Federal Communications Commission

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 2910

A BILL TO PROVIDE FOR THE REGULATION OF INTERSTATE AND FOREIGN COMMUNICATIONS BY WIRE OR RADIO, AND FOR OTHER PURPOSES

MARCH 9, 10, 13, 14, AND 15, 1934

Printed for the use of the Committee on Interstate Commerce

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FEDERAL COMMUNICATIONS COMMISSION

FRIDAY, MARCH 9, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to call, at 10:30 a.m., in room 414, Senate Office Building, Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. A number of the Senators will be a little late, but they have sent word that they could be counted as a quorum.

This meeting has been called to hold hearings on Senate bill 2910, a bill to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes. It is a bill that has been prepared to carry out the desires of the President, primarily, in his message to Congress, to combine the regulatory powers now exercised in the Interstate Commerce Commission and Radio Commission over communications. I will have the bill printed in the hearings at this point.

(The bill referred to follows:)

[S. 2910, 73d Cong., 2d sess.]

A BILL To provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS

PURPOSES OF ACT; CREATION OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. For the purpose of regulating 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, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided.

APPLICATION OF ACT

SEC. 2. The provisions of this act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or

such transmission of energy by radio; but it shall not apply to persons engaged in wire or radio communication or transmission in the Philippine Islands or the Canal Zone, or to wire or radio communication or transmission wholly within the Philippine Islands or the Canal Zone.

DEFINITIONS

SEC. 3. For the purposes of this act—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, and services incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, and services incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted as provided in this act.

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (including the Philippine Islands and the Canal Zone), or from the District of Columbia to any other State, Territory, possession of the United States (including the Philippine Islands and the Canal Zone), or to the District of Columbia; or (2) between points within the same Territory, or possession (except the Philippine Islands and the Canal Zone), or the District of Columbia; or (3) between points within the United States but through a foreign country if the point of origin and the point of reception are not in the same State.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(g) "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Philippine Islands and the Canal Zone.

(h) "Common carrier" or "carrier" means any person engaged in communication by wire or radio, as a common carrier for hire, except where reference is made to common carriers not subject to this act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(i) "Stock" means capital stock, bonds, or other evidences of interest or indebtedness having voting privileges, whether general or limited.

(j) "Parent" means any person or group of persons controlling one or more corporations and/or the operations or management thereof, whether by ownership or control of stock, or by interlocking directorates, or otherwise. The ownership or control by any such person or group of persons of 15 per centum or more of the stock of any corporation shall be prima facie evidence of the control of such corporation and/or its operations or management by such person or group of persons. Each member of any such group shall be deemed to be a "parent." A corporation to which any such person or group of persons bears the relationship of parent shall be deemed to be a "subsidiary" of such person or group of persons.

(k) Two or more persons shall be deemed to be affiliated if they are members of a group, composed of a parent and its subsidiary or subsidiaries, or of a parent, its subsidiary or subsidiaries, and other corporations, of which each member except the parent is a subsidiary of some other member.

(l) "Person" includes an individual, partnership, association, joint-stock company, or corporation.

(m) "Corporation" includes any corporation, joint-stock company, or association.

(n) "Radio station" or "station" means a station equipped to carry on radio communication or radio transmission of energy.

(o) "Mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(p) "Land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(q) "Mobile service" means the radio-communication service carried on between mobile stations and land stations, and by mobile stations communicating among themselves.

(r) "Broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(s) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(t) "Amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(u) "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange.

(v) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(w) "State commission" means the commission, board, or official (by whatever name designated by the laws of a State) which under the laws of such State has regulatory jurisdiction with respect to intrastate operations of carriers.

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a) The Federal Communications Commission (in this act referred to as the "Commission"), shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing supplies or services to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this act, nor own stock or bonds of any corporation subject to any of the provisions of this act. Such commissioners shall not engage in any other business, vocation, or employment. Not more than four commissioners, nor more than one member of a division other than the chairman, shall be members of the same political party.

(c) The commissioners first appointed under this act shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office, but for no other cause. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission.

(d) Each commissioner shall receive an annual salary of $10,000, payable in monthly installments.

(e) The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States.

(f) Without regard to the civil service laws or the Classification Act of 1923, as amended, (1) the Commission may appoint and prescribe the duties and fix the salaries of a secretary, a chief engineer and one or more assistants, a general counsel and one or more assistants, experts, inspectors, and special counsel, and (2) each commissioner may appoint and prescribe the duties of

an assistant at an annual salary not to exceed $4,000 per annum. The general counsel and the chief engineer shall each receive an annual salary of not to exceed $9,000; and no assistant, expert, or inspector shall receive an annual salary in excess of $7,500 per annum. The Commission shall have authority, subject to the provisions of the civil service laws and the Classification Act of 1923, as amended, to appoint such other officers, examiners, and other employees as are necessary in the execution of its functions.

(g) The Commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for office supplies, law books, periodicals, and books of reference, and for printing and binding) as may be necessary for the execution of the functions vested in the Commission and as from time to time may be appropriated for by Congress. All expenditures of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees, under their orders, in making any investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose.

(h) Four members of the Commission shall constitute a quorum thereof and two members shall constitute a quorum of a division. The Commission shall have an official seal which shall be judicially noticed.

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this act, as may be necessary in the execution of its functions.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested.

(k) The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary: *Provided*, That the Commission shall make a special report not later than February 1, 1935, recommending such amendments to this act as it deems desirable in the public interest.

(l) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

(m) The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proofs or authentication thereof.

DIVISIONS OF THE COMMISSION; JURISDICTION OF COMMISSION AND DIVISION

SEC. 5. (a) The Commission shall be organized into three divisions which shall exercise the jurisdiction of the Commission as follows: (1) The radio division shall have jurisdiction of all matters relating to or connected with broadcasting, with amateur stations, and the mobile service; (2) the telephone division shall have jurisdiction of all matters relating to or connected with common carriers engaged in voice communication by wire or radio other than broadcasting; and (3) the telegraph division shall have jurisdiction of all matters relating to or connected with common carriers engaged in record communication by wire, radio, or cable. The chairman of the Commission shall be a member of all three divisions; two other commissioners, one of whom for each division shall be chosen vice chairman of the Commission presiding over the division, shall be assigned by the Commission as members of each division,

Except for the chairman no member of the Commission may be a member of more than one division; but in case of a vacancy in any division, or of absence or inability to serve thereon of any commissioner thereto assigned, any commissioner designated by the chairman for that purpose may temporarily serve on said division until the Commission shall otherwise order.

(b) The whole Commission shall have jurisdiction of (1) all matters arising under this act which do not fall within the jurisdiction of a division, as above prescribed; (2) all matters which fall within the jurisdiction of more than one division; and (3) teletype service, telephoto service, the regulation of charges made for the use of telephone wires in connection with broadcasting, and the provisions of this act relating to valuation of property of carriers, reports of carriers, parents, subsidiaries, and affiliated persons, and accounts, records, and memoranda, to be kept by carriers and depreciation charges in respect of property of carriers. In any case where a conflict arises under this section as to jurisdiction of any division the Commission shall decide which division shall have jurisdiction of the matter, and the decision of the Commission shall be final.

(c) Each division may (1) appoint a director, without regard to the civil service laws or the Classification Act of 1923, as amended, at an annual salary which shall not exceed $8,000 per annum; and (2) hear and determine, order, certify, report, or otherwise act as to any matter under its jurisdiction, and in respect thereof the division shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. Any action so taken by a division and any order, decision, or report made or other action taken by any of said divisions in respect of any matters assigned to it shall have the same force and effect, and may be made, evidenced, and enforced in the same manner as if made or taken by the Commission. The secretary and seal of the Commission shall be the secretary and seal of each division thereof.

(d) The director for each division shall exercise such of the functions thereof as may be vested in him by the division, but any order of the director shall be subject to review by the division under such rules and regulations as the Commission shall prescribe.

TITLE II—COMMON CARRIERS

SERVICE AND CHARGES

SEC. 201. (a) 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 the orders of the Commission, to establish through routes and charges applicable thereto, and to establish and provide facilities and regulations for operating such through routes, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: *Provided*, That messages by wire or radio subject to this act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of messages: *Provided further*, That nothing in this act shall be construed to prevent a common carrier subject to this act from entering into any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest.

DISCRIMINATION AND PREFERENCES

SEC. 202. (a) It shall be unlawful for any common carrier to discriminate in charges, practices, classifications, or regulations for or in connection with such communication service, by making or giving, directly or indirectly, by any means or device, any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or by subjecting any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or service, whenever referred to in this act, include charges for, or service in connection with, the use of wires in chain broadcasting or incidental to radio communication of any kind.

SCHEDULE OF CHARGES

SEC. 203. (a) Every common carrier shall file with the Commission and print and keep open to public inspection schedules showing all charges for wire or radio communication in interstate and foreign commerce between the different points on its own route and between points on its own system and points on the system of any other carrier subject to this act, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulations require, and each such schedule shall give notice of its effective date.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and regulations made thereunder; and no carrier shall (1) charge, demand, collect or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not comply with the provisions of this section or with any regulation of the Commission. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

HEARING AS TO LAWFULNESS OF NEW CHARGES; SUSPENSION

SEC. 204. Whenever there is filed with the Commission any new charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, but not for a longer period than three months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed change of charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its decision shall be

found not justified. At any hearing involving a charge increased, or sought to be increased, after the organization of the Commission, the burden of proof to show that the increased charge, or proposed increased charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

COMMISSION AUTHORIZED TO PRESCRIBE JUST AND REASONABLE CHARGES

SEC. 205. Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier is or will be in violation of any of the provisions of this act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge for such transmission other than the charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

LIABILITY OF CARRIERS FOR DAMAGES

SEC. 206. In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

COMPLAINTS AND SUITS FOR DAMAGES

SEC. 207. Any person claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

REPARATION PROCEEDINGS

SEC. 208. Any person, any body politic or municipal organization, or State commission or the similar agency of any Territory, complaining of anything done or omitted to be done by any common carrier subject to this act, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for any injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for this particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

ORDERS FOR PAYMENT OF MONEY

SEC. 209. If, after hearing on a complaint the Commission shall determine that any party complainant is entitled to an award of damages under the

provisions of this act, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

ACT NOT TO APPLY TO COMMUNICATION IN INTRASTATE COMMERCE

SEC. 210. Nothing in this act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, or regulations for or in connection with intrastate communication service of any carrier, or to any carrier engaged exclusively in intrastate commerce.

COPIES OF CONTRACTS TO BE FILED

SEC. 211. Every carrier subject to this act shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

INTERLOCKING DIRECTORATES—OFFICIALS DEALING IN SECURITIES

SEC. 212. After sixty days from the enactment of this act it shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this act, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any such carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carrier from any funds properly included in capital account.

VALUATION OF CARRIER PROPERTY

SEC. 213. (a) The Commission may from time to time, as may be necessary for the proper administration of this act, make a valuation of all or of any part of the property owned or used by any carrier subject to this act, which is used and useful in the public service, as of such date as the Commission may fix.

(b) The Commission may at any time require any such carrier to file with the Commission an inventory of all or of any part of the property owned or used by said carrier, which is used and useful in the public service, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such carrier shall file such inventory within such reasonable time as the Commission by order shall require.

(c) The Commission may at any time require any such carrier to file with the Commission a statement showing the original cost of all or of any part of the property owned or used by said carrier, which is used and useful in the public service. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a carrier under this paragraph shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

(d) Nothing shall be included in the original cost reported for the property of any carrier under paragraph (c) of this section on account of any ease-

ment, license, or franchise granted by the United States or by any State or political subdivision thereof, beyond the reasonable necessary expense lawfully incurred in obtaining such easement, license, or franchise from the public authority aforesaid, which expense shall be reported separately from all other costs in such detail as the Commission may require; and nothing shall be included in any valuation of the property of any carrier made by the Commission on account of any such easement, license, or franchise, beyond such reasonable necessary expense lawfully incurred as aforesaid.

(e) For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, the Commission may exercise all of the powers and authority conferred upon the Interstate Commerce Commission in its administration of section 19a of the Interstate Commerce Act, as amended, and it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers. The Commission, in making any such valuation shall be free to adopt any method of valuation which shall be lawful.

EXTENSION OF LINES AND CIRCUITS

SEC. 214. (a) No carrier shall undertake the extension of its line or circuits, or the construction of a new line or circuit, or shall acquire or operate any line or circuit, or extension thereof, or shall engage in transmission over or by means of such additional or extended line or circuit, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line or circuit.

(b) Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to and a copy filed with the Governor of each State in which such additional or extended line or circuit is proposed to be constructed or operated, with the right to be heard as provided with respect to the hearing of complaints; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county which said line or circuit will serve.

(c) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line or circuit, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or extension covered thereby. Any construction, operation, or extension contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for performing its service as a common carrier and to extend its line or circuits; but no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilties that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States $100 for each day during which such refusal or neglect continues.

