature.

78. MCI Lockheed urges that, with a policy of open entry, there would be sufficient competitive spurs to ensure that satellite operators contract for system and other equipment possessing the best possible combination of quality and price. Enactment of detailed procurement regulations would only constrain the effectiveness of procurement operations and discourage the use of diverse or innovative procurement techniques. More-

over, the viables entering into the complex process of designing and building a domestic satellite system make it nearly impossible to devise an a priori set of detailed regulations to stratify procurement. The more formal and detailed the regulations, the greater the burden, expense and delay placed upon the system operator. MCI Lockheed believes in competition in this area, as well as among systems; but the best way to achieve this goal is to keep the procurement process relatively unfettered by Government regulation.

79. The Department of Justice asserts that competitive procurement is required by the 1962 statute for Comsat and would, in general, be sound policy insofar as rate regulated carriers are concerned. The Department takes no position on whether the Commission can require competitive bidding in light of section 215 of the Communications Act. However, as indicated in paragraph 39 above, the Department urges that the Commission can deny a section 214 authorization if a carrier fails to demonstrate that the proposed investment is the most efficient way of satisfying its requirements. It suggests that A.T. & T. and other existing common carriers should be required to demonstrate that they are fulfilling their needs through the "least cost supplier." (For the contrary position of Comsat and A.T. & T., see paragraphs 54 and 59.) The Department states that there is less justification for competitive procurement for operators that are not subject to rate regulation, and that this would not be worth the administrative burden. While satellite manufacturers can be expected to use their own equipment, competitive bidding will not cure such a situation.

80. The most comprehensive comments on procurement were filed by an individual, Ronald S. Kahn, as a result of a personal research project conducted while he was a student at the Columbia University School of Law. Mr. Kahn discusses at some length various procurement statutes; rules and regulations pertaining to other government agencies; the legal authorities he believes to be relevant to the question of the Commission's authority; and the factors he considers to be pertinent in the choice of a procurement strategy. Mr. Kahn concludes that the Commission lacks authority to implement competitive bidding as a matter of law (Comments, p. 61), and that, as a matter of policy, procurement policies in the domestic satellite field should be reviewable only as and to the extent that they affect rates (Comments, pp. 1, 74-100). He states (id., p. 1): "Procurement policies in this market are a managerial function not suitable for effective regulation."³²

IV. SERVICE FOR EDUCATIONAL PURPOSES

81. The 1970 Report (paragraph 34(b) (1) and (2)) requested applicants proposing broadcast program transmission to state the terms and conditions under which satellite channels would be made available for non-commercial educational networks.³³ The Commission also requested all applicants for multipurpose or specialized systems to indicate the terms and conditions under which satellite services would be available for data

³¹ At pages 101 through 108 of his comments, Mr. Kahn sets forth proposed procurement rules in the event that the Commission should opt for that course.

³² Applicants proposing broadcast program transmission were also requested to address the possibility of realizing a "peoples dividend" to provide some funds for programming by noncommercial educational stations, as suggested by the Ford Foundation.

and computer usage in meeting the instructional, educational, and administrative requirements of educational institutions. Noting that previous parties to the proceeding, such as Comsat and the ABC network, had offered to provide satellite channels to public broadcasting without charge, the Commission said it "believed this to be in the public interest." On March 22, 1971, all pending applicants were furnished with a copy of a letter from Mr. John W. Macy, Jr., president of the Corporation for Public Broadcasting, with a request that each review, and if necessary supplement, its application in light of the concerns expressed in Mr. Macy's letter.

82. Three system applicants—Hughes, MCI Lockheed and Fairchild—propose some form of free service for public broadcasting. Hughes is willing to afford CPB and PBS two (backed up and noninterruptible) satellite channels without charge, and free access to the Hughes earth stations. MCI Lockheed would make available for transmission the equivalent of five television channels for educational use, including PBS in Conus, for 5 years without charge and thereafter at a fraction of commercial rates for the remainder of the satellite life. The MCI Lockheed proposal also includes the services of its downtown earth stations. Fairchild offers two free satellite transponders for public television in Conus, a shared-service to off-shore locations, and free part-time use of two transponders to the medical community. It also proposes optional free use of one or two transponders at 2 GHz for instructional television and message service to remote areas if earth stations are provided by other entities.

83. WTCI is willing to abide by an FCC decision to supply channels at reduced rates or without cost provided that the cost is distributed among all satellite systems or users in some fair and equitable manner. The RCA applicants also assert that the Commission should apply a uniform policy to all the applicants. While preferring reduced rates on an incremental cost basis, the RCA applicants would defer to a Commission decision as to free service for noncommercial networks in the event that they should provide service to commercial networks. Though the proposed systems of A.T. & T. and GTE are oriented towards other services, they take the position that satellite service to PBS should be on the same terms as terrestrially, i.e., on an incremental cost basis.

84. Pointing out that the provision of satellite channels at reduced rates or without cost entails a form of subsidy, Western Union questions whether it is fair to impose such a burden on a single entity or industry if the benefits go to the entire nation. Subject to FCC approval, Western Union would offer educational television channels on an incremental cost basis, or at even lower rates provided that the Commission established ground rules which apply equally to all contenders for the major network business. It states that the Commission should not permit service to CPB to be a pawn in the evaluation of the domestic satellite proposals. Rather, the Commission should define the needs for public broadcasting and indicate the entities responsible for supporting those needs.

85. Comsat also notes that transmission service to CPB—unless rendered on an interruptible, when available, basis from spare capacity—results in cost to someone. Any domestic system would have revenue requirements which must be met by system users and Comsat, as well as other system applicants, are not yet sure who such users will be. Thus, "categorical commitments to CPB that depend on the support of the paying users have little or no validity while those users are still in negotiation with the applicants to operate the system." Comsat, which like Western Union urges the Commission to

³³ Section 35.03-7 requires that all "charges to accounts prescribed in this system of accounts for plant, operating revenues, and for operating expenses * * * shall be just and reasonable, and any payments by the carrier in excess of such just and reasonable charges shall be included in account 5299, 'Other deductions from ordinary income.'"

establish ground rules.⁸⁴ very much hopes that "some form of preferential service can be worked out for public broadcasting in a fashion which meets the genuine requirements of CPB, and produces unit costs which are acceptable to the yet undecided commercial users of a domestic satellite system."

86. The networks state that they were concerned with the needs of CPB in developing basic capacity requirements and believe that continued cooperation with CPB in "technical evaluative areas" would be desirable. They further state that in a multipurpose system—with the commercial networks being only one class of user—CPB should be expected to deal directly with the carrier to develop a rate structure and facility requirement meeting its needs "without commercial network commitment to underwrite the costs or determine the configuration of the system needed for noncommercial program distribution." The prototype receive-only earth station application, filed by Phoenix and supported by the Affiliates Associations, proposes that public broadcasting stations could use such earth stations without charge (except for terrestrial interconnection).

87. CPB and PBS have filed extensive comments taking the position that a minimum network service should be provided without charge.⁸⁵ The rationale for this position is essentially as follows:

The American people have invested more than \$20 billion in the space program. Communication satellite technology is derived from that investment. The public thus has a real and direct interest in the cost-savings inherent in the satellite technology. As the submissions in this docket indicate, the potential cost-savings are substantial. [Footnote omitted.] The bulk of these savings will accrue in any event to private industry. We ask only that a small portion be used to provide the American people with a partial return on their investment, in the form of free interconnection for public broadcasting.

CPB and PBS also rely on the Public Broadcasting Act of 1967, prior statements of the Commission, and the submissions of various applicants in this proceeding. In the latter connection, CPB and PBS remark that the present position of the networks is a disappointing about-face from their prior statements before this Commission, in appearances before congressional committees and in public speeches (CPB and PBS comments, pages 23-27).

88. Contrary to Comsat's suggestion (footnote 34), they claim that the extent of free service requested is modest. This minimum requirement (described in paragraph 37 of this second report) does not take account of public broadcasting's potential for growth, or go into the requirements of a second pro-

⁸⁴ Comsat suggests that the stated requirements of CPB and PBS may be inflated by the expectation of free service.

⁸⁵ Among other things, their comments describe the development of public broadcasting, its growth and the institutional framework (i.e., the structure and role of CPB, PBS, and NPR). Appendices list public television stations in Table 1 (indicating where interconnection would be required), PBS originating stations in Table 2, and PNR member stations in Table 3. In addition, they have commissioned and made available to the Commission's staff two technical studies: (1) An Investigation of Network Television Distribution Satellite Systems, prepared in February 1971 by the Space Systems Organization of the GE Space Division; and (2) A Technical Survey and Analysis of Eight Proposed Domestic Satellite Systems Regarding Their Ability to Satisfy Public Broadcasting's Objectives, dated Apr. 15, 1971, and prepared by National Scientific Laboratories, Inc.

gram service or instructional uses.⁸⁶ Moreover, even with such a minimum network, public broadcasting would still be required to construct its own studio links and additional stations to meet its needs alone.

89. In response to the argument that there is no such thing as "free" service, CPB and PBS state: "The present applicants are the beneficiaries of a public subsidy. To deny free rates for public broadcasting is simply to increase this subsidy and to deny the taxpayer this return on his investment." Moreover, they assert that the incremental cost of free interconnection service for public broadcasting is quite small in relationship to overall system costs, and will not deter other users from making maximum use of the satellite technology since it permits such substantial savings over terrestrial communications.⁸⁷

90. The State of Alaska, the National Association of Educational Broadcasters, the Joint Council of Educational Telecommunications, and the National Citizens Committee for Broadcasting support the concept of free interconnection service for public broadcasting. The Joint Council further urges the Commission to recognize that educational needs are broader—including educational data transmission, library access service, etc.—and may not be the same as commercial needs. The Joint Council states that facilities should be made equally available to medical, health and other public service oriented users. The State of Alaska recommends that as a condition precedent to any grant the Commission require each applicant to offer free ITV/ETV and radio access to prospective users of both the space segment and terrestrial facilities. NCTA opposes free service for educational television. While American Cable Television, Inc., et al. has doubts about free or reduced rates for anyone, it suggests that any special provision for educational television should also apply to satellite channels used for the distribution of educational programming to CATV where provided by bona fide educational institutions.