(e) The authority conferred upon the Commission by this section shall not extend to the construction, operation, or extension of lines or circuits within a single State.

TRANSACTIONS RELATING TO SERVICES, EQUIPMENT, ETC.

SEC. 215. (a) The Commission may examine into transactions heretofore or hereafter entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the service rendered or to be rendered by such carrier in wire or radio communication subject to this act. When the Commission finds, after full opportunity for hearing, that any such transaction has affected or is likely to affect adversely the ability of the carrier to render adequate service of such character to the public, or may result in an undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service, the Commission shall, by order, declare such transaction void, or authorize such transaction to be carried out subject to such modification of its terms and conditions as it shall deem desirable in the public interest.

(b) Where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a parent or subsidiary of or person affiliated with such carrier, no such transaction shall be entered into, after the organization of the Commission, except with the approval of the Commission. The Commission shall, by order, after full opportunity for hearing, grant or withhold its approval, or condition its approval upon such modification of the terms of the transaction, as it shall deem necessary in the public interest.

(c) The Commission may require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

APPLICATION OF ACT TO RECEIVERS AND TRUSTEES

SEC. 216. The provisions of this act shall apply to all receivers and operating trustees of carriers subject to this act to the same extent that it applies to carriers.

LIABILITY OF CARRIER FOR ACTS AND OMISSIONS OF AGENTS

SEC. 217. In construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

INQUIRIES INTO MANAGEMENT

SEC. 218. The Commission may inquire into the management of the business of all carriers subject to this act, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in electrical communications to the end that the benefits of new inventions and developments shall be made available to the people of the United States. The Commission may obtain from such carriers and from parents and subsidiaries of, and persons affiliated with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

ANNUAL AND OTHER REPORTS

SEC. 219. (a) The Commission is authorized to require annual reports under oath from all carriers subject to this act, and from any parent or subsidiary of, or person affiliated with any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any; the number of stockholders (and the names of all holders of 5 per centum or more of any class of stock); the funded and

floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvement; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same as the Commission may require.

(b) Such reports shall be for such twelve months' period as the Commission shall designate and shall be filed with the Commission within 3 months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within 30 days from the time it is lawfully required so to do, such person shall forfeit to the United States the sum of $100 for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act; and such periodical or special reports shall be under oath whenever the Commission so requires. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

ACCOUNTS, RECORDS, AND MEMORANDA; DEPRECIATION CHARGES

SEC. 220. (a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(b) The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

(d) In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents.

such carrier or other person shall forfeit to the United States the sum of $500 for each day of the continuance of such offense.

(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $1,000 nor more than $5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts as hereinbefore provided except insofar as he may be directed by the Commission or by a court.

(g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) Nothing in this section shall (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier, the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices; or (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State law.

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this act, the Commission shall fix a time and place for a public hearing upon such application and shall thereupon give reasonable notice in writing to the Governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable. After such public hearing, if the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any act or acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection

the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies or wave length designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this act.

(3) Every license issued under this act shall be subject in terms to the right of use or control conferred by section 606 hereof.

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required hereby shall not be granted to or held by—

(1) Any alien or the representative of any alien;

(2) Any foreign government or the representative thereof;

(3) Any corporation organized under the laws of any foreign government;

(4) Any operating, controlling, holding, or other corporation of which any officer or more than one fifth of the directors are aliens, or of which more than one fifth of the capital stock may be owned or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any coporation or association controlled by, or subsidiary to a corporation or association, of which any officer or more than one fifth of the directors are aliens, or of which more than one fifth of the capital stock may be owned or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country: *Provided, however,* That nothing herein shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by act of Congress or any treaty to which the United States is a party.

(b) The station license required hereby, the frequencies or wave length or lengths authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any company, corporation, or association holding such license, to any person or corporation, unless the Commission shall, after a hearing, decide that said transfer is in the public interest, and shall give its consent in writing.

REFUSAL OF LICENSES AND PERMITS IN CERTAIN CASES

SEC. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, after this act takes effect, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person or corporation for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such firm, company, or corporation.

REVOCATION OF LICENSES; FINES IMPOSED BY COMMISSION

SEC. 312. Any station license may be revoked, or the station owner fined not to exceed $1,000 by the Commission for each and every day during which such offense occurs, for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, for violation of or failure to observe any of the restrictions and conditions of this act, or of any regulation of the Commission authorized by this act or by a treaty ratified by the United States, or whenever any Federal body in the exercise of authority conferred upon it by law shall find and shall certify to the Commission that any licensee bound so to do has failed to provide reasonable facilities for the transmission of radio communications, or that any licensee has made any unjust and unreasonable charge, or has been guilty of any discrimination, either as to charge or as to service or has made or prescribed any unjust and unreasonable classification, regulation, or practice with respect to the transmission of radio communications or service: *Provided, however*, That no license shall be revoked and no station owner fined until the licensee shall have been notified in writing of the proceedings for such revocation or fine, the cause for the proposed action, and shall have been given fifteen days to show cause why an order of revocation should not be issued or a fine or fines imposed.

APPLICATION OF ANTITRUST LAWS

SEC. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked, and that all rights under such license shall thereupon cease: *Provided, however*, That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

PRESERVATION OF COMPETITION IN COMMERCE

SEC. 314. After the passage of this act no person, firm, company, or corporation now or hereafter directly or indirectly through any subsidiary, associated, or affiliated person, firm, company, corporation, or agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share of any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States or in the District of Columbia and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person, firm, company, or corporation now or hereafter engaged directly or indirectly through any subsidiary, associated, or affiliated person, company, corporation, or agent, or otherwise, in the business of transmitting and/or re-

rving for hire messages by any cable, wire, telegraph, or telephone line or ystem (a) between any place in any State, Territory, or possession of the nited States or in the District of Columbia, and any place in any other State, erritory, or possession of the United States; or (b) between any place in ny State, Territory, or possession of the United States, or the District of olumbia, and any place in any foreign country, by purchase, lease, construcion, or otherwise, directly or indirectly acquire, own, control, or operate any ation or the apparatus therein, or any system for transmitting and/or receivg radio communications or signals between any place in any State, Territory, r possession of the United States or in the District of Columbia, and any lace in any foreign country, or shall acquire, own, or control any part of the ock or other capital share or any interest in the physical property and/or ther assets of any such radio station, apparatus, or system, if in either case he purpose is and/or the effect thereof may be to substantially lessen cometition or to restrain commerce between any place in any State, Territory, or ossession of the United States or in the District of Columbia, and any place n any foreign country, or unlawfully to create monopoly in any line of ommerce.

FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

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SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such station; and if any licensee shall permit any person to use a broadcasting station in support of or in opposition to any candidate for public office, or in the presentation of views on a public question to be voted upon at an election, he shall afford equal opportunity to an equal number of other persons to use such station in support of an opposing candidate for such public office, or to reply to a person who has used such broadcasting station in support of or in opposition to a candidate, or for the presentation of opposite views on such public questions. Furthermore, it shall be considered in the public interest for a licensee, so far as possible, to permit equal opportunity for the presentation of both sides of public questions.

(b) The Commission shall make rules and regulations to carry this provision into effect. No such licensee shall exercise censorship over any material broadcast in accordance with the provisions of this section. No obligation is imposed upon any licensee to allow the use of his station by any candidate or in support of or in opposition to any candidate, or for the presentation of views on any side of a public question.

(c) The rates charged for the use of any station for any of the purposes set forth in this section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs, and shall not be discriminatory as between persons using the station for such purposes.

LOTTERIES AND OTHER SIMILAR SCHEMES

SEC. 316. No person shall broadcast by means of any radio station for which license is required by any law of the United States, and no person, firm, or corporation operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes. Any person, firm, or corporation violating any provision of this section shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs.

ANNOUNCEMENT THAT MATTER IS PAID FOR

SEC. 317. All matter broadcast by any radio station for which service money or any other valuable consideration is directly or indirectly paid or promised for or charged or accepted by, the station so broadcasting, from any person, firm, company, or corporation, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person, firm, company, or corporation.

OPERATION OF TRANSMITTING APPARATUS

SEC. 318. The actual operation of all transmitting apparatus in any radi station for which a station license is required by this act shall be carrie on only by a person holding an operator's license issued hereunder. N person shall operate any such apparatus in such station except under and i accordance with an operator's license issued to him by the Commission.

CONSTRUCTION PERMITS

SEC. 319. (a) No license shall be issued under the authority of this act fo the operation of any station the construction of which is begun or is continue after this act takes effect, unless a permit for its construction has been grante by the Commission upon written application therefor. The Commission ma grant such permit if public convenience, interest, or necessity will be serve by the construction of the station. This application shall set forth such fact as the Commission by regulation may prescribe as to the citizenship, characte and the financial, technical, and other ability of the applicant to construct an operate the station, the ownership and location of the proposed station and o the station or stations with which it is proposed to communicate, the fre quencies and wave length or wave lengths desired to be used, the hours of th day or other periods of time during which it is proposed to operate the sta tion, the purpose for which the station is to be used, the type of transmittin apparatus to be used, the power to be used, the date upon which the station i expected to be completed and in operation, and such other information as th Commission may require. Such application shall be signed by the applican under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected t begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes no under the control of the grantee. The rights under any such permit shall no be assigned or otherwise transferred to any person, firm, company, or cor poration without the approval of the Commission. A permit for construction shall not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft. Upon the completion of any station for the construction or continued construction for which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall con form generally to the terms of said permit.

DESIGNATION OF STATIONS LIABLE TO INTERFERE WITH DISTRESS SIGNALS

SEC. 320. The Commission is authorized to designate from time to time radi stations the communications or signals of which, in its opinion, are liable t interfere with the transmission or reception of distress signals of ships. Suc stations are required to keep a licensed radio operator listening in on th wave lengths designated for signals of distress and radio communication relating thereto during the entire period the transmitter of such station in operation.

DISTRESS SIGNALS AND COMMUNICATIONS

SEC. 321. (a) Every radio station on shipboard shall be equipped to transm radio communications or signals of distress on the frequency or wave leng specified by the Commission, with apparatus capable of transmitting and r ceiving messages over a distance of at least one hundred miles by day or nigh When sending radio communications or signals of distress and radio commun cations relating thereto the transmitting set may be adjusted in such a mann as to produce a maximum of radiation irrespective of the amount of interferen which may thus be caused.

(b) All radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies or wave lengths which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with it instructions.

INTERCOMMUNICATION IN MOBILE SERVICE

SEC. 322. Every shore station open to general public service between coast and vessels at sea shall be bound to exchange radio communications or signals with any ship station without distinction as to radio systems or instruments adopted by such stations, respectively, and each station on shipboard shall be bound to exchange radio communications or signals with any other station on shipboard without distinction as to radio systems or instruments adopted by each station.

INTERFERENCE BETWEEN GOVERNMENT AND COMMERCIAL STATIONS

SEC. 323. (a) At all places where Government and private or commercial radio stations on land operate in such close proximity that interference with the work of Government stations cannot be avoided when they are operating simultaneously such private or commercial stations as do interfere with the transmission or reception of radio communications or signals by the Government stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time.

(b) The Government stations for which the above-mentioned division of time is established shall transmit radio communications or signals only during the first fifteen minutes of each hour, local standard time, except in case of signals or radio communications relating to vessels in distress and vessel requests for information as to course, location, or compass direction.

USE OF MINIMUM POWER

SEC. 324. In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired.

FALSE OR FRAUDULENT DISTRESS SIGNALS OR COMMUNICATIONS; REBROADCASTING OF PROGRAMS

SEC. 325. No person, firm, company, or corporation within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

CENSORSHIP; INDECENT LANGUAGE

SEC. 326. Nothing in this act shall be understood or construed to give the commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communications. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

USE OF NAVAL STATIONS FOR COMMERCIAL MESSAGES

SEC. 327. The Secretary of the Navy is hereby authorized unless restrained by international agreement, under the terms and conditions and at rates prescribed by him, which rates shall be just and reasonable, and which, upon

complaint, shall be subject to review and revision by the Commission, to us all radio stations and apparatus, wherever located, owned by the Unite States and under the control of the Navy Department (a) for the receptio and transmission of press messages offered by any newspaper published i the United States, its Territories or possessions, or published by citizens of th United States in foreign countries, or by any press association of the Unite States, and (b) for the reception and transmission of private commerci messages between ships, between ship and shore, between localities in Alask and between Alaska and the continental United States: *Provided*, That th rates fixed for the reception and transmission of all such messages, other tha press messages between the Pacific coast of the United States, Hawaii, Alask Guam, American Samoa, the Philippine Islands, and the Orient, and betwe the United States and the Virgin Islands, shall not be less than the rat charged by privately owned and operated stations for like messages and servic *Provided further*, That the right to use such stations for any of the purpos named in this section shall terminate and cease as between any countri or localities or between any locality and privately operated ships whenev privately owned and operated stations are capable of meeting the normal co munication requirements between such countries or localities or between a locality and privately operated ships, and the Commission shall have notifi the Secretary of the Navy thereof.

SEC. 328. This act shall not apply to the Philippine Islands or to the Can Zone. In international radio matters the Philippine Islands and the Can Zone shall be represented by the Secretary of State.

SPECIAL PROVISION AS TO PHILIPPINE ISLANDS AND CANAL ZONE

ADMINISTRATION OF RADIO LAWS IN TERRITORIES AND POSSESSIONS

SEC. 329. The Commission is authorized to designate any officer or employ of any other department of the Government on duty in any Territory possession of the United States other than the Philippine Islands and t Canal Zone, to render therein such services in connection with the admin tration of the radio laws of the United States as the Commission may prescrib *Provided*, That such designation shall be approved by the head of the depa ment in which such person is employed.

TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

JURISDICTION TO ENFORCE ACT, AND ORDERS OF COMMISSION

SEC. 401. (a) The district courts of the United States shall have jurisdicti upon application of the Attorney General of the United States at the requ of the Commission, alleging a failure to comply with or a violation of any the provisions of this act by any person, to issue a writ or writs of mandam commanding such person to comply with the provisions of this act; or, up application of the Commission, any injured party, or the United States by Attorney General, for the enforcement of an order or requirement of t Commission under the provisions of this act, regularly made and duly serv which any person has failed or neglected to obey while in effect, to enfor obedience to such order or requirement by writ of injunction or other prop process, mandatory or otherwise, to restrain such person, its officers, agen or representatives, from further disobedience of such order or requirement, to enjoin upon it or them obedience to the same.

(b) If any carrier fails or neglects to obey any order of the Commissi other than for the payment of money, while the same is in effect, the Comm sion or any party injured thereby, or the United States, by its Attorney Gener may apply to the appropriate district court of the United States for the enfor ment of such order. If, after hearing, that court determines that the order w regularly made and duly served, and that the carrier is in disobedience of t same, the court shall enforce obedience to such order by a writ of injuncti or other proper process, mandatory or otherwise, to restrain such carrier, officers, agents or representatives, from further disobedience of such ord or to enjoin upon it or them obedience to the same.

(c) The provisions of the Expediting Act, approved February 11, 1903, amended, and of section 238(1) of the Judicial Code, as amended, shall held to apply to any suit in equity arising under title II of this act, whe the United States is complainant.

APPLICATION OF DISTRICT COURT JURISDICTION ACT

SEC. 402. Suits to enjoin, set aside, annul, or suspend any order of the Commission under this act shall be brought in the several district courts of the United States, and the provisions of the District Court Jurisdiction Act (38 Stat. 219) are hereby made applicable to all such suits, and all references in said act to the Interstate Commerce Commission shall apply to the Commission. The provisions of said act as to venue of suits to enforce orders of the Interstate Commerce Commission are hereby made applicable to all suits to enforce orders of the Commission, made under the provisions of this act.

INQUIRY BY COMMISSION ON ITS OWN MOTION

SEC. 403. The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

REPORTS OF INVESTIGATIONS

SEC. 404. Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

REHEARING BEFORE COMMISSION

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto or any person or any State or political subdivision thereof, aggrieved or whose interests are adversely affected may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

MANDAMUS TO COMPEL FURNISHING OF FACILITIES

SEC. 406. The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this act, of any of the provisions of this act which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communica-

tion or transmission to the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined upon such terms as to security, payment of money into the court, or otherwise as the court may think proper pending the determination of the question of fact: *Provided further*, That the remedy hereby given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this act.

PETITION FOR ENFORCEMENT OF ORDER FOR PAYMENT OF MONEY

SEC. 407. If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the line of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated, except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

ORDERS NOT FOR PAYMENT OF MONEY—WHEN EFFECTIVE

SEC. 408. Except as otherwise provided in this act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, no less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

GENERAL PROVISIONS RELATING TO PROCEEDINGS—WITNESSES AND DEPOSITIONS

SEC. 409. (a) Upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Any member or examiner of the Commission, or the director of any division, when duly designated by the Commission for such purpose, may hold hearings, sign and issue subjenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Commission; except that in the administration of title III an examiner may not be authorized to exercise such powers with respect to a matter involving (1) a change of policy by the Commission, (2) the revocation of a construction permit or license, (3) new devices or developments in radio, or (4) a new kind of use of frequencies. In all cases heard by an examiner the Commission shall hear oral arguments on request of either party.

(c) Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpena the Commis-

sion, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

(d) Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any common carrier or licensee or other person, issue an order requiring such common carrier, licensee, or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States commissioner, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(f) Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(g) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(h) Witnesses whose depositions are taken as authorized in this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(i) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents before the Commission, or in obedience to the subpena of the Commission, whether such subpena be signed or issued by one or more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(j) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Commission, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) The Commission may refer any matter arising in the administration of this act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed, and any such board shall be vested with the same powers and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold a hearing as hereinbefore authorized. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory juridiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

JOINDER OF PARTIES

SEC. 411. (a) In any proceeding for the enforcement of the provisions of this act, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

(b) In any suit for the enforcement of an order for the payment of money all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit, the recovery, if any, may be by judgment in favor of any one of such plaintiffs against the defendant found to be liable to such plaintiff.

DOCUMENTS FILED TO BE PUBLIC RECORDS—USE IN PROCEEDINGS

SEC. 412. The copies of schedules, classifications, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers and other persons made to the Commission as required under the provisions of this act shall be preserved as public records in the custody of the Secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports, made public records as aforesaid certified by the Secretary, under the Commission's seal, shall be received in evidence with like effect as the originals: *Provided*, That the Commission may,

if the public interest will be served thereby, keep confidential any contract, agreement, or arrangement relating to wire or radio communication in foreign commerce when the publication of such contract, agreement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.

DESIGNATION OF AGENT FOR SERVICE

SEC. 413. It shall be the duty of every carrier subject to this Act, within sixty days after the taking effect of this Act, to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decision, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission or before any court, and to file such designation in the office of the secretary of the Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and process and orders, decisions, and requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the District of Columbia, with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Commission or court, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Commission.

REMEDIES IN THIS ACT NOT EXCLUSIVE

SEC. 414. Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

LIMITATIONS AS TO ACTIONS

SEC. 415. (a) All actions at law by carriers for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within three years from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subsection (b) or of the three-year period of limitation in subsection (c) a carrier begins action under subsection (a) for recovery of charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of the transmission of a message shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A petition for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transmission services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(h) The foregoing provisions of this section shall extend to and embrace cases in which the cause of action accrued prior to the passage of this act, as well as cases in which the cause of action accrues thereafter.

PROVISIONS RELATING TO ORDERS

SEC. 416 (a) Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

(b) The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(c) It shall be the duty of every common carrier, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect.

TITLE V—PENAL PROVISIONS—FORFEITURES

GENERAL PENALTY

SEC. 501. Any person who willfully does or causes or suffers to be done any act, matter, or thing, in this act prohibited or declared to be unlawful, or who willfully omits or fails to do any act, matter, or thing in this act required to be done, or willfully causes or suffers such omission or failure shall, upon conviction thereof, be punished for each offense, for which no penalty (other than a forfeiture) is provided herein, by a fine of not more than $10,000 or by imprisonment for a term of not more than three years, or both.

VIOLATIONS OF RULES, REGULATIONS, ETC.

SEC. 502. Any person who violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs.

FORFEITURE IN CASES OF REBATES AND OFFSETS, AND FOR VIOLATION OF CERTAIN ORDERS

SEC. 503. (a) Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any wire or radio communication in interstate or foreign commerce, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this act, shall in addition to any other penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section 201 or 204 of this Act shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

PROVISIONS RELATING TO FORFEITURES AND FINES

SEC. 504. (a) The forfeitures provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the line or system of the carrier runs. Such forfeitures shall be in addition to any other

general or specific penalties herein provided. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this act. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) All fines collected by the Commission shall be covered into the Treasury of the United States the first of each month.

VENUE OF OFFENSES

SEC. 505. The trial of any offense under this Act shall be in the district in which it is committed; or if the offense is committed upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall be first brought. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

TITLE VI—MISCELLANEOUS PROVISIONS

TRANSFER TO COMMISSION OF DUTIES, POWERS, AND FUNCTIONS UNDER EXISTING LAW

SEC. 601. (a) All duties, powers, and functions of the Interstate Commerce Commission with respect to telegraph lines and companies operating telegraph lines under the Government-aided Railroad and Telegraph Act, approved August 7, 1888, are hereby imposed upon and vested in the Commission.

(b) All duties, powers, and functions of the Postmaster General with respect to telegraph companies and telegraph lines under any existing provision of law are hereby imposed upon and vested in the Commission.

REPEALS AND AMENDMENTS

SEC. 602. (a) The Radio Act of 1927, as amended, is hereby repealed.

(b) The provisions of the Interstate Commerce Act, as amended, insofar as they relate to communication by wire or wireless, or to telegraph, telephone, or cable companies operating by wire or wireless, are hereby repealed.

(c) The last sentence of section 2 of the act entitled "An act relating to the landing and operation of submarine cables in the United States", approved May 27, 1921, is amended to read as follows: "Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission with respect to the transmission of messages."

(d) The first paragraph of section 11 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, is amended to read as follows:

"SEC. 11. That authority to enforce compliance with sections 2, 3, 7, and 8 of this act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers other than common carriers engaged in wire or radio communication; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:"

TRANSFER OF EMPLOYEES, RECORDS, PROPERTY, AND APPROPRIATIONS

SEC. 603. (a) All officers and employees of the Federal Radio Commission (except the members thereof, whose offices are hereby abolished) are hereby transferred to the Commission, without change in classification or compensation.

(b) There are hereby transferred to the jurisdiction and control of the Commission (1) all records and property (including office furniture and equipment, and including monitoring radio stations) under the jurisdiction of the Federal Radio Commission and (2) all records under the jurisdiction of the Interstate Commerce Commission relating to common carriers engaged in wire or radio communication, and of the Interstate Commerce Commission and the

Postmaster General relating to the duties, powers, and functions imposed upon and vested in the Commission by this act.

(c) All appropriations and unexpended balances of appropriations available for expenditure by the Federal Radio Commission shall be available for expenditure by the Commission in the same manner and to the same extent as if the Commission had been named in laws making such appropriations.

EFFECT OF TRANSFERS, REPEALS, AND AMENDMENTS

SEC. 604. (a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this act or in the exercise of duties, powers, or functions transferred to the Commission by this act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law.

(b) Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission by this act or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this act.

(c) All records transferred to the Commission under this act shall be available for use by the Commission to the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communications, and all orders of the Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this act.

UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 605. No person receiving or assisting in receiving any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purpose, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any message and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted message to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress.

WAR EMERGENCY—POWERS OF PRESIDENT

SEC. 606. (a) During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment

may be essential to the national defense and security shall have preference or priority with any carrier subject to this act. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is hereby authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 7 of an act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all offices and stations for wire or radio communication within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any such office or station and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such office or station and/or its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(d) The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto, but no allowance shall be included for the use of any radio frequency. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by paragraph 20 of section 24, or by section 145 of the Judicial Code, as amended.

EFFECTIVE DATE OF ACT

SEC. 607. This act shall take effect upon the organization of the Commission, except that this section and sections 1 and 4 shall take effect upon the enactment of this act. The Commission shall be deemed to be organized upon such date as four members of the Commission have taken office.

SEPARABILITY CLAUSE

SEC. 608. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SHORT TITLE

SEC. 609. This act may be cited as the "Communications Act of 1934."

The CHAIRMAN. The first witness I want to call this morning is Commissioner McManamy, chairman of the legislative committee of the Interstate Commerce Commission.

STATEMENT OF FRANK McMANAMY, CHAIRMAN OF THE LEGISLATIVE COMMITTEE OF THE INTERSTATE COMMERCE COMMISSION

Commissioner McMANAMY. Mr. Chairman and gentlemen of the committee, on request of the chairman I appear to present the views of the Interstate Commerce Commission with respect to the general features of the bill under consideration, S. 2910. As we understand the bill, it will create a Federal Communications Commission to regulate interstate and foreign communications by wire and radio and the transmission of energy by radio.

In order to more effectively and economically accomplish this purpose it is proposed to transfer to the Federal Communications Commission regulation of radio as at present exercised by the Federal Radio Commission and regulation of telephone, telegraph, and cable lines as at present exercised by the Interstate Commerce Commission. I make no comment with respect to the matters now under the jurisdiction of the Federal Radio Commission. What I shall say applies solely to matters to be transferred from the Interstate Commerce Commission which in general are included in titles II, IV, V, and VI of the bill. The Interstate Commerce Commission believes it to be sound public policy and in the interest of effective and economical regulation to consolidate under a single regulatory commission such closely related activities.

In addition to transferring the control presently exercised by the Interstate Commerce Commission over telephone, telegraph, and cable lines, the bill contains certain provisions, increasing the power of the regulatory commission over such activities for the purpose of making the control more complete and effective. This also appears to be sound public policy and in the interest of effective regulation.