91. The State of Hawaii supports special low cost rates (on an incremental cost basis) for educational transmissions, including those of PBS which would encompass service to Hawaii. Satellite transmission of programs arranged for by CPB, although very important, will not in and of itself meet the educational needs of Hawaii and the Nation. All types of recognized educational institutions should be eligible, with the goal being two-way exchange of voice, data, facsimile and television—in accordance with the principles reflected both in the Public Broadcasting Act of 1967 (which applied to public educational broadcast stations) and in the Higher Education Act of 1968 (which applied to institutions of higher education). If available, free or low cost interconnection would be used extensively by Hawaii's edu-

⁸⁶ As examples of potential instructional uses, CPB and PBS point to state and regional instructional networks, an "open university of the air" that would permit degree programs, and additional programming for selective audiences potentially possible by relating the satellite and cable television technologies.

⁸⁷ In commenting on the various applications, CPB and PBS state that the Hughes' offer would go far toward meeting their needs, and that most other proposals (apart from A.T. & T.) could accommodate public broadcasting needs if the particular applicant voluntarily or pursuant to a Commission requirement afforded free interconnection service. CPB and PBS further urge the Commission not to authorize the 2 GHz band for any commercial use, whether or not called experimental.

ational institutions for instruction, research and development in areas of education, health and community services. Low cost communication is essential to sustain quality education in Hawaii. Moreover, the WARC allocations (e.g., 2 GHz) raise the possibility for an extension of educational networking in the Pacific Basin, utilizing a strong educational base in Hawaii reinforced by low cost domestic satellite links to major centers of education in Conus.

V. ALASKA AND HAWAII

92. The 1970 report, in requesting each applicant to state whether the proposed system would be capable of providing service to Alaska and Hawaii, stated (paragraph 34 (a)):⁸⁸

We believe that national unity will be served if domestic systems have the capability of serving these two States, in the absence of overriding considerations to the contrary. Hawaii is presently receiving communications satellite service via the facilities of Intelsat, though not the type of broadcast program distribution that has been proposed in this proceeding, and we have authorized an earth station in Alaska. Our belief that domestic systems should be capable of serving Hawaii and Alaska does not reflect any view with respect to the continued use of Intelsat facilities. But unless the capability is built into the domestic facilities at the outset, the possibility of providing any service to these States by means of these facilities will be precluded.

93. All of the proposed systems have satellite capability of serving Alaska, and all but one (Comsat/A.T. & T.) could serve Hawaii.⁸⁹ However, only two system applicants have actually applied for earth stations in Alaska: RCA/Alascom (four transmit-receive, plus terrestrial interconnection facilities) and Comsat (two transmit-receive and one receive-only). Three system applicants have applied for earth stations in Hawaii: Western Union (one transmit-receive), the RCA applicants (one transmit-receive), and Comsat (one receive-only). In addition, Hawaiian Telco—though of the view that Hawaii should not be part of any domestic system at this time—has applied for an earth station (transmit-receive) to operate with any system required to serve Hawaii.

94. The State of Alaska describes its situation and needs as follows:

The population of Alaska is substantially less than one-half million, with a significant portion of that total scattered in relatively tiny rural population pockets (the Alaska "bush") throughout the State's huge area. By and large, the bush population is of native origin. With the exception of the south-central section of the State, significant rail and road systems do not exist either between the bush and urban Alaska or within the bush itself. Rural air service, particularly during the long severe winters, is infrequent and uncertain. Electricity, running water, and paved streets are in the main not pres-

⁸⁸ In its comments the State of Alaska "extends its appreciation to the Commission for having initially designated Alaska service as a matter for specific concern by the applicants," adding that it would be "difficult to overstate the benefits rendered to the State by that simple act." The State of Hawaii also "expresses its appreciation for the concern for its needs shown by the Commission."

⁸⁹ In addition, three systems (Comsat, RCA, and Fairchild) could serve Puerto Rico and one (Fairchild) could serve the Canal Zone. Only one applicant (Comsat) has applied for an earth station (receive-only) in Puerto Rico, and there is no pending application for the Canal Zone.

ent. Therefore, bush life is marked by a degree of physical isolation and primitiveness unknown to the rest of the Nation. Clearly, nothing short of comprehensive and inexpensive reliable communication services must be made available if the quality of life in the bush is to be upgraded and rural and urban Alaska successfully integrated.

As for the cities, urban living in Alaska's few cities does not approach nationwide standards with respect to such basic amenities as paved streets, sewer systems, and public transportation facilities. Primary industry is almost nonexistent. State unemployment and the cost of living are annually either the highest or among the highest in the Nation. Consequently, economic development is imperative. However, the prospects of such development are hindered substantially by Alaska's geographic remoteness. Therefore, the State's carriers must be able to offer comprehensive and inexpensive reliable communications service if Alaska is to overcome its geographical handicaps and compete equally with other States in the attraction of capital and industry.

95. Against the pressing need, the State maintains, present communications are either inadequate or nonexistent.⁴⁰ All who have studied the matter have indicated to the State that the existing backbone system cannot be overbuilt to meet present and projected circuit requirements. Construction of new terrestrial facilities (both between cities and to provide comprehensive bush service) would be extremely expensive because of the distance, mountainous terrain and climatic conditions involved. While Intelsat service is of some value, the high cost and restricted access preclude its being of material aid. Therefore, the provision of vitally needed comprehensive and low cost reliable communications services in Alaska is exclusively dependent upon realization of the potential inherent in a domestic system.

96. The State's communication requirements (amplified at pp. 6-7 of its comments, and pp. 5-7 of its reply comments) are fourfold: (1) intrastate voice, message and data services; (2) interstate voice, message and data services; (3) instructional and educational television programming; and (4) commercial television. While the satellite technology has the capability to minimize the economic penalty imposed on Alaska by geographic separation from Conus, economic feasibility requires that the State be able to benefit from the high volume of traffic in all 50 States. It therefore desires to participate in a multipurpose system. The State says that at least one full-time, nonpreemptible channel must be made available for ITV/ETV programs and one audio channel for educational radio by the satellite carriers serving Alaska. While not addressing the question of the channel capacity needed for real-time commercial television, the State estimates that other current traffic of Alaska would require less than a full transponder. It would therefore prefer a demand assigned, multi-access system to the lease of dedicated trans-

⁴⁰ The State points out that the existing backbone communications system in Alaska is primarily composed of tropospheric scatter and microwave facilities owned and operated by the Air Force and designed to meet military requirements. Capacity allocated to meet civilian requirements is generally filled and during peak periods is subject to serious delays. Interstate Communications with Conus are provided by routes through Canada, a submarine cable, and via the Intelsat system to the Bartlett earth station. Service to rural Alaska is either nonexistent or via H-F radio. The proposed combination thin route microwave-VHF telephone system of RCA Alascom to a number of rural villages will, when installed, "rise to only a degree above emergency-type service."

ponders on a full-time basis. As earlier indicated (paragraph 40 above), the State's analysis of pending applications tends to show that the Comsat and RCA proposals offer the best potential for accommodating its needs, though the optional features in the Fairchild proposal would be particularly attractive to Alaska.

97. In its reply comments, the State expresses concern about the possibility of initial satellite proliferation within that portion of the orbital arc suitable for service to both Alaska and Conus (94° and 124° west longitude). It requests the Commission to reserve these locations for the exclusive use of the carrier or carriers selected for service between Alaska and Hawaii and Conus (reserving room also for second generation satellites along the lines of those proposed by Fairchild), and to assign more easterly locations to those carriers serving other areas of the United States. The State also stresses the importance of small, unattended earth stations to its needs, and requests the Commission to investigate and permit the exact orbital spacing required for the employment of small earth terminals in Alaska.⁴¹ While not disagreeing generally with CPB's position that the 2 GHz band should be authorized only for noncommercial use, the State requests an exception to permit the use of these frequencies for Alaska's special requirements for bush educational and message service. Finally, the State urges the Commission to act as expeditiously as possible in establishing domestic communications satellite facilities to serve Alaska's unique needs.

98. Very few applicants commented in any depth on the subject of service to Alaska and Hawaii. WTCI, GTE, and Hughes expressed no views (except insofar as Hughes notes that it would be easier to accommodate multiple systems in the available orbital locations at 4 and 6 GHz if not all systems were required to serve Alaska). Fairchild points out that the nature and capacity of its proposed satellites would permit the options of ITV and message service at 2 GHz to low cost terminals in remote areas (such as Alaska bush) and enable its offer of free transponder usage by earth stations supplied by others. Western Union asserts that the type of service desired by Alaska would pose technical and economic problems, though it would cooperate with a Commission decision specifying in advance the manner in which such service should be subsidized. A.T. & T. states that Alaska should share a small part of a large system in view of the State's "realistic" estimate as to current traffic. While A.T. & T. does not propose to establish earth station facilities in Alaska, it would be willing to lease one or more transponders for Alaskan intrastate and interstate traffic.

99. In its reply comments, MCI Lockheed states that, if authorized to do so, it would amend its application to provide intrastate service to Alaska as described in Appendix D to such reply comments. It claims that the proposed use of high power and 12/14 GHz frequencies would produce a relatively high signal level in Alaska, reduce the complexity and cost of earth stations, and facilitate bush service.⁴² MCI Lockheed envisages the use of

⁴¹ In this connection the State further suggests that higher values of EIRP would enhance the opportunity for using small, low cost earth terminals in Alaska.

⁴² MCI Lockheed asserts that a 10-foot diameter earth station capable of providing 12 duplex voice circuits plus one television receive channel, would cost approximately \$150,000. A bush station, with 2 voice channels plus television receive capability, is estimated to cost about \$75,000 or less in quantity. For larger communities, a 32-foot earth station with up to 240 voice circuits plus television transmit capability would cost approximately \$800,000.

multiple access techniques.⁴³ It states further that the intrastate transponders could provide interstate service to a Conus gateway, such as Seattle, and that additional 12/14 GHz transponders could link major Alaskan cities with all of Conus at distance insensitive rates—a policy to which MCI Lockheed is firmly committed.