I am not prepared at this time to discuss the details of the bill because of its complexity. It is at present, however, being studied by our legal department and by our legislative committee, and a complete report will be made to this committee direction attention to any changes which we may consider desirable or necessary in order to make the bill more effective and workable. This study of the bill has been delayed somewhat because our chief counsel has been engaged on cases before the United States Supreme Court and our legislative committee has been required to hear arguments on cases formerly docketed. It is hoped, however, to have this report ready to present in the very near future. (See p. 200.)

It is at once apparent that the bill covers a very important field and that the writer thereof has, very properly, we believe, used many of the provisions of the Interstate Commerce Act insofar as applicable as a foundation for the bill. This we believe to be advisable because much of the latter act has been construed judicially and a new act based thereupon with court interpretation of various provisions might not be subject to such involved litigation as usually follows the enactment of new laws. It is appreciated also that in covering a new field an act perfect in all details cannot at once be enacted, but that by the gradual process of exclusion and inclusion and as a result of experience gained thereunder amendments must be made thereto from time to time so as to express the legislative

policy. The work has been extremely well done but it is one of great difficulty because it involves not only rewriting the provisions of the Interstate Commerce Act to make them applicable to the regulation of a somewhat different industry, but also a check of the judicial interpretations of that act to determine the possible effect of the changes which are made. We shall do our best to be helpful to the committee in this respect.

The Interstate Commerce Commission has had a limited jurisdiction over telephone, telegraph, and cable companies, whether wire or wireless, since June 18, 1910. Annual and monthly reports are filed with us by 287 telephone companies and 13 telegraph and cable companies, and monthly reports are received from 103 telephone companies and 13 telegraph and cable companies. From the reports so filed selected financial data are compiled by our Bureau of Statistics and published in mimeographed form. The telegraph companies also file their tariffs with us under an order entered in Limitations of Liability in Transmitting Telegrams, 61 I.C.C. 541, requiring that such tariffs be filed with the Commission for its information. Complaints with respect to rates, charges, or service of telephone, telegraph, and cable companies have been rather infrequent, but a number of such have been filed and disposed of.

The CHAIRMAN. Mr. McManamy, would it interrupt you if I asked you a question there?

Commissioner MCMANAMY. No.

The CHAIRMAN. Mr. McManamy, your Commission administers the telephone and telegraph together, the regulation of telephone and telegraph together as one division, one department?

Commissioner MCMANAMY. Yes, sir.

The CHAIRMAN. Has the work been such as to require considerable effort or considerable work on the part of the members of the Commission?

Commissioner MCMANAMY. No, sir; I should say that so far as our control goes the work has been rather light. There have been very few complaints with respect to rates, and the principal formal proceedings before us have been related to consolidations.

Senator WHITE. Has there been any substantial body of complaints with respect to practices?

Commissioner MCMANAMY. No, sir. Under former paragraph (9), now paragraph (18), of section 5 of the Interstate Commerce Act 285 applications for authority to consolidate have been filed, 285 hearings have been held, 284 cases have been decided, one has been withdawn, and none are pending. These and other matters arising under the act have been handled as presented and our work in that respect is current. I might add that there has been a steady decrease in the number of applications filed, only six having been filed during 1933.

VALUATION

A somewhat different situation exists with respect to valuation. This is explained in our annual report for 1933, at page 76, where it is stated:

> Section 19a is applicable to all carriers subject to the provisions of the act. Insufficient appropriations have prevented us from proceeding with the valuation of carriers other than railroads with the exception of the Pullman and

telegraph companies. The valuation of these latter companies is being prosecuted as far as appropriations permit. Requests for additional appropriations to value other carriers such as pipe line and telephone companies have been made from time to time.

That ends the quotation from our annual report. In other words, the Commission has made no valuation of the property of telephone and radio companies nor is such valuation pending, and the Commission not only has advised Congress of this situation in its annual reports but also has so advised the Bureau of the Budget and congressional appropriation committees.

VALUATION OF TELEGRAPH PROPERTY

The Commission has completed the final valuation of all telegraph properties except those of the Western Union and Postal systems, and on those it has issued tentative valuations referred to later. The other companies are: Bridgton Telegraph Co., the report of which will be found in 121 I.C.C. 684; V.D. 944. Colorado & Wyoming Telegraph Co., 125 I.C.C. 95; V.D. 955. Continental Telegraph Co., 130 I.C.C. 672; V.D. 1010. Maryland & Delaware Telephone & Telegraph Co., 121 I.C.C. 51; V.D. 888. Mountain Telegraph Co., 125 I.C.C. 26; V.D. 956. Northern Telegraph Co., 125 I.C.C. 413; V.D. 953. Philadelphia, Reading & Pottsville Telegraph Co., 32 Val. Rep. 205; V.D. 1075. Vermont International Telegraph Co., 125 I.C.C. 164; V.D. 963.

Senator WHITE. Are those companies just named by you outside either the Western Union or the Postal systems?

Commissioner MCMANAMY. Yes, sir.

Senator WHITE. They are independent units?

Commissioner MCMANAMY. Yes, sir. The wholly owned telegraph and telephone property of all steam railroad carriers has been included in their final valuation reports. Such property consists of about 70,000 miles of pole lines. About 30,000 miles of pole lines are jointly owned by steam carriers and the Western Union Telegraph Co. With the exception of the above-referred-to property, all other telegraph property is owned and operated by the Western Union Telegraph Co. and the Postal Telegraph Co.

WESTERN UNION TELEGRAPH CO.

A tentative valuation report on the property of this company was served on the carrier on March 27, 1928. No final report has been made because the Western Union, in 1929, proposed that a new field inventory and report as of a current date would be of greater value, and, further, that it (the company) would make such inventory and furnish the Commission such data as might be necessary to compile a current report, the expense of the Commission being limited to expense of field representatives to check and verify the company's work. This proposal was agreed to. It is the procedure proposed in the bill now under consideration. The new inventory has been completed and field-checked, and the preparation of a current valuation report is now in process and it can be submitted before the close of this year. The property of the carrier consists of about 165,000 miles of pole line, with appurtenant wire, cable, equipment, etc.

POSTAL TELEGRAPH CO.

A tentative valuation report on the property of this carrier was served on the carrier on August 29, 1928. Final report has not been made for the same reasons as recited with respect to the Western Union. A new inventory and compilation of report on this carrier has not been commenced because our telegraph forces, limited by the necessity of reducing staff to meet reduced appropriations, has been completely occupied with the property of the Western Union. The Postal is under agreement to commence work whenever directed. Plans are under way to begin this work shortly. It is estimated that a complete report can be ready early next year. The Postal's property consists of approximately 29,000 miles of pole line wholly owned and used, 2,000 miles of pole line jointly owned, also a large amount of owned wire on poles of other companies.

This situation is directed to the attention of the committee because it will be necessary to determine whether this valuation work shall be completed by the Bureau of Valuation of the Interstate Commerce Commission or be turned over to the new commission for completion.

Another fact that will require consideration is that certain telegraph lines are owned by steam carriers and will have to be so valued, and certain telegraph property is jointly owned by steam carriers and telegraph companies. There is also property over which there is a hotly contested conflict between the telegraph companies (chiefly the Western Union) and the railroads which lies in the twilight zone of ownership and use with respect to which the Western Union has intervened in almost all of the larger railroad-valuation cases claiming ownership of the telegraph lines. It probably would not be advisable to attempt to cover this situation by amendment to the bill because of the practical difficulties that would be involved. The situation can probably be adequately handled by cooperation and consultation between the two commissions. Further discussion of this matter will be contained in our report on the bill, which will be made to the committee when our study of it has been completed. Until that study has been completed, this completes the statement which I desire to make.

The CHAIRMAN. That study, as I understand it, is an analysis of the bill?

Commissioner MCMANAMY. Yes, sir.

The CHAIRMAN. That is, those parts of the bill relating to the Interstate Commerce Commission's former policy?

Commissioner MCMANAMY. Yes, sir. In writing the bill it was necessary to leave out some of the language and change and shorten it, and we want to see just what the effect will be.

The CHAIRMAN. And that will be sent down to us as soon as it is ready?

Commissioner MCMANAMY. Yes, sir. I think it will be early in the week.

The CHAIRMAN. And it may be that we will want to call the chief counsel or the man that prepared it, either in open hearing or in executive session. I hope that may be possible?

Commissioner MCMANAMY. It will be.

The CHAIRMAN. It will be possible for you to let us use him if we get to the point where we want him?

Commissioner McMANAMY. Yes, sir; we will so arrange it.

The CHAIRMAN. Are there any questions?

Senator WHITE. You spoke about the properties of certain lines being in dispute as to ownership between the railroad companies and the wire companies, did I understand you?

Commissioner McMANAMY. Yes, sir.

Senator WHITE. And I also understood you to say that with respect to such disputed lines it might be left to conference between the two regulatory bodies?

Commissioner McMANAMY. No, not exactly that; that action with respect to the final valuation might be left to conference between the two regulatory bodies. I think that the ownership of the disputed properties will probably have to be settled in court or in formal procedure, at least. It is a question of ownership of the property and the telegraph company claims the ownership, although the property is based on railroad land in many cases. There are a great many complications in that situation.

Senator THOMPSON. Are those telegraph lines independent lines from the lines that are owned by the Union Pacific admittedly? Or are they the use that the telegraph line has of the lines of the Union Pacific?

Commissioner McMANAMY. The dispute that the question has been raised almost wholly by the Western Union Telegraph Co., and I cannot give you the information with respect to the different lines or the different locations, as to lines in dispute.

Senator THOMPSON. It was my supposition—I may be entirely wrong—that the two lines that you have not valued constitute the largest lines of the entire system, do they not, or do they?

Commissioner McMANAMY. They do.

Senator THOMPSON. And yet you have left those lines unvalued and have valued the others. What was the reason for that?

Commissioner McMANAMY. Well, the reason for that was the size of the job, Senator. We have been working on it with all the force that we have, and, of course, if we start on a small company and a large one, we complete the small one first. Now, as I have stated, we have the valuation work of the Western Union so that it can be completed in the fall, and the Postal early next year. We have done very much more work on them than we have on the small lines.

Senator THOMPSON. You have done work on them also?

Commissioner McMANAMY. The bulk of the work has been done. We are prepared to complete the valuation of those lines in a comparatively short time.

Senator WHITE. I understood you to say that this bill contains authority not now possessed by the Interstate Commerce Commission. I take it you refer to authority over the telephones and telegraphs?

Commissioner McMANAMY. Well, the authority is very much broader; yes.

Senator THOMPSON. Will that statement which you are to prepare at the suggestion of the chairman—will that statement indicate clearly to us what these additional powers are that are not now possessed by you?

Commissioner McMANAMY. Yes, sir.

Senator THOMPSON. And will it also show with respect to the matters concerning which you do now have some authority—will it show the changes from existing law?

Commissioner MCMANAMY. Yes, sir.

The CHAIRMAN. Thank you very much, Commissioner McManamy. We will now hear Judge Sykes, chairman Federal Radio Commission.

STATEMENT OF E. O. SYKES, CHAIRMAN FEDERAL RADIO COMMISSION

Mr. SYKES. Mr. Chairman and gentlemen, the Federal Radio Commission desires to express its endorsement of the creation of a Federal Communications Commission.

It has examined S. 2910 and desires to suggest the following changes giving its reasons therefor:

SECTION 5

(a) The jurisdiction given to the three divisions on page 12 should be changed as follows:

(1) The Radio *Broadcast* Division shall have jurisdiction over all matters relating to or connected with broadcasting and with *amateur service.*

(2) The Telephone Division shall have jurisdiction over all matters relating to or connected with common carriers engaged in telephone/ communications, other than broadcasting, by wire, radio, or *cable, including all forms of fixed and mobile radio telephone service when connected is effected with a public telephone network.*

Senator WHITE. May I interrupt you there to ask whether in this language you are reading you are proposing the precise language which you recommend, or simply stating the substance of it?

Mr. SYKES. Well, we have thought of the precise language, Senator, and we make that suggestion to you.

Senator WHITE. And this reflects your judgment as to what the precise language should be?

Mr. SYKES. Yes, sir.

Senator WHITE. I just wanted to make that clear.

Mr. SYKES. In other words, what we are doing there is, we are taking care of the mobile service, giving the telephone mobiles to the telephones, and the telegraph mobiles to the telegraphs.

The CHAIRMAN. But, judge, I may say that in this draft our intention was to cover the allocation of mobile services rather than anything else, and we left out the word "allocation." I note that you have no reference to the allocation of the radio services under the radio division. Do you not think that all of the allocations, all kinds of radio service, should be under this radio division?

Mr. SYKES. Well, when you get to the Mobile Telegraph and Telephone Service, they are so closely related, the Commission thought, the telephone on the one hand——

The CHAIRMAN (interposing). You are talking now of the common carrier feature? I am talking about the allocation of frequencies. You cannot certainly divide your power of allocating frequencies.