100. The RCA applicants, who have applied for Alaskan earth stations,⁴⁴ urge that there is room for only one carrier in Alaska. They note that Alaska has a land area of some 586,000 square miles (larger than the 3 largest Conus states combined), a difficult and rigorous terrain and climate, and a 1970 population of only about 302,000 persons. These factors place a burden on any carrier charged with the responsibility of providing service there, and at the present time the Alaska network falls short of Conus standards. RCA Alascom, which just recently acquired the long lines system from Alaska Communications System, has undertaken to achieve major expansions and improvements in service and rate reductions. The revenues and return in Alaska are smaller than in Conus, and unit costs would be lower if it were part of a multipurpose system serving other States. The interposition of a carrier's carrier would only add costs. It is estimated that approximately 70 percent of RCA Alascom's toll telephone service would use satellite facilities by 1978. Any substantial diversion of revenues to other carriers or systems, or fragmentation of the RCA Alascom market, would pose a severe threat to the future of public communications in Alaska. Alaska requires more extensive intrastate satellite facilities than other States, but the potential market is far too small to support more than a single satellite system. An authorization to the RCA applicants would relieve other applicants from the obligation of serving Alaska, and remove certain constraints on their proposals (such as the selection of orbital locations capable of serving Alaska, and the need for spot beams to illuminate Alaska). They urge the Commission to reserve the orbital locations between 114° and 126° west longitude for their system, since other systems not serving Alaska could use locations farther east.

⁴³ It is asserted that up to 20 locations could transmit to a single satellite transponder, and up to 240 duplex voice circuits per transponder could be provided. Segments of transponder passband would be allocated to up-link transmissions from specific cities. Communications circuits between any pair of large communities could be established upon demand by means of automatic signaling equipment located in the various earth stations. In addition, a number of transponder slots could be reserved for "party-line" voice communications from very small communities to major population centers such as Anchorage or Fairbanks.

⁴⁴ The RCA applicants have applied for and intend to use four major earth stations in Alaska as a link with the Bartlett earth station and to supplement terrestrial facilities in Alaska. Such facilities would allegedly provide growth up to 50 percent or more of the total interstate and intrastate requirements of Alaska, and would permit significant reductions in the cost of constructing additional terrestrial microwave facilities (estimated at \$7.5 million in the first 4 years after implementation of the system). In the event that negotiations with the Government lead to firm agreements, they would apply for nine additional earth stations in Alaska. Moreover, if their proposed system should obtain network program transmission, they envision that 250 of the 370 total proposed receive-only stations would be located in Alaska. They assert that the comments of the State underestimate the traffic potential.

101. The RCA applicants further claim that RCA Alascom is the only entity legally qualified to provide intrastate service in Alaska, since it alone allegedly possesses the requisite franchise authority from the State. Comsat, the only other applicant for Alaskan earth stations, generally takes the position that it should have a monopoly grant for all areas. Otherwise, it did not comment on the question of service to Alaska, except to dispute the latter claim by the RCA applicants. Comsat states that RCA Alascom does not have an exclusive franchise for Alaska. While the Alaska Public Utilities Commission noted that the market was then too thin to warrant general authority to more than one land lines carrier, it did not purport to foreclose the possibility of competing applications to provide some form of land lines service that future circumstances might permit. While approval by State authorities may be necessary at some stage for intrastate operations, it is not prerequisite to a Commission policy determination. The reply comments of the State of Alaska support Comsat's position on the legal issue, though this "should not be construed as disfavor with the merits of the [RCA] applicant's satellite proposal."⁴⁵

102. As previously indicated, Hawaiian Telco—one of the applicants for an earth station in Hawaii, takes the position that Hawaii should not be part of any domestic system at this time. It states that over half of the traffic between the United States and the Pacific consists of Conus-Hawaii traffic. The transfer of existing traffic from the Intelsat system to a domestic system would allegedly cause a loss to Comsat of about \$10.3 million in annual revenues and a proportionate loss to Intelsat. Moreover, none of the system applicants has shown a need for any additional service to Hawaii at this time. An Intelsat IV satellite over the Pacific would be capable of providing broadcast program distribution service equal to that proposed by domestic applicants, and should make it possible for Comsat to have competitive rates. Further, a submarine cable system with capacity of 845 circuits is planned for 1973,

⁴⁵ The RCA applicants assert that Comsat's plan is principally concerned with earth stations and circuits, and provides no indication of a thoughtful approach as to how circuits would be operated for two-way communications in the nationwide network or how the system would work with existing local telephone companies in Alaska. They state that Comsat's proposal could be viewed as relating only to private line service and should not be authorized without regard to message telephone. On this, the State of Alaska comments:

"A satellite carrier acting as a 'carrier's carrier' presumably would not be engaged in general long lines authority or offer services directly to the consumer. Clearly, such a carrier would not be a competitor of Alascom for Alaska traffic. It is therefore the State's contention that the authority granted by this Commission to construct and operate satellite facilities in Alaska would not fragment Alascom's system or divert any traffic from the long lines carrier to the extent envisioned by RCA."

and another cable with capacity of 3,500 circuits is planned for 1977. The Commission should consider service to Hawaii as part of the satellite-cable mix problem. Hawaiian Telco also asserts that Western Union's application is barred by section 222 of the Communications Act, and should not in any event be granted in preference to that of Hawaiian Telco for technical and economic reasons. Hawaiian Telco states that it would cooperate with the Western Union system and any carrier serving Alaska.

103. A.T. & T. shares the view of Hawaiian Telco that diversion of mainland traffic to domestic facilities would have undesirable effects on the global system insofar as Hawaii is concerned. Though Comsat has applied for earth stations in Hawaii, Alaska, and Puerto Rico, its comments do not reveal any views on the question of whether satellite service to these areas should be by means of the Intelsat system, domestic facilities or some combination of both. Western Union denies that it is disqualified under section 222, and also claims that there is no basis for Hawaiian Telco's suggestion that an Hawaiian earth station would create frequency congestion. It asserts that Hawaiian Telco has cited no instance of interference. The RCA applicants claim that exclusion of Hawaii would work a substantial hardship on that State in terms of available services and rates. They claim that a major social value would be accomplished through bringing full live network interconnection to Hawaii, which alone would more than justify the relatively minor impact on international service, and that Hawaii would benefit by being provided with public and instructional radio and television on a fully interconnected basis at the same free or reduced rates applicable to such service in other States. The RCA applicants have no objection to ownership participation by Hawaiian Telco in their proposed earth station.

104. After the comments and reply comments of the applicants and other parties were filed, the State of Hawaii requested and was granted leave to file comments on or before October 21, 1971. The State of Hawaii disagrees with the position that Hawaii should not be part of a domestic satellite system at this time. It asserts that the people of Hawaii and Alaska are now treated in many ways unequally when compared with other states in that:

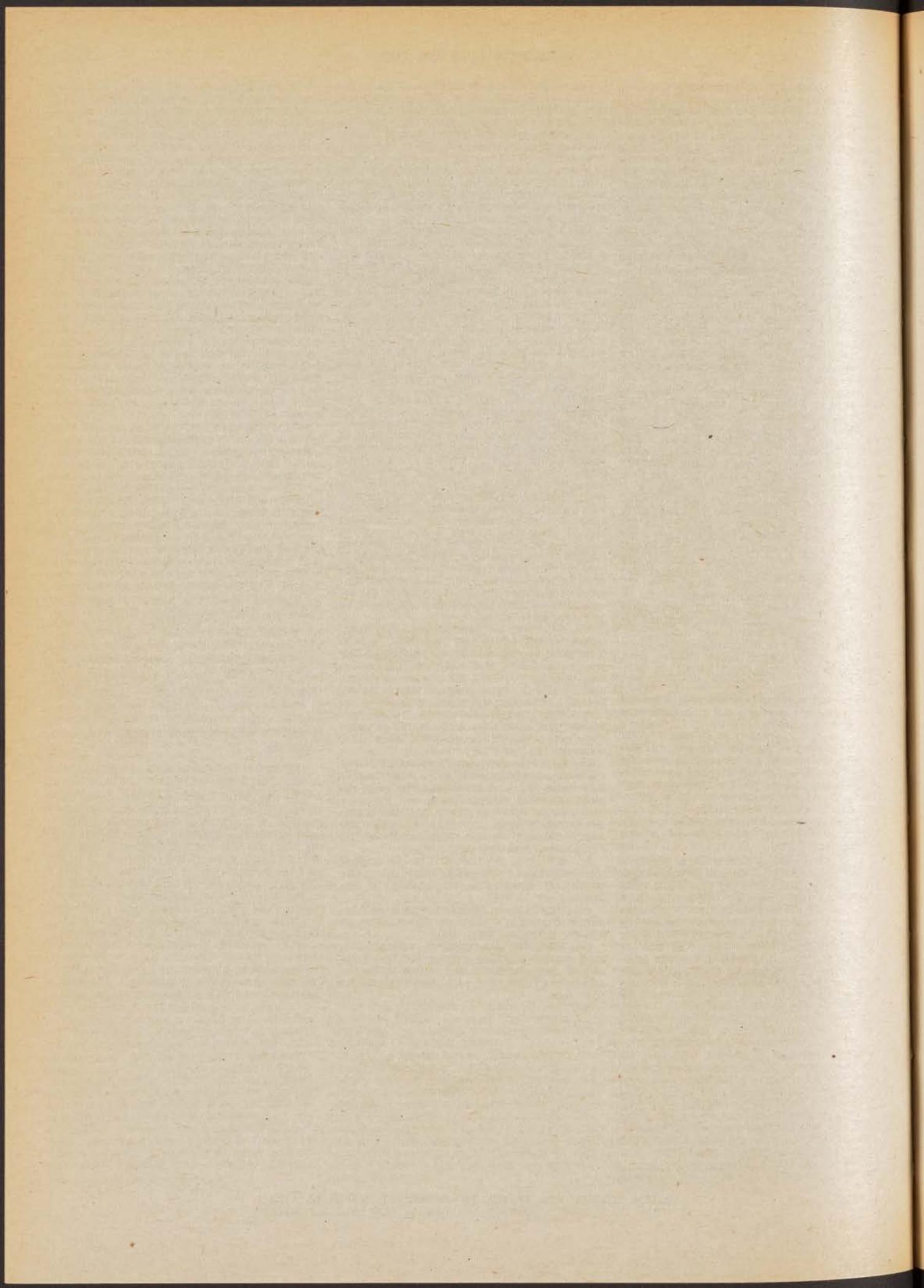
- (a) Rates between Hawaii and the Western States are allegedly more than double mainland rates for service between the most remote locations within Conus;
- (b) Rates between Hawaii and the mainland and between Hawaii and Alaska are nearly as high as, for example, Hawaii to Japan rates;
- (c) Hawaii is not included in the present low mainland rate-averaged night rates which are essentially independent of distance;
- (d) Hawaii is not provided Wide Area Telephone Service (WATS) or direct distance dialing by subscribers; and
- (e) Television transmission and specialized communications service for transmission of data, facsimile and record traffic are so costly to the user as to severely restrict their use.