Mr. SYKES. When I come to the allocation of frequencies for services at a later period in our recommendations we are recommending

that the allocation of frequencies to services be done by the Commission en bank, rather than by a division of the commission?

The CHAIRMAN. All right. I thought you had left it out and I wanted to clear it up.

Mr. SYKES. Yes, that comes later.

(3) The telegraph division shall have jurisdiction over all matters relating to or connected with common carriers engaged in record communication by wire, radio, or cable, *including all forms of fixed and mobile radio telegraph service.*

REASONS

It is believed that this allocation of jurisdiction will result in a better coordination of related radio and wire services. Broadcasting is in itself an important subject and not related to the mobile services. The mobile services, however, are closely related to the radio services both telegraph and telephone.

The word "cable" is added to division (2) to make it similar to division (3). There is in existence, at least, one international telephone cable.

(b) At the end of line 5, page 13, add:

(2) The assignment of frequencies and/or bands of frequencies to the various radio services.

REASON

All radio services must use a common medium and the type of service is not necessarily the criterion of interference. This change will avoid conflicts of jurisdiction between divisions.

Line 6, page 13. Change (2) to (3).

Line 7, page 13. Change (3) to (4).

Delete, "teletype service, telephoto service."

REASON

These services are only two of many similar services which might be named and relate only to types of terminal equipment. They are forms of record communication. If permitted to be used by both telephone and telegraph companies, they come under the category of matters which fall within the jurisdiction of more than one division.

Lines 14 to 17, page 13. Amend the last sentence to read:

In any cases where a conflict arises under this section as to jurisdiction of any division *or where jurisdiction of a service is not allocated to a division by this act,* the Commission shall decide which division shall have jurisdiction of the matter, and the decision of the Commission shall be final.

REASON

There are several radio services now in existence which are not allocated to divisions by this bill. The character of these services changes from time to time and it is desirable to give the Commission authority to allocate them to the division to which they are most closely related. This allocation may change as the character of the service changes.

SECTION 211

Insert (a) before the word " Every " in line 21, page 22.
Add a paragraph to this section to read as follows:

The Commission shall have authority to require the filing of any other contract of any carrier and shall also have authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine.

REASONS

Many contracts are and will be made by carriers with persons other than carriers in relation to matters which may be investigated under the authority conferred upon the Commission by the act. No question should arise as to the authority of the Commission to compel the filing of such contracts.

SECTION 214

Add the following at the end of paragraph (a), page 26.

Provided, however, That the Commission may upon appropriate request being made, authorize temporary or emergency service preliminary to any proceeding under this section.

REASONS

Many cases arise where on short notice communication by means of wire, radio, or cable might be necessary and should be permitted without the formal proceeding required or intended by the section.

SECTION 301

Page 40, line 17, after vessel, add " or aircraft."
Line 18, delete " aircraft or."

Senator WHITE. What is that first suggestion under section 301?

Mr. SYKES. Page 40, line 17, after " vessel " add " or aircraft." The reason there is that aircraft of the United States as well as vessels go beyond the limits of the United States.

SECTION 307

Strike out all of paragraph (b), pages 46–47 and insert in lieu thereof the following:

In considering applications for licenses, or modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such a distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide an equitable distribution of radio service to each of the same.

REASONS

With slight changes, this is section 9 of the Radio Act of 1927 prior to its amendment. Developments during the past few years have made it possible to accurately measure radio broadcast service.

The provision of the bill which contains the " Davis Amendment " to the original section 9 of the Radio Act of 1927 is contrary to

natural laws and results in concentration of the use of frequencies in centers of population and a restriction of facilities in sparsely populated States, even though interference would permit the operation of one or more additional stations. Because of the size of the zones this distribution results in providing ample broadcasting service in small zones and lack of service in large zones. Experience has proved that the section as proposed is very difficult of administration and cannot result in "an equality of radio broadcasting service." In the provision suggested, service is made an important criterion, making it possible to carry out the statutory provisions of public interest, convenience and necessity without artificial restrictions. If the suggested provision is adopted, section 302 should be deleted since it would not be necessary.

Senator WHITE. Of course, section 302, while it serves as a basis for the Davis Equalization Amendment, also is the section which requires regional representation, upon which regional representation on the Board is set up.

The CHAIRMAN. We do not require that any more.

Mr. SYKES. In your present bill, though, you do not require the regional representation.

Senator WHITE. That is eliminated from the pending bill?

Mr. SYKES. Yes, sir.

The CHAIRMAN. I just want to comment that if it had not been for the Davis Amendment we might not have a Supreme Court interpretation of this law yet.

Mr. SYKES. Yes, sir.

The CHAIRMAN. It was on that question that the case went to the Supreme Court.

Mr. SYKES. Yes; that is very true. I might add there that I thoroughly agree that at the time the Davis Amendment was passed it was needed, but there has been——

The CHAIRMAN (interposing). It should not have been needed if the Commission had done the thing that you now argue will be done.

Mr. SYKES. Yes; that is true, Senator. I will have to admit that.

The CHAIRMAN. I was just wondering what assurance we have that a Commission in the future will be more satisfactory in its allocation of radio stations than it was before we adopted the Davis Amendment.

Mr. SYKES. I think we have had a lot of experience along that line, and I think the experience of the Federal Radio Commission will be worth a great deal to its successor here.

The CHAIRMAN. I think there is some truth in that.

Mr. SYKES. And in a nutshell there are lots of places in the United States where we can further utilize these radio facilities, where it looks like we are prohibited by the Davis amendment from so doing. For instance, the western zone, which under the law is to have one fifth of the facilities, in area is practically 49 percent of the area of the United States. Large States with a small population suffer under the present amendment.

Senator WHITE. Of course, I think we all recognize that the original zones set up without any definite thought in mind of the equalization amendment which came later—the zones were set up

originally largely for the reason that there might be regional representation on the Commission; when the equalization amendment came along we simply took that then set-up and used it as the basis.

Mr. SYKES. I thoroughly approve of the doctrine of regional representation on the five zones.

The CHAIRMAN. One of the troubles was that the very areas that he is complaining of under the Davis amendment do not get enough radio facilities, have even less than they had before we passed the Davis amendment.

Mr. SYKES. The zones and facilities are well equalized among the zones now.

The CHAIRMAN. Yes; I think that is true.

Mr. SYKES. Some States needing more radio and being able to give them that radio.

Senator CAPPER. Judge Sykes, have you had many complaints along that line from that section of the country?

Mr. SYKES. Not a great many. We have had some applications, Senator, and we know from our experience that they do need radio and could use it very nicely. Radio broadcasting, of course, I am speaking of.

If it should be concluded to retain paragraph (b) of this section, attention is called to the proviso beginning at line 17, page 47.

The clause beginning at line 26, page 47, and ending with the colon in line 3, page 48, should be deleted.

REASONS

Under this clause "additional stations" would not be counted as a part of the quota. Stations 2,200 miles separated from each other of equal power would render approximately equal primary service. Both should be counted as part of the quota of their respective States, otherwise inequalities with respect to other stations in the same State could exist.

Senator WHITE. As this provision is now, it retains the principle of the Davis amendment but permits the complete scrapping of it through the licensing of 250-watt stations?

Mr. SYKES. Well, yes; 250-watt stations would not be charged to the quota under this, where they should be put in. Now, there is a serious question there that the Commission discussed in considering this. If they are put in with regard to quota, after they are put in—and we approve, you understand, of the doctrine of further utilizing these radio facilities—if you can put a station in without interfering with the primary service area of existing stations, and that community needs radio, the law should be so elastic that the Commission can do it; but after you put them in, without regard to quota, the question then in counting quota after it is in is would you count it as quota? We came to the conclusion in our meeting discussing the bill the other day that it should be put in, that it should be counted to quota; otherwise that part of a station would occupy a preferred position from stations—for instance, if a station applied for the facilities of somebody—applied for the facilities of a particular station, they might say, "You can't get my facilities because they were put in here without regard to quota and should

not be charged to quota." Our interpretation of that was that if they were put in without regard to quota, however, after they were put in they should be on a parity with other stations, and that should be charged to quota.

Senator WHITE. Well, it would look to me that we should either repeal the equalization amendment, so-called, and go back substantially to the language of section 9 of the 1927 act, or we should not grant this permission for you to stick in these 250-watt stations wherever you want to. It seems to me we should follow either one course or the other.

Mr. SYKES. If some permission some way is not given though, Senator, the communities that I have been talking about would suffer for radio.

Senator WHITE. I am not indicating to you now that I would not be willing to accept your major recommendation, which, as I understand it, is to go back to substantially the provisions of the 1927 act. I do not mean to indicate at the moment that I would not go that distance, but I think we should adopt one or the other course and not try to mix them together.

The CHAIRMAN. There is no doubt about that at all. If the radio law had been properly interpreted as written in 1927, we would never have had all this trouble about quota. But that is all over.

Senator KEAN. How about a State where you take another State and grant them all the power stations and you practically ignore the one State where they cannot get but very limited time?

Senator WHEELER. That is because New Jersey is the place where New Yorkers sleep. [Laughter.]

Senator KEAN. What I complain of is that you grant people permission to erect stations in New Jersey and they have their studios in New York, and all the transmission is from New York, and they occupy New Jersey to the detriment of all local news.

Mr. SYKES. We have had a number of those cases, but New Jersey is just about to her quota now.

Senator KEAN. In what way do you mean her quota?

Mr. SYKES. Under the Davis amendment. Her quota of radio stations.

Senator KEAN. I know you mean that, but I mean to say the service of those stations. Are they local or are they New York stations that transmit from New Jersey? For instance, WJZ?

Mr. SYKES. That is charged to New York.

Senator KEAN. And WOR?

Mr. SYKES. That is charged to New Jersey.

Senator KEAN. Well, they have a place in New York where a large part of their entertainment comes from?

Mr. SYKES. Their principal studio is located in New Jersey.

Senator WHITE. You have no complaint at all. You ought to see what some of the Maine newspapers are writing about me because New Hampshire has been given a station. [Laughter.]

The CHAIRMAN. I think we had better get down to the bill, gentlemen. If you get to arguing about States, you will never get anywhere.

Mr. SYKES. As you gentlemen know, this is a very controversial subject, the question of broadcasting.

The CHAIRMAN. Let us go ahead with the discussion of the bill.

Mr. SYKES. I was reading the reasons for the clause beginning at line 26, page 47, and ending with the colon in line 3, page 48, being deleted. Under this clause "additional stations" would not be counted as a part of the quota. Stations 2,200 miles separated from each other of equal power would render approximately equal primary service. Both should be counted as part of the quota of their respective States, otherwise inequalities with respect to other stations in the same State could exist.

SECTION 325

Line 22, page 65, before the word "No" insert "(a)."

After line 4, page 66, insert the following:

(b) No person, firm, company, or corporation shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the commission upon proper application therefor.

(c) Such application shall contain such information as the commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof, with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

REASONS

Paragraphs (b) and (c) above were recently suggested as an amendment to section 28 of the Radio Act of 1927 by the Federal Radio Commission. The committee is familiar with this amendment, it having been reported to the Senate with amendment and passed. The Commission has found that radio broadcast transmitters have been located in foreign countries and programs therefor furnished largely from American studios when the party operating the station has been refused a permit to operate in this country.

SECTION 402

In line 5, page 70, after the word "Commission" insert comma and add:

except as to (1) any order denying any application for renewal of any existing radio station license, or (2) any order revoking such license.

Add the following to be known as paragraph (b):

(b) An appeal may be taken in the manner hereinafter provided from orders of the Commission to the Court of Appeals of the District of Columbia in the following cases:

(1) By any applicant for renewal of an existing radio station license whose application is refused by the Commission, and

(2) By any licensee of a radio station whose license is revoked by the Commission.

Such appeal shall be taken by filing with said court within 20 days after the decision complained of is effective, notice in writing of said appeal and a statement of the reasons therefor, together with proof of service of a true copy of said notice and statement upon the Commission. Unless a later date is specified by the Commission as part of its decision, the decision complained of shall be considered to be effective as of the date on which public announcement of the decision is made at the office of the Commission in the city of Washington.

Within 30 days after the filing of said appeal the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application involved or upon its order revoking a license, and also a like copy of its decision thereon, and shall within 30 days thereafter file a full statement in writing of the facts and grounds for its decision as found and given by it.

At the earliest convenient time, the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission and, in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 347 of title 28 by appellant, by the Commission, or by any interested party intervening in the appeal.

The court may, in its discretion, enter judgment for costs in favor of or against an appellant but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof. *Provided, however,* That this section shall not relate to or affect appeals which were filed in said Court of Appeals prior to the passage of this act.

Now, that follows practically, without reading, the present appeal law with reference to applications before the Commission. It takes away this, though: It takes away the right of an applicant for a new station to appeal. And I will read the reasons why we have made that recommendation:

Where the Commission enters an order affecting the renewal of a radio-station license or the revocation thereof the right to existence of a radio station is involved. No other order that could be entered under the jurisdiction conferred upon the Commission by the proposed communications act would affect the very right of existence of any carrier or other company. The proposal would reenact with some limitation section 16 of the Radio Act of 1927. Under this section the Commission has experienced good results. A consistent body of radio jurisprudence has grown up. A single court has become well informed concerning a technical subject. It would seem desirable to continue to afford a direct method of appeal in the two instances provided for and such continuance would not give rise to any claim of discrimination by other persons or carriers subject to the jurisdiction of the proposed Communications Commission.

Senator WHITE. Is this proposal section 16 of the Radio Act as we amended it in 1930?

Mr. SYKES. Yes, sir.

Senator WHITE. Does it correct the defect in that repeal provision through the omission of any reference to appeals from construction permit applications? Is that taken care of, or has practice taken care of that?

Mr. SYKES. It is left out.

Senator WHITE. That is because you feel that the situation has been taken care of by development?

Mr. SYKES. This is the idea, Senator: Applications for new stations, not existing stations, appeal is left out of this bill for them because they are not alive yet. Their life is not in jeopardy but only those that are existing.

Mr. WHITE. I am asking specifically about construction permits.

Mr. SYKES. No, sir.

Senator WHITE. In the amendment?

Mr. SYKES. The court has decided though that under that act there could be an appeal from the refusal.

Senator WHITE. That is, you feel that the court has taken care of what we thought was an omission in the 1930 provision?

Mr. SYKES. Yes; that is true. They have expressly taken care of that.

The conclusion as to terminology is merely a suggestion. In several places in the bill the words "wave length" is used either separately or in connection with the word "frequency." The word "frequency" is sufficient and preferable in every case.

Senator WHITE. That criticism, I think, is sound. I think the Chairman will recall that when we were working on this act in 1927 the word "frequency" was not quite so common as it is now.

The CHAIRMAN. We were not sure about it ourselves, sometimes. [Laughter.]

Mr. SYKES. That is pretty well settled internationally now.

The CHAIRMAN. Judge, there is one thing in the bill that was put in without it being intentional on the part of those of us who drew it, and somebody has called it to my attention. I want to get your reaction on it, and that is on page 9, line 12, somebody has called my attention to the fact that these excepted inspectors from the civil service. That was not intended—I mean it was not realized that that we were lifting them out of the civil service.

Mr. SYKES. We noticed that.

The CHAIRMAN. They are now under civil service?

Mr. SYKES. Yes, sir.

The CHAIRMAN. It is the opinion of the Commission that they should be retained in civil service, is it not?

Mr. SYKES. Well, if our engineers, who are technical men—they are really engineers, Senator—if our underengineers remain in civil service, I see no reason why those in the field should not be likewise under civil service.

The CHAIRMAN. I just want to say it was one of those things that we did not intend to change.

Mr. SYKES. I might call your attention here though that examiners are put under civil service. Under the old Federal Radio Commission they are lawyers, exempted from civil service. It might be well to clarify that and exempt from civil service—you might call them "lawyer-examiners", those who hold our hearings. They are not in civil service.

Senator WHITE. We exempted the general counsel from the civil service requirements, did we not?

Mr. SYKES. None of the lawyers, Senator, are under civil service.

Senator WHITE. We exempted them. But the engineering force is under civil service, is it not?

Mr. SYKES. Under this bill the chief engineer and the assistants are exempted from civil service.

Senator WHITE. But when we amended the law and authorized the designation and appointment of a chief engineer, we did not exempt him from civil service, did we?

Mr. SYKES. No, sir; they are under civil service now.

Senator WHITE. That is my recollection.

Senator WHEELER. Why should not all the lawyers excepting the chief counsel be under civil service?

Mr. SYKES. None of them are.

Senator WHEELER. Why should they not be, all excepting the chief counsel?

Mr. SYKES. I do not know why. They construed it that the lawyers are not under civil service. I do not know that any of the lawyers are.

Senator WHITE. I remember somewhat vaguely that at the time there was much litigation in prospect and much confusion as to the legal rights of licensees, and those who aspired to be licensees, and we anticipated the Commission would face a great many court controversies, and it was felt that the Commission ought to be permitted to get the best legal talent available, without regard to civil-service requirements.

Mr. SYKES. Well, it was recalled that none of our lawyers were under civil service, but everything else except our lawyers and examiners are.

Senator KEAN. While that may have applied when the Commission was first started and this whole thing was in an embryo state, has it not become so decided now that they could well be put under civil service?

Mr. SYKES. Well, we have had very satisfactory decisions on the law, and the radio act has been very well clarified by the courts, particularly the Supreme Court of the United States.

Senator KEAN. Then there is not so much need for lawyers at the present time, is there?

Mr. SYKES. Yes, we need them all the time. [Laughter.] We have controversies all the time, Senator, and keep our lawyers very busy.

The CHAIRMAN. You must remember that Chairman Sykes is a lawyer. [Laughter.]

Senator KEAN. Yes, I see.

Senator WHEELER. You need lawyers, not politicians, down there. [Laughter.]

Mr. SYKES. I might suggest too, Senator, when you establish a new bill you have got a lot more new law for the courts; although, as I understand this bill, a great deal of it is taken from the Interstate Commerce Act and the Radio Act, and there are a great many decisions on everything connected with them. We have carefully been through that and analyzed it.

The CHAIRMAN. Are there any further questions?

Senator WHITE. I take it, Mr. Chairman, that Judge Sykes will be available later?

The CHAIRMAN. Yes, or the chief counsel of the Commission who, I understand, did much of the detail work, and we can call him into executive session.

Mr. SYKES. Yes; we have had the bill analyzed and have a long report whenever you want to talk about that.

Senator WHITE. Last night was the first opportunity I have had to read this bill, and I worked on it until 12 o'clock, and I have got a great many notes here that sometime I want to ask somebody about, and I think Judge Sykes would be a very agreeable victim.

Mr. SYKES. I will be available any time, Senator, with pleasure.

Senator CAPPER. I would like to ask Judge Sykes if this system of unified Government regulation of wire and radio communication is in use in any other country?

Mr. SYKES. Most countries, Senator, most all of the principal countries in the world have one head of the department. The Government operates those things in a great many countries. It is practically unified in all of the great nations over the world.

Senator WHEELER. Most of the nations control them and own them, do they not?

Mr. SYKES. Yes, sir.

Senator WHEELER. That is what we should have in this country.

Mr. SYKES. Absolute control of them, anyway; one man to say what is to be done.

The CHAIRMAN. Thank you very much, Judge. We will now hear Mr. Bellows. Please give your name, position, and address, Mr. Bellows.

STATEMENT OF HENRY A. BELLOWS, CHAIRMAN LEGISLATIVE COMMITTEE OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Mr. BELLOWS. Mr. Chairman and gentlemen, my name is Henry A. Bellows. I am a resident of Washington, D.C. I appear before your committee as chairman of the legislative committee of the National Association of Broadcasters. For the purposes of the record, I desire to introduce a list of the officers, directors, and members of this association, and to call attention to the fact that on November 14, 1933, the National Recovery Administration certified that the National Association of Broadcasters "imposes no inequitable restrictions on admission to membership therein and is truly representative of the radio broadcasting industry." I should like to add that the National Association of Broadcasters has never paid me, and presumably never will pay me, anything, either directly or indirectly, for any services I have ever rendered to it. All of its committee chairmen are actively engaged in the radio broadcasting industry, and serve the association without remuneration.

THE PRESIDENT'S MESSAGE

In appearing before you as the representative of the broadcasting industry in opposition to certain features of S. 2910, I want to make it clear that the broadcasters are wholly in accord with what they conceive to be the purpose and intent of the President's mes-

sage sent to Congress on February 26, 1934, and consequently are likewise in complete accord with any legislation which carries out that purpose. Their objections, therefore, to S. 2910 are limited exclusively to such features of the bill as, in their judgment, are contrary to the clear intent of the President.

Permit me to quote three sentences from the message:

> I recommend that the Congress create a new agency to be known as the "Federal Communications Commission", such agency to be vested with the authority now lying in the Federal Radio Commission and with such authority over communications as now lies with the Interstate Commerce Commission.
>
> It is my thought that a new commission such as I suggest might well be organized this year by transferring the present authority for the control of communications of the Radio Commission and the Interstate Commerce Commission.
>
> The new body should, in addition, be given full power to investigate and study the business of existing companies and make recommendations to the Congress for additional legislation at the next session.

Gentlemen, we submit that the intent of this message is perfectly clear; that the proposed commission is to take over the present authority of, the authority now lying with, the Radio and Interstate Commerce Commissions for the control of communications and that additional legislation on the subject is expressly advised to be reserved to the next session of Congress, after the commission has had an opportunity for investigation and study.

I have here a list of the officers and directors of the National Association of Broadcasters, if you would like to have it, Mr. Chairman.

The CHAIRMAN. Without objection, it will be placed in the record at this point.

(The list referred to follows:)

OFFICERS AND DIRECTORS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

OFFICERS

President: Alfred J. McCosker, WOR, New York, N.Y.
First vice president: Leo Fitzpatrick, WJR, Detroit, Mich.
Second vice president: John Shepard, 3d, WNAC, Boston, Mass.
Treasurer: Isaac D. Levy, WCAU, Philadelphia, Pa.
Managing director: Philip G. Loucks, National Association of Broadcasters, Washington, D.C.

DIRECTORS

One-year term

Henry A. Bellows, Columbia Broadcasting System, Washington, D.C.
E. B. Craney, KGIR, Butte, Mont.
Walter J. Damm, WTMJ, Milwaukee, Wis.
Quin A. Ryan, WGN, Chicago, Ill.
W. W. Gedge, WMBC, Detroit, Mich.

Two-year term

J. Thomas Lyons, WCAO, Baltimore, Md.
Lambdin Kay, WSB, Atlanta, Ga.
C. W. Myers, KOIN, Portland, Oreg.
I. Z. Buckwalter, WGAL, Lancaster, Pa.
J. T. Ward, WLAC, Nashville, Tenn.

Three-year term

William S. Hedges, KDKA, Pittsburgh, Pa.
H. K. Carpenter, WPTF, Raleigh, N.C.
Arthur Church, KMBC, Kansas City, Mo.
Frank M. Russell, WRC, Washington, D.C.
I. R. Lounsberry, WGR-WKBW, Buffalo, N.Y.

ACTIVE MEMBERS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

WAAB---------- Bay State Broadcasting Corporation, Boston, Mass.
WAAF---------- Drovers Journal Publishing Co., Chicago, Ill.
WAAT---------- Bremer Broadcasting Corporation, Jersey City, N.J.
WAAW---------- Omaha Grain Exchange, Omaha, Nebr.
WABC---------- Atlantic Broadcasting Corporation, New York, N.Y.
WABI---------- First Universalist Society of Bangor, Bangor, Maine.
WADC---------- Allen T. Simmons, Akron, Ohio.
WAIU---------- Associated Radiocasting Corporation, Columbus, Ohio.
WAPI---------- WAPI Broadcasting Corporation, Birmingham, Ala.
WAVE---------- WAVE, Inc., Louisville, Ky.
WAWZ---------- Pillar of Fire, Zarephath, N.J.
WBBM---------- WBBM Broadcasting Corporation, Chicago, Ill.
WBBZ---------- C. L. Carrell, Ponca City, Okla.
WBCM---------- James E. Davidson, Bay City, Mich.
WBEN---------- WBEN, Inc., Buffalo, N.Y.
WBEO---------- Lake Superior Broadcasting Co., Marquette, Mich.
WBNS---------- WBNS, Inc., Columbus, Ohio.
WBNX---------- Standard Cahill Co., New York, N.Y.
WBOW---------- Banks of Wabash, Inc., Terre Houte, Ind.
WBRE---------- Louis G. Baltimore, Wilkes-Barre, Pa.
WBT----------- WBT, Inc., Charlotte, N.C.
WBTM---------- Piedmont Broadcasting Corporation, Danville, Va.
WCAE---------- WCAE, Inc., Pittsburgh, Pa.
WCAO---------- Monumental Radio Co., Baltimore, Md.
WCAU---------- WCAU Broadcasting Co., Philadelphia, Pa.
WCAX---------- Burlington Daily News, Inc., Burlington, Vt.
WCBA---------- B. Bryan Musselman, Allentown, Pa.
WCBM---------- Baltimore Broadcasting Corporation, Baltimore, Md.
WCCO---------- Northwestern Broadcasting, Inc., Minneapolis, Minn.
WCKY---------- L. B. Wilson, Inc., Covington, Ky.
WCLO---------- WCLO Radio Corporation, Janesville, Wis.
WCNW---------- Arthur Faske, Brooklyn, N.Y.
WCOA---------- Pensacola Broadcasting Co., Pensacola, Fla.
WCRW---------- Clinton R. White, Chicago, Ill.
WCSH---------- Congress Square Hotel Co., Portland, Maine.
WDAF---------- Kansas City Star Co., Kansas City, Mo.
WDAY---------- WDAY, Inc., Fargo, N.Dak.
WDBJ---------- Times-World Corporation, Roanoke, Va.
WDEL---------- WDEL, Inc., Wilmington, Del.
WDGY---------- Dr. George W. Young, Minneapolis, Minn.
WDOD---------- WDOD Broadcasting Corporation, Chattanooga, Tenn.
WDRC---------- WDRC, Inc., Hartford, Conn.
WDZ----------- James L. Bush, Tuscola, Ill.
WEAF---------- National Broadcasting Co., Inc., New York, N.Y.
WEAN---------- Shepard Broadcasting Service, Inc., Providence, R.I.
WEBC---------- Head of the Lakes Broadcasting Co., Superior, Wis.
WEBQ---------- Harrisburg Broadcasting Co., Harrisburg, Ill.
WEBR---------- Howell Broadcasting Co., Inc., Buffalo, N.Y.
WEEI---------- Edison Electric Illuminating Co. of Boston, Boston, Mass.
WEEU---------- Berks Broadcasting Co., Reading, Pa.
WEHC---------- Community Broadcasting Corporation, Charlottesville, Va.
WELL---------- Enquire-News Co., Battle Creek, Mich.
WENR---------- National Broadcasting Co., Inc., Chicago, Ill.
WESG---------- WESG, Inc., Elmira, N.Y.
WEVD---------- Debs Memorial Radio Fund, Inc., New York, N.Y.
WEW----------- St. Louis University, St. Louis, Mo.