105. According to the State, domestic satellites can provide communications transmission at costs no longer related to distance and can afford Hawaii direct linkage throughout the United States. Hawaii's domestic traffic is far larger than its foreign traffic, and is increasing rapidly. It is not equitable, the State believes, that citizens of Hawaii in using interstate communications must carry a heavier burden than other U.S. citizens for making Comsat or Intelsat workable and profitable and for supporting cost-averaged international communications. The State of Hawaii says: "These objectives are national and the responsibility for achieving them should be shared equally by all." Further, unlike proposed new cable facilities linking Hawaii with California, communications via domestic satellite would no longer need to transit the contiguous States in linking the continental hinterlands and East Coast with Hawaii. The early provision of domestic satellite service for Hawaii could permit a postponement of additional cable facilities until such time as higher capacity, advanced technology cable is available which would afford economy of scale and resultant reduced circuit costs.

106. While the State of Hawaii is of the opinion that none of the applicants has adequately treated the question of effective service to Hawaii, it requests the Commission to require that licensees include interstate service for Hawaii (accommodating two-way voice, record, data and video transmission) and that Hawaii be included in any satellite distribution of television network programming (including commercial, public broadcasting and CATV).⁴⁶ The State further requests that licensees in advanced system planning be required to recognize the need for incremental and incentive pricing of satellite transponder capacity to permit economically viable interisland communications, and that special low-cost rates for interconnection of educational institutions and public broadcast stations, including those in Hawaii, be approved on the basis of incremental cost (see paragraph 91 above). Finally, the State of Hawaii requests the Commission to take needed steps to include facilities serving Hawaii in domestic rate making and rate averaging.

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⁴⁶ In the latter connection, the State observes that while mainland public broadcast stations will soon be served by low-cost video interconnection, Hawaii's public broadcasting stations will remain unserved and its citizens must, nevertheless, pay taxes to support the Corporation for Public Broadcasting. The State further notes that though ranking in the top 100 television markets, it is still largely dependent on the physical transport of video tapes and films and desires commercial program distribution via satellite to improve program diversity and timeliness. Moreover, Hawaii will soon have CATV service available to a majority of the population and thus is favorable to proposals including multichannel CATV programming via satellite.



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PART III



DEPARTMENT OF LABOR

■

Examination and Copying of
Department Documents

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 70—EXAMINATION AND COPYING OF LABOR DEPARTMENT DOCUMENTS

Pursuant to authority in 5 U.S.C. 301, 552, 559, in Reorganization Plan No. 6 of 1950 (63 Stat. 1069, 5 U.S.C. Appendix), in 29 U.S.C. 9b and in 31 U.S.C. 483a, 29 CFR Part 70 is revised to read as set out below. As the changes made by this document relate solely to interpretative rules, general statements of policy, and to rules of agency procedure and practice, neither notice of proposed rule making nor public participation therein is required by 5 U.S.C. 553. Since the changes made by this document either relieve restriction or are interpretative rules, no delay in effective date is required by 5 U.S.C. 553(d). These rules shall, therefore, be effective immediately.

In accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data, or arguments to the Secretary of Labor, Washington, D.C. 20210, within 45 days of the publication of the regulations contained in this part. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Until such time as further changes are made, however, Part 70 as revised herein shall remain in effect, thus permitting the public business to proceed more expeditiously.

1. The revised 29 CFR Part 70 reads as follows:

Subpart A—General INTRODUCTORY

- Sec.
70.1 Purpose and scope of this part.
70.2 Definitions.

AVAILABILITY OF PUBLISHED INFORMATION

- 70.5 Information published in the FEDERAL REGISTER.
70.6 Information in Department of Labor publications.

INFORMATION AVAILABLE ON REQUEST

- 70.11 Policy of disclosure.
70.12 Records of administrative proceedings.
70.13 Evaluation reports on external programs.
70.14 Policy statements and interpretations.
70.15 Staff manuals and instructions.

RESTRICTIONS ON DISCLOSURE

- 70.21 Records not disclosable.
70.22 Records disclosure of which may be refused.
70.23 Internal rules and practices.
70.24 Trade secrets and privileged or confidential information.
70.25 Inter-agency and intra-agency memoranda and letters.
70.26 Personnel, medical, and similar files.
70.27 Investigatory files compiled for law enforcement purposes.
70.28 Well information.
70.29 Partial disclosure.
70.30 Withdrawal of originals.
70.31 Record of concern to more than one agency.

FACILITIES FOR DISCLOSURE

- Sec.
70.35 Where information may be obtained.
70.36 Indexes of records.

PROCEDURE FOR DISCLOSURE

- 70.41 Applicability of procedures.
70.42 Submittal of requests for access to records.
70.43 To whom to direct requests.
70.44 Description of information requested.
70.45 Deficient descriptions.
70.46 Requests for categories of records.
70.47 Time for reply to request.
70.48 Action on request; protection of privacy.
70.49 Form of denials.
70.50 Appeals from denial of requests.
70.51 Time for action on appeals.
70.52 Action on appeals.

Subpart B—Copies of Records and Special Services

- 70.61 Manual copying.
70.62 Special searching and copying services.
70.63 Certificates of authentication.
70.64 Special studies and compilations.

Subpart C—Special Rules Applicable to Certain Specific Records

- 70.71 Authority of Administration, Bureau, and Offices.
70.72 Supplementary regulations currently in force.
70.73 Bureau of Labor Statistics.
70.74 Employment Standards Administration.
70.75 Labor-Management Services Administration.
70.76 Manpower Administration.
70.77 Occupational Safety and Health Administration.
70.78 Bureau of International Labor Affairs.

AUTHORITY: The provisions of this Part 70 issued under 5 U.S.C. 301, 552, 559; 48 Stat. 583, as amended, 29 U.S.C. 9b; 65 Stat. 290, 31 U.S.C. 483a; Reorganization Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. Appendix; unless otherwise noted.

Subpart A—General

INTRODUCTORY

§ 70.1 Purpose and scope of this part.

This part contains the general rules of the Department of Labor providing for public access to information from records of the Department. These regulations implement 5 U.S.C. 552, the Freedom of Information Act, and the policy of the Department of Labor to disseminate information on matters of interest to the public and to disclose to members of the public on request all information contained in records in its custody insofar as is compatible with the discharge of its responsibilities and consistent with law. This part sets forth generally the categories of records accessible to the public, the types of records subject to prohibitions or restrictions on disclosure, and the places at which and procedure whereby members of the public may obtain access to and inspect and copy information from records in the custody of the Department of Labor. Rules providing for the copying of records made available for inspection and for special services furnished in locating and copying records and fees therefor are set forth in Subpart B. Rules applying the general provisions of this part to requests for disclosure of particular types of records concerned with certain specific programs

of the Department are set forth in Subpart C or in the titles and parts of the Code of Federal Regulations referred to in that subpart.

§ 70.2 Definitions.

As used in this part—

(a) The terms "agency," "person," "party," "rule," "rulemaking," "order," and "adjudication" have the meaning attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended.

(b) Having "custody" of a Government record means having such charge of it as to be responsible for keeping it available for governmental use as required and protecting, preserving, and exercising such control over it as may be necessary for that purpose. Custody of a record is not synonymous with, and does not require, actual physical possession of the record and a record may be in the custody of an office or officer at a place other than that where the record is located.

(c) The terms "disclosure officer" and "officer authorized to disclose information from Department records" refer generally to those officials in the Department of Labor to whom requests to inspect or copy record information in their custody may be addressed as provided in § 70.43 and who must pass on such requests as provided in §§ 70.46–70.49. The Solicitor of Labor, in the case of appeals as provided in §§ 70.50–70.52, and with respect to withdrawal of originals as provided in § 70.30, is the disclosure officer for such purposes, as is the Secretary of Labor when he takes action under § 70.30. As the head of the Department, the Secretary may invest any officer or employee of the Department with the authority to disclose information from particular records.

AVAILABILITY OF PUBLISHED INFORMATION

§ 70.5 Information published in the Federal Register.

(a) *General.* In accordance with the provisions of 5 U.S.C. 552(a)(1), basic information concerning the organization, operations, functions, substantive and procedural rules and regulations, officials, office locations, and allocation of responsibilities for functions and programs of the Department of Labor is published in the FEDERAL REGISTER for the guidance of the public. Among other things, such published information describes the central and field organization of the Department and its component units, identifies the persons in charge of its various programs and offices to whom submittals or requests may be made and from whom decisions may be obtained and the places at which they are stationed, outlines generally the course and method by which the various functions of the Department are channeled and determined, and makes plain the nature and requirements of available formal and informal procedures for official action. Indexes to the FEDERAL REGISTER are published in each daily issue and compiled currently on a monthly, quarterly, and annual basis.

Copies of the FEDERAL REGISTER and its indexes are available in many libraries, may be examined in reference facilities and offices of the Department of Labor in which reference copies are maintained, and may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. No formal request to examine documents published in the FEDERAL REGISTER is necessary to inspect them at the place where they are kept. Much of the information published in the FEDERAL REGISTER is available in compiled form as stated in paragraphs (b) and (c) of this section.

(b) *Government Organization Manual.* The Government Organization Manual, published annually as a special edition of the FEDERAL REGISTER provides a compact source of information concerning the general and field organization of the Department of Labor, location of Department offices, division of functions among various component units of the Department, and the names and addresses of major officers and those in charge of particular programs or offices. Copies of the Manual may be examined without formal request in any office of the Department of Labor and are available for purchase from the Superintendent of Documents.