WFAA—Dallas News-Journal, Dallas, Tex.
WFBC—Greenville News-Piedmont Co., Greenville, S.C.
WFBG—Gable Broadcasting Co., Altoona, Pa.
WFBL—Onondaga Radio Broadcasting Corporation, Syracuse, N.Y.
WFBM—Indianapolis Power & Light Co., Indianapolis, Ind.
WFBR—Baltimore Radio Show, Inc., Baltimore, Md.
WFDF—Flint Broadcasting Co., Flint, Mich.
WFI—WFI Broadcasting Co., Philadelphia, Pa.
WGAL—WGAL, Inc., Lancaster, Pa.
WGAR—WGAR Broadcasting Co., Inc., Cleveland, Ohio.
WGBF—Evansville on the Air, Inc., Evansville, Ind.
WGBI—Scranton Broadcasters, Inc., Scranton, Pa.
WGH—Hampton Roads Broadcasting Corporation, Newport News, Va.
WGN—WGN, Inc., Chicago, Ill.
WGR—Buffalo Broadcasting Corporation, Buffalo, N.Y.
WHAD—Marquette University, Milwaukee, Wis.
WHAM—Stromberg-Carlson Telephone Manufacturing Co., Rochester, N.Y.
WHAS—Louisville Times & Courier Journal Co., Louisville, Ky.
WHB—WHB Broadcasting Co., Kansas City, Mo.
WHBC—Rev. E. P. Graham, Canton, Ohio.
WHBF—Rock Island Broadcasting Co., Rock Island, Ill.
WHBL—Press Publishing Co., Sheboygan, Wis.
WHBU—Anderson Broadcasting Corporation, Anderson, Ind.
WHBY—WHBY, Inc., Green Bay, Wis.
WHDH—Matheson Radio Co., Inc., Boston, Mass.
WHFC—WHFC, Inc., Cicero, Ill.
WHK—Radio Air Service Corporation, Cleveland, Ohio.
WHN—Marcus Loew Booking Agency, New York, N.Y.
WHOM—New Jersey Broadcasting Corporation, Jersey City, N.J.
WHP—WHP, Inc., Harrisburg, Pa.
WIBA—Badger Broadcasting Co., Inc., Madison, Wis.
WIBM—WIBM, Inc., Jackson, Mich.
WIBW—Topeka Broadcasting Association, Inc., Topeka, Kans.
WICC—Bridgeport Broadcasting Station, Inc., Bridgeport, Conn.
WIL—Missouri Broadcasting Corporation, St. Louis, Mo.
WIND—Johnson-Kennedy Radio Corporation, Chicago, Ill.
WIP—Pennsylvania Broadcasting Co., Philadelphia, Pa.
WJAC—WJAC, Inc., Johnstown, Pa.
WJAG—Huse Publishing Co., Norfolk, Nebr.
WJAR—The Outlet Co., Providence, R.I.
WJAS—Pittsburgh Radio Supply House, Pittsburgh, Pa.
WJAY—Cleveland Radio Broadcasting Corporation, Cleveland, Ohio.
WJBK—James F. Hopkins, Inc., Detroit, Mich.
WJDX—Lamar Life Insurance Co., Jackson, Miss.
WJMS—WJMS, Inc., Ironwood, Mich.
WJR—WJR, The Goodwill Station, Inc., Detroit, Mich.
WJSV—Old Dominion Broadcasting Co., Washington, D.C.
WJZ—National Broadcasting Co., Inc., New York, N.Y.
WKBF—Indianapolis Broadcasting Co., Indianapolis, Ind.
WKBN—WKBN Broadcasting Corporation, Youngstown, Ohio.
WKBW—Buffalo Broadcasting Corporation, Buffalo, N.Y.
WKJC—Lancaster Broadcasting Service, Lancaster, Pa.
WKRC—WKRC, Inc., Cincinnati, Ohio.
WKY—WKY Radiophone Co., Oklahoma City, Okla.
WKZO—WKZO, Inc., Kalamazoo, Mich.
WLAC—Life & Casualty Insurance Co., Nashville, Tenn.
WLAP—American Broadcasting Corporation of Kentucky, Louisville, Ky.
WLBF—WLBF Broadcasting Co., Kansas City, Kans.
WLBW—Broadcasters of Pennsylvania, Inc., Erie, Pa.
WLIT—Lit Brothers Broadcasting System, Inc., Philadelphia, Pa.
WLS—Agricultural Broadcasting Co., Chicago, Ill.
WLTH—Voice of Brooklyn, Inc., Brooklyn, N.Y.
WLVA—Lynchburg Broadcasting Corporation, Lynchburg, Va.
WLW—Crosley Radio Corporation, Cincinnati, Ohio.

WMAL—National Broadcasting Co., Inc., Washington, D.C.
WMAQ—National Broadcasting Co., Inc., Chicago, Ill.
WMAS—WMAS, Inc., Boston, Mass.
WMAZ—Southeastern Broadcasting Co., Inc., Macon, Ga.
WMBC—Michigan Broadcasting Co., Detroit, Mich.
WMBD—Peoria Broadcasting Co., Peoria, Ill.
WMBG—Havens & Martin, Inc., Richmond, Va.
WMBI—Moody Bible Institute Radio Station, Chicago, Ill.
WMBQ—Paul J. Gollhofer, Brooklyn, N.Y.
WMC—WMC, Inc., Memphis, Tenn.
WMCA—Knickerbocker Broadcasting Co., Inc., New York, N.Y.
WMT—Waterloo Broadcasting Co., Waterloo, Iowa.
WNAC—Shepard Broadcasting Service, Inc., Boston, Mass.
WNAX—House of Gurney, Inc., Yankton, S.Dak.
WNBF—Howitt-Wood Radio Co., Inc., Binghamton, N.Y.
WNBH—New Bedford Broadcasting Co., New Bedford, Mass.
WNBR—Memphis Broadcasting Co., Inc., Memphis, Tenn.
WOAI—Southern Industries, Inc., San Antonio, Tex.
WOC-WHO—Central Broadcasting Co., Des Moines, Iowa.
WOKO—WOKO, Inc., Albany, N.Y.
WOL—American Broadcasting Co., Washington, D.C.
WOPI—Radiophone Broadcasting Station, WOPI, Inc., Bristol, Tenn.
WOR—Bamberger Broadcasting Service, Inc., New York, N.Y.
WORC—Alfred F. Kleindienst, Worcester, Mass.
WOW—Woodmen of the World Life Insurance Association, Omaha, Nebr.
WPEN—Wm. Penn. Broadcasting Co., Philadelphia, Pa.
WPG—WPG Broadcasting Corporation, Atlantic City, N.J.
WPRO—Cherry & Webb Broadcasting Corporation, Providence, R.I.
WPTF—WPTF Radio Co., Raleigh, N.C.
WQAM—Miami Broadcasting Co., Inc., Miami, Fla.
WRAK—WRAK, Inc., Williamsport, Pa.
WRAM—Wilmington Radio Association, Inc., Wilmington, N.C.
WRBL—WRBL Radio Station, Inc., Columbus, Ga.
WRC—National Broadcasting Co., Inc., Washington, D.C.
WREC—WREC, Inc., Memphis, Tenn.
WREN—Jenny Wren Co., Lawrence, Kans.
WRJN—Racine Broadcasting Corporation, Racine, Wis.
WRVA—Larus & Brother Co., Inc., Richmond, Va.
WSAI—Crosley Radio Corporation, Cincinnati, Ohio.
WSAR—Doughty & Welch Electric Co., Inc., Fall River, Mass.
WSB—Atlanta Journal Co., Atlanta, Ga.
WSBC—WSBC, Inc., Chicago, Ill.
WSFA—Montgomery Broadcasting Co., Inc., Montgomery, Ala.
WSGN—Southern Broadcasting Co., Inc., Birmingham, Ala.
WSJS—Winston-Salem Journal Co., Winston-Salem, N.C.
WSM—National Life & Accident Insurance Co., Nashville, Tenn.
WSMB—WSMB, Inc., New Orleans, La.
WSOC—WSOC, Inc., Charlotte, N.C.
WSPD—Toledo Broadcasting Co., Toledo, Ohio.
WSUN, WFLA—St. Petersburg Chamber of Commerce, St. Petersburg, Fla., and Clearwater Chamber of Commerce, Clearwater, Fla.
WTAG—Worcester Telegram Publishing Co., Inc., Worcester, Mass.
WTAM—National Broadcasting Co., Inc., Cleveland, Ohio.
WTAX—WTAX, Inc., Springfield, Ill.
WTIC—Travelers Insurance Co., Hartford, Conn.
WTMJ—Milwaukee Journal Co., Milwaukee, Wis.
WTOC—Savannah Broadcasting Co., Inc., Savannah, Ga.
WTRC—Truth Radio Corporation, Elkhart, Ind.
WWJ—Evening News Association, Inc., Detroit, Mich.
WWL—Loyola University, New Orleans, La.
WWRL—Long Island Broadcasting Corporation, Woodside, N.Y.
WXYZ—Kunsky-Trendle Broadcasting Corporation, Detroit, Mich.
KBTM—Beard's Temple of Music, Paragould, Ark.
KCMC—North Mississippi Broadcasting Corporation, Texarkana, Ark.

KDB—Santa Barbara Broadcasters, Ltd., Santa Barbara, Calif.
KDFN—Donald L. Hathaway, Casper, Wyo.
KDKA—National Broadcasting Co., Inc., Pittsburgh, Pa.
KDLR—KDLR, Inc., Devils Lake, N.Dak.
KDYL—Intermountain Broadcasting Corporation, Salt Lake City, Utah.
KECA—Earle C. Anthony, Inc., Los Angeles, Calif.
KERN—Bee Bakersfield Broadcasting Co., Bakersfield, Calif.
KFAB—KFAB Broadcasting Co., Lincoln, Nebr.
KFBB—Buttrey Broadcast, Inc., Great Falls, Mont.
KFBK—James McClatchy Co., Sacramento, Calif.
KFEL—Eugene F. O'Fallon, Inc., Denver, Colo.
KFI—Earle C. Anthony, Inc., Los Angeles, Calif.
KFJR—KFJR, Inc., Portland, Oreg.
KFJZ—Fort Worth Broadcasters, Inc., Fort Worth, Tex.
KFKA—Mid-Western Radio Corporation, Greeley, Colo.
KFNF—Henry Field Co., Shenandoah, Iowa.
KFPL—KFPL Broadcasting Station, Dublin, Tex.
KFPW—Southwestern Hotel Co., Fort Smith, Ark.
KFPY—Symons Broadcasting Co., Spokane, Wash.
KFRC—Don Lee Broadcasting System, San Francisco, Calif.
KFSD—Airfan Radio Corporation, San Diego, Calif.
KFSG—Echo Park Evangelistic Association, Los Angeles, Calif.
KFUO—Concordia Theological Seminary, St. Louis, Mo.
KFVD—Los Angeles, Broadcasting Co., Inc., Los Angeles, Calif.
KFVS—Hirsch Battery & Radio Co., Cape Girardeau, Mo.
KFWB—Warner Bros. Broadcasting Corporation, Los Angeles, Calif.
KFYO—Kirksey Bros., Lubbock, Tex.
KFYR—Meyer Broadcasting Co., Bismarck, N.Dak.
KGA—Northwest Broadcasting System, Inc., Spokane, Wash.
KGB—Don Lee Broadcasting System, San Diego, Calif.
KGBX—KGBX, Inc., Springfield, Mo.
KGCX—E. E. Krebsbach, Wolf Point, Mont.
KGEZ—Donald C. Treloar, Kalispell, Mont.
KGFJ—Ben S. McGlashan, Los Angeles, Calif.
KGFK—Red River Broadcasting Co., Inc., Moorhead, Minn.
KGFW—Central Nebraska Broadcasting Corporation, Kearney, Nebr.
KGGC—Golden Gate Broadcasting Co., San Francisco, Calif.
KGGF—Powell & Platz, Coffeyville, Kans.
KGHL—Northwestern Auto Supply Co., Inc., Billings, Mont.
KGIR—KGIR, Inc., Butte, Mont.
KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, Hawaii.
KGO—National Broadcasting Co., Inc., San Francisco, Calif.
KGRS—Gish Radio Service, Amarillo, Tex.
KGVO—Mosby's, Inc., Missoula, Mont.
KGW—Oregonian Publishing Co., Portland, Oreg.
KHJ—Don Lee Broadcasting System, Los Angeles, Calif.
KHQ—Louis Wasmer, Inc., Spokane, Wash.
KID—KID Broadcasting Co., Inc., Idaho Falls, Idaho.
KJBS—Julius Brunton & Sons Co., San Francisco, Calif.
KLUF—George Roy Clough, Galveston, Tex.
KLZ—Reynolds Radio Co., Inc., Denver, Colo.
KMAC—W. W. McAllister, San Antonio, Tex.
KMBC—Midland Broadcasting Co., Kansas City, Mo.
KMED—Virgin's Broadcasting Station, Medford, Oreg.
KMJ—James McClatchy Co., Fresno, Calif.
KMOX—Voice of St. Louis, Inc., St. Louis, Mo.
KOAC—Oregon State Agricultural College, Corvallis, Oreg.
KOH—The Bee, Inc., Reno, Nev.
KOIL—Mona Motor Oil Co., Council Bluffs, Iowa.
KOIN—KOIN, Inc., Portland, Oreg.
KOL—Seattle Broadcasting Co., Inc., Seattle, Wash.
KOMO—Fisher's Blend Station, Inc., Seattle, Wash.
KPO—National Broadcasting Co., Inc., San Francisco, Calif.
KPOF—Pillar of Fire, Denver, Colo.
KPQ—Wescoast Broadcasting Co., Wenatchee, Wash.
KPRC—Houston Printing Co., Houston, Tex.