(c) *Code of Federal Regulations.* Titles 20, 29, and 41 of the Code of Federal Regulations, which are revised annually, contain a compilation of documents published by the Department of Labor in the FEDERAL REGISTER which set forth substantive and procedural rules and regulations of the Department and statements of general policy or interpretations of general applicability formulated and adopted by the Department. The published rules include descriptions of forms available or the places at which forms and instructions for their use may be obtained, and provide guidance as to the scope and contents of any required papers, reports or examinations. Copies of the pertinent titles of the Code of Federal Regulations are available in many libraries and may be purchased from the Superintendent of Documents. Reference copies maintained in offices of the Department of Labor are available for examination without formal request.

§ 70.6 Information in Department of Labor publications.

Informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program, shall be available upon oral or written request so long as an adequate supply exists. Copies of informational publications of the Department which may be purchased from the Superintendent of Documents may be inspected in those offices of the Department in which reference copies are available. Compliance with the formal procedures provided in this part for obtaining access to Department records is not necessary for access to the foregoing materials.

INFORMATION AVAILABLE ON REQUEST

§ 70.11 Policy of disclosure.

Upon the request of any person for identifiable records of the Department of Labor in the custody of any official of the Department, such records shall be made available as provided in this part for inspection and copying unless specifically exempt from disclosure under the provisions of 5 U.S.C. 552, subsection (b) thereof, and §§ 70.21 through 70.28. Except in the case of records of which disclosure is prohibited, as described in § 70.21, each officer of the Department authorized to disclose information from Department records under the provisions of this part shall make available for inspection and copying pursuant to the applicable procedures any document from the records in his custody if he determines that, notwithstanding the applicability or possible applicability of an exemption from disclosure, the requested inspection or copying furthers the public interest and does not impede the discharge of any of the functions of the Labor Department. To provide for a maximum of availability of Department records under the foregoing policy, the provisions of § 70.29 will be applied where appropriate. Rules to effectuate the application of this policy of disclosure to specific types of information from Department records are set forth in §§ 70.12 through 70.15.

§ 70.12 Records of administrative proceedings.

(a) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by the Department of Labor in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof shall be made available for public inspection and copying at reasonable times during business hours by the officer responsible for their custody at the place where such records are kept. Arrangements for such inspection may be made in response to oral requests, but a register shall be kept identifying the persons who inspect the records and the times at which they do so. Official records of other rulemaking proceedings shall be made available in accordance with the policies set forth in § 70.11 and the special regulations contained or cited in subpart C.

(b) *Adjudication proceedings.* All final opinions, including concurring and dissenting opinions, as well as orders, made in the administrative adjudication of cases, shall be made available for inspection and copying upon request pursuant to the provisions in this part. Except where an exemption provided by 5 U.S.C. 552 must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of functions of the Department of Labor,

all papers and documents made a part of the official record in adjudication proceedings conducted by the Department shall be made available for public inspection and copying on request as provided in this part or in specific regulations pertinent to such adjudications as referred to in Subpart C.

§ 70.13 Evaluation reports on external programs.

Except in the case of records of which disclosure is prohibited, as described in § 70.21, each officer of the Department authorized to disclose information from Department records under the provisions of this part shall make available for inspection and copying, within 45 days after receipt thereof, any document or part thereof containing a final evaluation by an independent contractor of any external program or activity carried out by the Department of Labor, upon written request submitted as provided in this part.

§ 70.14 Policy statements and interpretations.

Statements of policy and interpretations affecting a member of the public which have been adopted by the Department of Labor or an Administration, Bureau, or Office thereof in connection with the administration of any program of the Department and which have not been published in the FEDERAL REGISTER shall be made available for public inspection and copying in accordance with the policy set forth in § 70.11 and the provisions and procedures in this part. The policies and interpretations made available pursuant to this section shall include any policy or interpretation concerning a particular fact situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. If the statement of policy or interpretation sought is contained in an available publication of the Department of Labor or has been placed in the public domain by release to private publishers of Government information services, it will be made available for examination in the form in which it was published or released without any formal request, at any office of the Department in which a copy or copies are kept.

§ 70.15 Staff manuals and instructions.

Any administrative staff manual or instruction to staff issued by the Department of Labor or an Administration, Bureau, or Office thereof in connection with the administration of any program of the Department, containing matter (such as statutory interpretations) affecting a member of the public shall be made available for public inspection and copying in accordance with the policy set forth in § 70.11 and the provisions and procedures in this part. Any special provisions for access to staff manuals and instructions applicable to specific programs may be ascertained by reference to Subpart C.

RESTRICTIONS ON DISCLOSURE

§ 70.21 Records not disclosable.

(a) Pursuant to the provisions of 18 U.S.C. 1905, every officer and employee of the Department of Labor is prohibited from publishing, divulging, disclosing, or making known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with the Department or any agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. No records of the Department of Labor shall be disclosed in violation of this provision of law.

(b) No records of the Department of Labor with respect to matters specifically required by statute to be kept secret shall be made available for inspection or copying under the provisions of this part. By virtue of the exclusionary language in 5 U.S.C. 552(b)(3) the disclosure requirements of the Freedom of Information Act do not apply to or authorize the disclosure of records with respect to any matters specifically exempted from disclosure by statute.

(c) No records of the Department of Labor with respect to matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy shall be made available for inspection or copying under the provisions of this part. Records concerning such matters are expressly excluded from the application of the disclosure requirements of the Freedom of Information Act by the provisions of 5 U.S.C. 552(b)(1).

§ 70.22 Records disclosure of which may be refused.

(a) *Records exempt from statutory disclosure requirements.* The Freedom of Information Act, as codified in 5 U.S.C. 552, lists nine categories of records (in 5 U.S.C. 552(b)) to which the disclosure requirements of the statute do not apply. The first and third of these relate to the records described in § 70.21 which are not disclosable because protected from disclosure by the express provisions of a statute or Executive order. The other seven categories of records excluded from the statutory disclosure requirements are set forth in §§ 70.23 through 70.28, inclusive. Information from records in these seven categories may, however, be made available for inspection and copying as provided in paragraph (b) of this section.

(b) *Disclosure of protected records; conditions precedent.* Although the Department of Labor is not required by the Freedom of Information Act to make available for inspection or copying any materials or documents included in its records which are within the categories

described in 5 U.S.C. 552(b) (2), (4), (5), (6), (7), (8), or (9) (see §§ 70.23-70.28), under the Department's disclosure policy set forth in § 70.11 particular records requested which come within these categories, or portions thereof, shall nevertheless be made available to the extent, but only to the extent, that the appropriate officer authorized to disclose information from Department records determines that the disclosure will further the public interest and will not impede the discharge of any of the functions of the Department of Labor. Such a determination shall be made with due regard not only to the public interest in accessibility to the people of information regarding operations of their Government but also to the public interest in protecting citizens from impairment of their rights to privacy or from harassment, injury, or the dissemination of information concerning them which is privileged or has been submitted by them to the Government on a confidential basis. In determining whether access to such records will be permitted, due consideration shall also be given to the public interest in preventing disclosure of information which would handicap, obstruct, or jeopardize effective performance of the Department's functions under statutes or Executive orders, including its duties with respect to law enforcement.

§ 70.23 Internal rules and practices.

(a) Pursuant to exemption (2) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are related solely to the internal personnel rules and internal practices of the Department may be refused. The records protected by this exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees. Also included are records concerning operating rules, practices, guidelines, and procedures for Departmental investigators, inspectors, compliance officers, examiners, and attorneys, the release of which would substantially impair the effective performance of their duties.

(b) The purposes of exemption (2) include the protection from public disclosure of any record that is designed only for the guidance of Department personnel, including internal rules and practices that cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Department function. A negotiator cannot bargain effectively if his instructions and limitations are known to the person with whom he is negotiating. Similarly, the effectiveness of an authorized but unannounced inspection or audit would be destroyed if the circumstances under which that inspection or audit is to be held become public knowledge.

(c) Although access to particular records concerning matters within the purview of exemption (2) may be permitted as provided in § 70.22 if the officer authorized to disclose records determines

that the disclosure would serve the public interest and not impede the discharge of any function of the Department, such a determination ordinarily cannot be made in the case of internal rules and instructions relating to investigations and enforcement activities concerned with questions of compliance with or violations of provisions of law.

§ 70.24 Trade secrets and privileged or confidential information.

(a) Pursuant to exemption (4) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are trade secrets, and of commercial and financial information obtained from a person and privileged or confidential, may be refused. Legal requirements of secrecy and prohibitions of disclosure may apply to such records as set forth in § 70.21. Disclosure shall be refused where these mandatory restrictions apply to the records sought. Even where denial of access is not required by these restrictions, access to records exempted from the disclosure requirements by exemption (4) cannot be granted under the policy expressed in §§ 70.11 and 70.22 unless the disclosure officer, in balancing the right of the public to know how the Government operates against the need of the Government to keep information in confidence and the right of the person from whom it was obtained to have privileges and confidences respected, is able to determine that disclosure will serve the public interest and not impede the discharge of any function of the Department of Labor.

(b) Information the disclosure of which may be refused pursuant to the exemption set forth in paragraph (a) of this section is, according to the legislative history, intended to include information customarily subject to a doctor-patient, lawyer-client, or other such privileged. Information "obtained from any person" would include information obtained from a person inside as well as outside the Government. The applicability of this exemption does not depend on whether the record contains information obtained from the public at large, from a particular person, from within the Department, or from another agency. While information which is confidential in the hands of one agency retains its protected character in the hands of agencies to which it is subsequently furnished, the exemption does not sanction the rendering of documents confidential by the expedient of transferring them among agencies. Except as otherwise provided in this part (e.g. § 7013), disclosure in certain circumstances may be refused of material such as formulae, designs, drawings, research data, and the like, which are significant not as records but as items of valuable property. These may have been developed by or for the Government for its use and at its expense. Nothing in the legislative history suggests that the Freedom of Information Act was intended to give away such valuable property to any person willing to pay the price of making a copy. Where similar property in private hands would be held

in confidence, the public interest would appear to require that such property in the hands of an agency should be protected under exemption (4). This exemption is further intended to extend protection to other information in Government records which has been furnished and accepted in confidence and which would not customarily be released to the public by the person from whom the Government obtained it. See, for example, the House Report (H. Rept. 1497, 89th Cong., second sess.) and the President's signing statement. Accordingly, the exemption assures the confidentiality of information thus obtained by the Department of Labor through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. Nothing in the Freedom of Information Act necessitates a disregard of the right of individuals or groups to rely in good faith on an understanding of confidentiality for which a Government agency has reasonably afforded a basis. Maintenance of citizens' respect for governmental fairness requires that such understandings be given due consideration. At the same time, Department representatives should be alert to discourage the development of such understandings where not clearly warranted by departmental responsibilities.

(c) Pursuant to exemption (8) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of any matter contained in, or related to, examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, may be refused. Exemption (8) emphasizes the application to financial institutions of the protection from disclosure afforded by the exemption set forth in paragraph (a) of this section, and makes plain the intent to protect information relating to such institutions which may be prepared for or used by any agency responsible for the regulation or supervision of such institutions. Access to any such information in records of the Labor Department will be refused where disclosure is not legally permitted or where a determination to disclose is inappropriate for reasons discussed in paragraph (a) of this section. In cases where another agency is concerned with information protected by exemption (8) in 5 U.S.C. 552(b) which is sought from records of the Department, the provisions of § 70.31 are also applicable.

§ 70.25 Inter-agency and intra-agency memoranda and letters.

(a) Pursuant to exemption (5) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than the agency in litigation with the agency may be refused. The exemption is intended essentially to protect the full and frank exchange in writing of ideas, views, and opinions necessary for the effective func-

tioning of the Government and the making of informed decisions by its officers.

(b) The protection from disclosure afforded by exemption (5) to the internal records of the Government described in paragraph (a) of this section is limited to those communications which, in litigation with a Government agency, would not be routinely available by law to another party to the proceeding. The legislative history and decisions of the courts make it clear that this provision is intended to insure that memoranda or letters not protected from disclosure by some other exemption would be available to the general public for inspection and copying if they "would routinely be disclosed" to such a party "through the discovery process" in such litigation. (See H. Rept. 1497, 89th Cong., second sess.) The internal memoranda and letters protected from disclosure by exemption (5) are accordingly those which would not be released as a matter of course in litigation where discovery is sought by a party other than the agency under the Federal Rules of Civil Procedure. Since the granting of discovery of internal documents is typically a very extraordinary step, not normally a "routine" one, it is only in a limited category of situations that such documents would be routinely available by law to another party in litigation with the agency.

(c) Examples of the type of record information protected from disclosure by the exemption set forth in paragraph (a) of this section include opinions, advice, deliberations, or recommendations made in the course of developing official action by the Department of Labor or any of its component units, and other internal communications which would not be routinely available through the discovery process to a party in litigation with the Government.

(d) In the case of inter-agency memoranda and letters protected by this exemption, the officer authorized to disclose records shall not make a determination to allow access to such matters under the policy set forth in §§ 70.11 and 70.22 if to do so would conflict with the provisions of § 70.31.

§ 70.26 Personnel, medical, and similar files.

(a) Pursuant to exemption (6) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" may be refused. In view of the Congressional concern expressed in the legislative history regarding the protection of individuals' privacy, each disclosure officer of the Department shall apply the disclosure policy set forth in §§ 70.11 and 70.22 with due regard to the apparent intent of the statutory language to characterize the invasion of personal privacy typically involved in disclosure of personnel and medical files as "clearly unwarranted." "Similar files" for which protection is provided under this exemption appear to refer to any files the disclosure of which would invade per-

sonal privacy to such a degree that the disclosure would be as "clearly unwarranted" as the disclosure of personnel or medical files.

(b) Among the records in Department files protected from disclosure by the exemption set forth in paragraph (a) of this section are (1) personnel and background records personal to any officer or employee of the Department, including his home address and telephone number; (2) medical histories and medical records concerning individuals; (3) any other detailed record containing personal information identifiable with a particular individual where it appears that this right to have such information protected from public dissemination is clear; and (4) private or personal information in other files which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains. Related regulations implementing this part and the application of this exemption to personal and medical information in the files of the Employment Standards Administration relating to claims of injured employees for workmen's compensation benefits are referred to in Subpart C.

§ 70.27 Investigatory files compiled for law enforcement purposes.

(a) Pursuant to exemption (7) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are "investigatory files compiled for law enforcement purposes" may be refused, "except to the extent available by law to a party other than the agency."

(b) The exemption set forth in paragraph (a) of this section expresses the public interest in preventing disclosure detrimental to law enforcement by the Government and in protecting the privacy of those who aid the Government in investigations instituted to determine whether laws have been violated. "Law enforcement" as used in the statute, according to the legislative history, is used in the broadest sense to include the enforcement not only of criminal statutes, but of all laws establishing rules of conduct, whether by statute or by Executive order or by a duly promulgated regulation having the force and effect of law. Moreover, "enforcement" is not limited to enforcement by adversary proceedings, and includes other types of Government law enforcement activities as well; the work of a policeman or a compliance officer is law enforcement even if he does not participate in adversary proceedings. On the other hand, "enforcement" does not include all activities conducted in order to carry out the laws, but only those intended to counteract past, present, or future violations.

(c) There is support for the position, which the Department of Labor believes is correct, that investigatory files "compiled" for law enforcement purposes continue to be protected from disclosure by this exemption whether or not proceedings are contemplated at the time of the investigation or are instituted thereafter.

A file is no less compiled for law enforcement purposes because after the compilation it is decided that there will be no enforcement proceeding; the privacy of informants may still need protection for their own, or the public, interest. An informant may not inform unless he knows that what he says is not available to private persons at their request. Documents in an investigatory file which would reveal the name of an informant may require protection in the public interest even years after the proceedings are concluded, since if disclosed it would soon become a matter of common knowledge and few individuals, if any, would come forth to embroil themselves in controversy or possible recrimination by notifying the Government of something which might justify investigation. Even more important in this day of increasing concern over the conflict between the citizen's right of privacy and the need of the Government to investigate, it is unthinkable that rights of privacy, whether of subjects or informants, should be jeopardized further by making investigatory files available to other persons.

(d) The protection afforded investigatory files under the exemption set forth in paragraph (a) of this section also extends, according to the legislative history, to those files related to the investigation which are prepared in connection with related Government litigation and adjudicative proceedings. One of the purposes of the exemption is to preserve the position of the Government in litigation or potential litigation, in accordance with the rules governing discovery in cases before courts and administrative agencies. While it confirms the availability to litigants of documents from investigatory files to the extent that Congress and the courts have made them available, it ensures that the litigant is not given any earlier or greater access to investigatory material than he would have directly in litigation or other enforcement proceedings.

§ 70.28 Well information.

Pursuant to exemption (9) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters consisting of geological and geophysical information and data, including maps, concerning wells, may be refused. This exemption supplements the exemption set forth in § 70.23 by removing any doubt that disclosure of this specific type of information is protected under the Act.

§ 70.29 Partial disclosure.

(a) *Deletions to protect personal privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, the officer authorized to disclose information from a record may delete identifying details when he makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, provided that in every case the justification for the deletion is fully explained in writing.

(b) *Records containing both disclosable and nondisclosable information.* If

a requested record contains some materials which are protected from disclosure and other materials which are not so protected, identifying details or protected matters shall be deleted whenever analysis indicates that such deletions are feasible. Whenever such deletions are made, the remainder of the records may be disclosed.

§ 70.30 Withdrawal of originals.

No document or record in the custody of the Department of Labor, or of any Administration, Bureau, Office, or officer thereof, shall on any occasion be taken or withdrawn by any agent, attorney, or any other person not officially connected with the Department; no exception will be made without the written consent of the Secretary or the Solicitor of Labor.

§ 70.31 Record of concern to more than one agency.

If the release of a record in custody of the Department of Labor would be of concern not only to the Department but also to another Federal agency, the record will be made available by the Department only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the Department in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the applicant will be so notified. The release of information received from another agency and the release to another agency of information collected from persons outside the Government shall be subject to the conditions and restrictions imposed by 44 U.S.C. 3508.

FACILITIES FOR DISCLOSURE

§ 70.35 Where information may be obtained.

(a) Any person desiring to examine or copy records of the Department of Labor known to be situated in any office of the Department may obtain from the head of such office, upon identification of the records sought, information as to whether such records are available for examination under the provisions of this part and any applicable supplemental regulations (see Subpart C) without the submission of a formal request or whether such a request must be submitted for consideration by an officer responsible for custody of the records under the procedures set forth in §§ 70.42-70.52. If such a request must be submitted, information as to the name, title, and address of the officer to whom it should be addressed will also be furnished. The officers to whom such requests should be addressed are identified in general terms in § 70.43. Such officers may provide access to records at the place where they are kept or, where appropriate, at another location.

(b) If the person desiring access to particular records is in doubt as to the place where they are kept or the Administration, Bureau, or Office of the Department listed in paragraph (d) of this section which is responsible for their

custody, the necessary information may be obtained by addressing an inquiry, identifying the records sought, to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 14th Street and Constitution Avenue, Washington, DC 20210.

(c) Public reference facilities for examination and copying of certain Department records are maintained in some offices. Their locations and the types of records available for examination therein may be ascertained by addressing an inquiry to the chief officer of the Administration, Bureau or Office listed in paragraph (d) of this section which has custody of records of the types sought to be examined, or by communicating with the nearest officer of such Administration, Bureau, or Office who is authorized to act on requests for its records. If the Administration, Bureau, or Office responsible for custody of the records is not known, the Assistant Secretary for Administration and Management will provide the necessary information on request.

(d) Offices in Washington, D.C., are maintained by the following component units of the Department of Labor. Field offices are maintained by some of these, as listed in the Government Organization Manual (see § 70.5(b)).

- (1) Office of the Secretary of Labor.
- (2) Office of the Solicitor of Labor.
- (3) Office of Information, Publications, and Reports.
- (4) Bureau of International Labor Affairs.
- (5) Bureau of Labor Statistics.
- (6) Employment Standards Administration.
- (7) Labor-Management Services Administration.
- (8) Manpower Administration.
- (9) Occupational Safety and Health Administration.
- (10) Employees' Compensation Appeals Board.
- (11) Wage Appeals Board.
- (12) Chief Hearing Examiner.

The heads of the foregoing administrations, bureaus, and offices shall make available for inspection and copying in accordance with the provisions of this part, records in their custody either directly or through their authorized representatives in particular offices and locations.

§ 70.36 Indexes of records.

Each officer identified in § 70.35 shall maintain and make available for public inspection and copying a current index of all materials in his custody which are required by 5 U.S.C. 552(a) (2) to be indexed. Each such officer shall forward a copy of each page of his index, including information as to pages which have become obsolete, to the Assistant Secretary for Administration and Management in the Main Labor Building, 14th Street and Constitution Avenue NW., Washington, DC 20210, who shall provide a central repository for, and make available for public inspection, all such indexes compiled by such officers.

PROCEDURE FOR DISCLOSURE

§ 70.41 Applicability of procedures.

Requests for inspection or copying of information from records in the custody of the Department of Labor which are identifiable and available under the provisions of this part shall be made and acted upon as provided in the following sections of this subpart. The prescribed procedure shall be followed in all cases where access is sought to official records pursuant to the provisions of the Freedom of Information Act, except with respect to records for which a less formal disclosure procedure is provided specifically in this part or in any supplemental regulation referred to in Subpart C. Officers and employees of the Department may be authorized by the Secretary, or by the head of the Administration, Bureau, or Office having custody of the record, to continue to furnish to the public, informally and without compliance with these procedures, information and copies from its records which prior to enactment of the Freedom of Information Act (5 U.S.C. 552) were customarily furnished in the regular performance of their duties.

§ 70.42 Submittal of requests for access to records.

Any person who desires to inspect or copy any record covered by this part, including any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved, shall submit a written request to that effect to the Administration, Bureau, or Office of the Department of Labor (see the listing in § 70.35(b)) which has custody of the record. Standard forms for making a request are not required.

§ 70.43 To whom to direct requests.

(a) A request for records in the custody of the Bureau of Labor Statistics shall be directed to the Commissioner of Labor Statistics, Department of Labor, 14th Street and Constitution Avenue NW., Washington, DC 20210. In the case of records in the custody of other Administrations, Bureaus, or Offices of the Department, the request shall be directed to the chief of the Administration, Bureau, or Office, unless the record asked for is kept in one of its field offices. If the desired record is kept in a field office, the request shall be directed to the field official having the principal responsibility to the Administration, Bureau, or Office for the custody of the records in that office, who may, for brevity, be referred to as the "responsible field official." The responsible field official may be identified as follows:

- (1) In the case of records kept in a regional office, the chief of such office.
- (2) In the case of records relating to compensation claims under laws providing compensation for work injuries to employees and under the War Hazards Act and Defense Base Act, the deputy commissioner of the district office in which the records are kept.
- (3) In the case of records kept in any other field office, the chief of the regional

office or of the highest field office which, pursuant to authority from the Administration, Bureau, or Office administering the program to which the record relates, is responsible for the direct supervision of operations under such program in the field office where the record is kept. If the person making the request does not know where the record is located, he may direct his request to the Assistant Secretary of Labor for Administration and Management, Department of Labor, 14th Street and Constitution Avenue NW., Washington, DC 20210, for appropriate handling.

(b) The Administrations, Bureaus, and Offices of the Department of Labor, referred to in paragraph (a) of this section, are listed in § 70.35(d). For purposes of submittals of requests for records under this section, the chief of the Office of the Secretary shall be considered to be the Assistant Secretary for Administration and Management, and the chief of the Office of the Solicitor shall be considered to be the Deputy Solicitor. The organization of the Department of Labor, its principal officers, and addresses of its regional and other field offices may be found in the "U.S. Government Organization Manual" referred to in § 70.5(b).

§ 70.44 Description of information requested.

Each request should describe the record or records sought in sufficient detail to permit identification and location thereof with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details.

§ 70.45 Deficient descriptions.

If the description is insufficient, the officer processing the request will notify the applicant and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist an applicant in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

§ 70.46 Requests for categories of records.

Requests calling for all records falling within a reasonably specific category will be regarded as conforming to the statutory requirement of "identifiable records" if the Department is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with Department operations because of staff time consumed or the resulting disruption of files. If undue disruption would result from fulfilling the request, the officer to whom the request was submitted shall give the applicant notice thereof and the opportunity to confer with him in an attempt to reduce the request to manageable proportions by reformulation and by outlining an orderly procedure for the production of the records.

§ 70.47 Time for reply to request.

(a) The officer passing upon the request shall do so as soon as practicable and within 15 working days of its receipt by him unless additional time is required for one of the following reasons:

(1) The requested records are stored in whole or part at other locations than the office having charge of the records requested.

(2) The request requires the collection of a substantial number of specified records.

(3) The request is couched in categorical terms and requires an extensive search for the records responsive to it.

(4) The requested records have not been located in the course of a routine search and additional efforts are being made to locate them.

(5) The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are (i) exempt from disclosure under the Freedom of Information Act and (ii) should be withheld as a matter of sound policy, or revealed with appropriate deletions.

(b) When additional time is required, the officer shall acknowledge the request in writing within the 15-day period, note the reason for the delay and approximate date the request may be expected to be acted upon. When a request is received at an office not having charge of the records, it shall promptly forward the request to the proper office and notify the applicant of the action taken.

(c) If the officer who must pass on the request does not reply to or acknowledge a request within the 15-day period, or fails to act within an extended deadline adopted for one of the reasons set forth herein, the applicant may petition the Solicitor of Labor, U.S. Department of Labor, Washington, D.C. 20210, for appropriate action on the request. Where a petition to the Solicitor complaining of an officer's failure to respond to a request or to meet an extended deadline for responding to a request does not elicit an appropriate response within 15 days, the applicant may treat his request as denied and file an appeal pursuant to § 70.50. Where a petition to the Solicitor complaining of an officer's imposition of an unreasonably long deadline to consider assertion of an exemption does not result in a properly revised deadline, the applicant may treat his request as denied after a reasonable period of time has elapsed from his initial request and he may then file an appeal.

§ 70.48 Action on request; protection of privacy.

(a) Except with respect to matters described in § 207.21, the officer to whom a request is made shall, if he is able to find the described document in his custody, apply the policy of disclosure set forth in §§ 70.11 and 70.22 and either grant the request in whole or in part upon making the required determinations, or deny the request in whole or in part to the extent authorized by §§ 70.22 and 70.29. An action granting a request shall not be subject to review.

(b) Where the identity of an applicant, or other identifying details related to a request, would constitute an unwarranted invasion of personal privacy if made generally available, as in the case of a request to examine one's own medical files, identifying details shall be deleted from copies of the request and written responses to it that are made available to requesting members of the public.

§ 70.49 Form of denials.

A reply denying a written request for a record or portion thereof shall be in writing and shall contain a brief statement of the reasons for the denial, including a reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record and an explanation of how the exemption applies to the matter withheld. The denial shall also include an outline of the appeal procedure available and note the ultimate availability of judicial review pursuant to 5 U.S.C. 552.

§ 70.50 Appeals from denial of requests.

An applicant whose request for a record or portion thereof has been denied pursuant to § 70.49 may file an appeal within 90 days from the date of the denial stating in writing the grounds for appeal, including any supporting statements or arguments. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, Washington, D.C. 20210. The Solicitor shall review the appellant's supporting papers and pass on the appeal. The decision of the Solicitor shall be the final action of the Department of Labor.

§ 70.51 Time for action on appeals.

Final action on the appeal shall be taken within 30 working days from the time of filing the appeal. Where novel and complicated questions have been raised or unusual difficulties have been encountered, the Solicitor may extend the time for final action for a reasonable period beyond 30 working days upon notifying the applicant of the reasons for the extension of time and the approximate date on which a final response will be forthcoming.

§ 70.52 Action on appeals.

In his review of the matter on appeal, the Solicitor is authorized to determine de novo, in the light of the disclosure policy set forth in § 70.11, whether the denial of appellant's request for access to records was proper and in accord with the applicable provisions of the statute and the pertinent regulations. The Solicitor shall issue a decision in writing granting or denying the appeal in whole or in part. If the appeal is denied wholly or in part, the decision shall set forth each exemption provided in 5 U.S.C. 552 which is relied on, how it applies to the record or portion thereof which has been withheld, and the reasons for asserting it. Copies of both grants and denials on appeal shall be collected in one file open to the public (subject to provisions of

§ 70.48(b)) and indexed according to the exemptions asserted and, to the extent feasible, according to the type of record requested.

Subpart B—Copies of Records and Special Services

§ 70.61 Manual copying.

Any document released for inspection under the provisions of this part may be manually copied by the requesting party. The Department shall provide facilities for copying such documents without charge at reasonable times during normal working hours.

§ 70.62 Special searching and copying services.

(a) Fee schedule: Except as otherwise provided in this section, the following schedule of fees to cover the Department's costs shall be applicable to the performance of special services required for the production and copying of records.

(1) For each one-quarter man-hour or fraction thereof spent in excess of the first quarter hour in searching for or producing a requested record \$1.

(2) For copies of documents, each page:

(i) Reproduction by person desiring copies, where Government reproduction equipment is available for use by any member of the public, e.g., coin-operated equipment \$0.10.

(ii) Reproduction by Government employees \$0.20.

(3) For certification of true copies, each \$1.

(4) For attestation under the seal of the Department, each \$3.

The maximum number of copies furnished of any document is 10. When costs of reproduction exceed \$200, the person desiring reproduction may request special rate quotation from the Office of the Assistant Secretary for Administration.

(b) Costs relating to deletion of non-disclosable materials. The time spent deleting nondisclosable materials shall be included in determining the cost of producing a requested record under paragraph (a) (1) of this section.

(c) When special circumstances, such as those covered by §§ 70.45 and 70.46, call for substantial amounts of time to be spent by higher-salaried professional, managerial, or program personnel in searching for or producing requested records, special rates not to exceed the cost of the Government of such services, taking into account the man-hours spent by such personnel, will be determined and charged.

(d) Rule of construction: In providing the foregoing fee schedule pursuant to the provisions of 5 U.S.C. 552(a) (3), it is the intent of this section to apply 29 U.S.C. 9(b) and the user charge statute (31 U.S.C. 483a) in accordance with the policy guidance set forth in Office of Management and Budget Circular No. A-25, "User Charges," which states generally that where services are provided that are above and beyond

those which accrue to the public at large, a charge should be imposed to recover the Government's cost of rendering the services. This section is not intended to require the charging of a fee under other circumstances; e.g., when reasonable quantities of the information have been printed or otherwise reproduced for the purpose of making it available to the public without charge.

(e) Services performed without charge:

(1) The fees set forth in paragraph (a) (1) of this section shall not be charged for the production of any requested record material maintained in a public reference facility of the Department or of any of its component units, or for searching for and producing any records available for public inspection without formal request pursuant to the rules in this part and supplemental regulations issued as provided in Subpart C, or for producing any record required by statute to be made available for inspection without charge. No charge under paragraph (a) (1) of this section shall be made for routine procurement for inspection from Department records, not requiring more than one-quarter man-hour of time, of any document required by the Freedom of Information Act to be made available for public inspection on request.

(2) The fees provided for copies in paragraph (a) (2) of this section do not apply to copies of materials reproduced for the purpose of distribution to the public without charge or to copies of published materials available for purchase from the Superintendent of Documents which the Department makes available in single copies or in limited quantities without charge to persons whose access to such materials may serve the public interest and assist the Department in administering statutes or carrying out programs for which it is responsible.

(3) In appropriate circumstances the disclosure officer may waive fees otherwise applicable under paragraph (a) of this section for services in producing and copying record information. Thus, where no major expenditure of staff time or burden on reproduction facilities is involved, single copies of disclosable documents readily accessible in Departmental files may be furnished without charge to persons properly and directly concerned with the matters therein (e.g., where an individual seeks a copy of a record pertaining to Departmental action or reference material directly concerning that individual), and to persons in special circumstances where inability to pay is demonstrated and it is clear that a significant public interest would be served by providing the service free of charge.

(f) Payment of fees: Payment of the fees set forth in paragraph (a) of this section shall be made in cash, by U.S. postal money order, or by check payable to the Secretary of Labor. An advance payment of the known and officially estimated fees shall be made or assured to the satisfaction of the disclosure officer prior to the performance of substantial

searching or copying services. Where the estimated fee paid in advance exceeds the fee chargeable under the schedule, the balance will be refunded. Requests may be made by mail for copies of documents made available for examination pursuant to this part, in which case any postal fees necessary for the type of transmittal requested which are in excess of domestic first-class postal rates shall be added to the per-page fee specified in the schedule, unless appropriate stamps or stamped envelopes are furnished with the request. Postage stamps will not, however, be accepted in lieu of cash, checks, or money orders as payment for fees specified in the schedule.

(g) *Transcripts of proceedings.* Copies of transcripts of hearings and other proceedings pertaining to matters within the purview of the Department of Labor or any of its programs and available for inspection and copying pursuant to the provisions of this part will be furnished upon payment of the fees set forth in paragraph (a) of this section in the case of transcripts prepared by employees of the Department. Copies of transcripts prepared by persons or firms reporting the proceedings under contract with the Department may be obtained upon application to the reporter and payment of the reporter's fees at the rate provided in the contract. The foregoing fees are not applicable to the furnishing of any copies of such transcripts to any persons entitled to receive such copies without charge pursuant to a regulation or order issued by the Secretary or his authorized representative.

§ 70.63 Certificates of authentication.

Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue certificates of authentication under the seal of the Department of Labor. The form of authentication shall be as follows:

I hereby certify, that _____ who signed the foregoing attestation, is now and was at the time of signing (title) _____ and has legal custody of the official documents of the U.S. Department of Labor therein attested and that full faith and credit should be given to his act as such.

In witness whereof, I _____ duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have hereunto subscribed by name and caused the seal of the Department of Labor to be affixed this _____ day of _____ 19 ____

(Authentication Officer, Department of Labor)

§ 70.64 Special studies and compilations.

Pursuant to the provisions of 29 U.S.C. § 9a the Department may, upon the written request of any person and within the discretion of the Secretary of Labor, conduct special statistical studies relating to employment, hours of work, wages and other conditions of employment, may prepare from its records statistical compilations, and may furnish transcripts of its studies, tables, and other

records, upon the payment of the actual cost of such work by the person requesting it. However, nothing in the Freedom of Information Act (5 U.S.C. 552) is construed to require the compiling of records or the preparation of documents other than those required to be published in the FEDERAL REGISTER.

Subpart C—Special Rules Applicable to Certain Specific Records

§ 70.71 Authority of Administrations, Bureaus, and Offices.

Each Administration, Bureau, Office, or other component unit of the Department of Labor for which an officer or officers have authority to issue rules and regulations may through such officers promulgate supplementary regulations, not inconsistent with this part, governing the disclosure of particular or specific records which are in the custody of that departmental unit. Subdivisions of the Department which do not or have not promulgated special supplementary regulations governing disclosure of particular records shall disclose such records pursuant only to the provision of Subparts A and B of this Part 70.

§ 70.72 Supplementary regulations currently in force.

Duly promulgated regulations currently in force governing the disclosure of records in the custody of a subdivision of the Department shall continue to be operative insofar as such regulations are consistent with the provisions of this part. Subdivisions of the Department which have promulgated supplementary regulations or to which special regulations apply are listed in this subpart.

§ 70.73 Bureau of Labor Statistics.

(a) The documents described in paragraph (b) of this section are in the custody of the Bureau of Labor Statistics at the address indicated. The right of inspection and copying provided in this Part 70 may be exercised at that office. See § 70.77(b) concerning rules specially applicable to the disclosure of statistical information compiled by the Bureau pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) Collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes, maintained by the Department of Labor pursuant to section 211 (a) of the Labor-Management Relations Act of 1947 (61 Stat. 156; 29 U.S.C. 181); other available statistical information, tables, studies, and reports, collected, collated, and published or reported by the Bureau of Labor Statistics pursuant to the provisions of title 29, chapter I of the United States Code. As required by the governing statute and as provided in § 70.21, requests to inspect or copy any such document shall be denied with respect to any specific information submitted to the Department in confidence.

ADDRESS

U.S. Department of Labor, Bureau of Labor Statistics, General Accounting Office, 441 G Street NW., Washington, DC 20212.

§ 70.74 Employment Standards Administration.

Records relating to compensation claims under statutes administered by the Employment Standards Administration for work injuries to employees and for detention benefits under the War Hazards Act may be made available for inspection as provided in 20 CFR 1.22, 31.22, 41.21, 51.1, 61.19, 81.1, and 91.1, and for copying as provided in Subpart B and the supplemental rules in 20 CFR 1.22.

(39 Stat. 749, 44 Stat. 1442, 56 Stat. 1033, 60 Stat. 1095, 80 Stat. 555; 5 U.S.C. 8149, 33 U.S.C. 939(a), 42 U.S.C. 1706)

§ 70.75 Labor-Management Services Administration.

(a) The following documents are in the custody of the Office of Labor-Management and Welfare-Pension Reports at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(1) Copies of the descriptions of welfare or pension benefit plans, amendments or modifications thereto, and entire or individual pages of annual financial reports thereon, filed pursuant to section 8(b) of the Welfare and Pension Plans Disclosure Act (72 Stat. 1002, 29 U.S.C. 307).

(2) Data and information contained in any report or other document filed pursuant to sections 201, 202, 203, 211, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 530, 79 Stat. 888; 29 U.S.C. 431-433, 441, 461).

(3) Data and information contained in any report or other document filed pursuant to the reporting requirements of Part 204 of this title, which are the regulations implementing Executive Order 11491. The reporting requirements are found in the following sections of Part 204 of this title: §§ 204.4, 204.5, 204.7, 204.8, 204.9, 204.11, 204.12, 204.14 through 214.17, and 204.20.

ADDRESS

U.S. Department of Labor, Office of Labor-Management and Welfare-Pension Reports, Public Documents Room, 8701 Georgia Avenue, Silver Spring, MD 20910.

(b) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 79 Stat. 888, 29 U.S.C. 431-433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management and Welfare-Pension Reports shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or;

(2) Require the person who filed such reports and documents, to furnish such copies or information and data directly to the State agency thus designated.

(72 Stat. 999, 73 Stat. 529, 76 Stat. 36; 29 U.S.C. 304, 438)

§ 70.76 Manpower Administration.

(a) Disclosure of record information in the custody of the Department of Labor respecting claims for unemployment compensation by Federal civilian employees and ex-servicemen shall, pending the promulgation of appropriate regulations pursuant to § 70.71, be governed by the provisions of Subparts A and B. Disclosure of such information as is in the custody of a State agency is governed by regulations found in 20 CFR 609.26 and 614.18, respectively.

(b) Disclosure of record information in the custody of the Department of Labor respecting all other claims for unemployment compensation shall, pending the promulgation of appropriate regulations pursuant to § 70.71, be governed by the provisions of Subparts A and B.

(c) Disclosure of record information in the custody of the Department of Labor respecting the counseling, testing and placement of job applicants through the U.S. Training and Employment Service shall, pending the promulgation of

appropriate regulations pursuant to § 70.71, be governed by the provisions of Subparts A and B. Disclosure of such information as is in the custody of a State agency is governed by regulations found in 20 CFR 604.16.

(d) Disclosure of information obtained by the Secretary of Labor respecting the administration of Neighborhood Youth Corps projects and Work Training and Experience programs under the Economic Opportunity Act of 1964 (78 Stat. 528; 42 U.S.C. 2701) is governed by regulations found in §§ 50.41 and 51.15 of this subtitle respectively.

(48 Stat. 113, 78 Stat. 528, 80 Stat. 590; 5 U.S.C. 8503, 29 U.S.C. 557, 42 U.S.C. 2701)

§ 70.77 Occupational Safety and Health Administration.

(a) Supplementary regulations governing the disclosure of records in the custody of the Occupational Safety and Health Administration pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 651) will be published in Part 1913 of this title.

(b) Disclosure of statistical information compiled by the Bureau of Labor Statistics pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 shall be governed by the supplementary regulations referred to in paragraph (a) of this section.

(84 Stat. 1600; 29 U.S.C. 657)

§ 70.78 Bureau of International Labor Affairs.

Special supplementary regulations governing the disclosure of records respecting the certification of eligibility to apply for worker assistance under the Trade Expansion Act of 1962 (76 Stat. 872; 19 U.S.C. 1801) and Executive Order 11075 (28 F.R. 473) may be found in §§ 90.18-19 of this title.

(76 Stat. 902; 19 U.S.C. 1801 note, 1802; E.O. 11075, 28 F.R. 473)

Signed at Washington, D.C., this 20th day of March 1972.

J. D. HOPGSON,
Secretary of Labor.

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