KQV	KQV Broadcasting Co., Pittsburgh, Pa.
KQW	Pacific Agricultural Foundation, Ltd., San Jose, Calif.
KRSC	Radio Sales Corporation, Seattle, Wash.
KSD	The Pulitzer Publishing Co., St. Louis, Mo.
KSEI	Radio Service Corporation, Pocatello, Idaho.
KSL	Radio Service Corporation of Utah, Salt Lake City, Utah.
KSO	Iowa Broadcasting Co., Des Moines, Iowa.
KSOO	Sioux Falls Broadcasting Association, Sioux Falls, S.Dak.
KSTP	National Battery Broadcasting Co., St. Paul, Minn.
KTAB	Associated Broadcasters, Inc., San Francisco, Calif.
KTAR	KTAR Broadcasting Co., Phoenix, Ariz.
KTBS	Tri-State Broadcasting System, Inc., Shreveport, La.
KTUL	Tulsa Broadcasting Co., Inc., Tulsa, Okla.
KUJ	KUJ, Inc., Walla Walla, Wash.
KVOO	Southwestern Sales Corporation, Tulsa, Okla.
KVOS	KVOS, Inc., Bellingham, Wash.
KWCR	Cedar Rapids Broadcast Co., Cedar Rapids, Iowa.
KWEA	International Broadcasting Corporation, Shreveport, La.
KWG	Portable Wireless Telephone Co., Inc., Stockton, Calif.
KWK	Thomas Patrick Inc., St. Louis, Mo.
KWKH	International Broadcasting Corporation, Shreveport, La.
KWWG	Frank P. Jackson, Brownsville, Tex.
KXA	American Radio Telephone Co., Seattle, Wash.
	Electrical Research Products, Inc., New York, N.Y.
	Jansky & Bailey, Washington, D.C.
	M. A. Leese, Washington, D.C.
W2XR	Radio Pictures, Inc., New York, N.Y.
	RCA-Victor Co., Inc., Camden, New Jersey.
	Western Electric Co., New York, N.Y.
	World Broadcasting System, New York, N.Y.

Senator WHEELER. Some of us may not be here after the next session, you know. [Laughter.]

Mr. BELLOWS. That is possible, but we hope that will not apply to any members of this committee. [Laughter.]

It is our contention that S. 2910 does not conform to the terms of the President's message. By what we regard as in some instances fundamental changes in the present law relating to radio, it would vest in the new commission an authority quite different from the authority now lying with either of the existing commissions, and anticipate the action which the President has suggested for the next session of Congress, by materially modifying the law before the new commission has had any opportunity to make the investigation which the President recommends. It is on this basis, and on this basis alone, that the broadcasters come before you in opposition to certain features of S. 2910.

REPEAL OF THE RADIO ACT

Our essential objection to this bill concerns itself with just exactly 10 words out of its total of 100 pages.

These 10 momentous words appear as section 602 (a) on page 90. They are, "The Radio Act of 1927, as amended, is hereby repealed."

Gentlemen, we protest most earnestly against the repeal of the Radio Act of 1927, as amended. The President's message does not even suggest any such drastic action, nor does there appear to be any instant necessity which warrants it. The Radio Act of 1927, as amended, may not be perfect. Most of us could suggest ways in which we think it might be improved——

Senator WHITE (interposing). Might I interject right there that I have got a complete redraft of that section of that bill, 7716, omitting from it, however, all mistakes that the committee and Congress made.

Mr. BELLOWS. You have rewritten the bill entirely, Senator?

Senator WHITE. Yes. And it is a good job, too. [Laughter.] I have not introduced it yet.

The CHAIRMAN. It is worth noting that you have not introduced it so that anybody can see it. [Laughter.]

Mr. BELLOWS. Most of us could suggest ways in which we think it might be improved, though there would be wide disagreement among us as to these improvements, but the fact remains that for 7 years it has stood the tests of administration and of court action. If changes in it are desirable, we believe they should be made, as the President indicates, only after investigation and study by the new commission.

That there has been no urgent demand for any such changes appears from the history of recent bills to amend the Radio Act. There was no general outcry when, a year ago, H.R. 7716, the omnibus amending bill, failed of enactment. Congressman Bland reintroduced that same bill in the House on March 9, 1933, as H.R. 1735, and there has not been enough general interest manifested for the committee as yet to consider it. In the Senate the bill has not even been reintroduced at all. Almost every one recognizes that, despite minor defects, the Radio Act of 1927, as amended, and the court decisions under it, have established a solid workable and sound basis for Government regulation of radio.

It is this basis that we believe those 10 words on page 90 of S. 2910 would destroy. The bill creates a new agency of control, and then, notwithstanding the many inevitable problems of any new organization, it takes away its surest legal guide and repeals the act upon which, above all else, it should be able to rely. It confronts this new commission with a radio law differing in many and important respects from the one now in effect. The commission will have plenty of work to do, plenty of problems to solve, without being required to administer an untried an untested radio act in place of one which has come almost unscathed through 7 years of court tests.

And what is to be gained by repealing the Radio Act? Either it is incorporated bodily and unchanged in the new law, in which case nothing is accomplished by repealing it, or else the new law alters its provisions, in which case the bill not only goes counter to the President's suggestion, and legislates before investigation by the commission instead of after it, but also launches the new commission on a sea whereon there has been raised an artificial and a wholly needless storm.

No one can possibly foretell at this time what form this tremendously significant legislation will ultimately assume. No one can possibly, in advance, draft legislation which will adequately and fully define the activities, powers, and methods of this new commission. The commission itself must, after careful study and investigation, help in determining its legislative needs. The President has clearly indicated this, and yet S. 2910 seeks to rewrite the law before the commission is even set up.

If it is suggested that title III of this bill is really the Radio Act of 1927, with only a few minor changes, we want to urge upon you, from our years of practical experience in radio, that the changes are neither few nor minor; that one of them seems to us to under-

mine the whole legal structure which 7 years of work have painstakingly built up; that another converts an administrative commission with quasi-judicial functions into a criminal court with wide powers of summary punishment, while a third tends to deny to the commission the right of solving technical problems on the strength of technical evidence. But even if the changes proposed were less drastic, we would still contend that this is no time to repeal the Radio Act, that repeal is absolutely unnecessary, that it is contrary to the advice of the President, and that it means the imposition of a serious and needless handicap on the new commission.

Accordingly, gentlemen, in order to state exactly what we are suggesting, we ask you to strike out from S. 2910 the whole of title III, from page 39, line 12, through page 68, line 13; and on page 90, lines 6 and 7, we ask you to strike out the words "The Radio Act of 1927, as amended, is hereby repealed", and to substitute therefor the following language, taken from H.R. 8301, which, as you know, omits title III of the Senate bill:

> The Federal Radio Commission is hereby abolished, and all duties, powers, and functions of the Federal Radio Commission under the Radio Act of 1927, as amended, or under any other provision of law, are hereby imposed upon and vested in the Commission.

We ask you, in other words, to let this bill abolish the Radio Commission, as an obviously necessary move in setting up the new Federal Communications Commission, but to leave the Radio Act of 1927, as amended, to serve as a basis upon which the new commission can advise with Congress in the building of such further legal structures as the future may suggest.

SPECIFIC OBJECTIONS TO TITLE III

Of course, if the Senate decides to concur in the recommendation which we have just made, and strike out all of title III, it will not need to consider specific changes in the provisions of that title as it now stands. However, we want to point out certain of the respects in which title III differs from the present Radio Act, chiefly in order to make clear our reasons for contending that this bill, in varied and fundamental respects, is actually setting up a new and untried law in place of the tested and established one. Naturally, if the Senate does not completely eliminate title III, we hope that it will at least make it conform as closely as possible to the present law, but we cannot justify our contention that the Radio Act should not be repealed unless we demonstrate just how sweeping the changes proposed in this bill actually are. In doing this, we are going to reserve till the last all reference to the most far-reaching and, we believe, potentially disastrous change proposed in this bill—the denial under certain circumstances of any right of appeal to the courts.

Now, gentleman, the rest of this statement covers these changes in title III. The chairman has suggested that in order to expedite the hearing he would like to have us not take too much time, and I can summarize these statements, not very effectively, perhaps, or I can give you the whole thing. It will take probably 30 minutes more to give you the whole thing as it stands.

Senator WHEELER. I think you had better give us the whole thing.

The CHAIRMAN. I think that much of it can be summarized and we can print it in full in the record.

Senator WHEELER. It will never be read if it is simply printed in the record.

The CHAIRMAN. We will have to read it. We will have to take it up when we consider the bill. I have no objection to his going ahead if he wants to.

Senator WHEELER. I think we had better go ahead with it. Let us go ahead as far as we can.

The CHAIRMAN. Very well.

Mr. BELLOWS. May I make one suggestion on that? I would rather not do it that way, if you do not mind, because some of the most important things come at the end, and I do not want to get about half way through and then leave out the rest, because I have got certain things toward the end that are important. However, I will go ahead, and then if you want to shut me off I will summarize the rest.

TECHNICAL ADMINISTRATION

Let me begin with the material added to the present law which appears on page 47, lines 17 to 26, and page 48, lines 1 to 10.

The first of these new provisions declared, in effect, that no broadcasting channel shall be "cleared" for more than 2,200 miles airline.

Now, I have no opinion to express as to whether this mileage separation is good engineering or not. Very few people are sufficiently qualified as radio engineers to say whether the ideal separation for high-powered stations should be 2,200 miles, or 1,800, or 2,600.

What we all do know is that this is primarily a technical question. We also know that today's answer to any technical question in radio may be proved wrong tomorrow morning. And we all know how hard it is to get a law amended. For instance, there was a perfectly obvious error of draftsmanship in the amendment to section 16 of the Radio Act adopted July 1, 1930. Everybody knew it, everybody deplored it, everybody wanted it changed, but it is still there—and I may add that S. 2910 does not remedy this particular matter, as it omits section 16 entirely. But of that more presently.

Senator WHEELER. What was the reason for separating those, putting that in?

The CHAIRMAN. I would like to have the radio facilities of this country made use of by the whole country, instead of having them held up so that States on the Atlantic coast will not keep us from having a station on the Pacific coast on the same wave length.

Mr. BELLOWS. So would we.

The CHAIRMAN. We will never get it any other way.

Mr. BELLOWS. That is a question that we are raising here.

Gentlemen, if Congress is going to change its entire policy with regard to radio by legislating on purely technical matters, why set up a commission at all? If it fixes by statute the mileage separation between high-powered stations, why not do exactly the same thing for the regionals and locals? We have no specific quarrel with 2,200 miles, but we do protest most earnestly against this basic change in

the whole theory of the Radio Act. Up to now it has been the function exclusively of the Radio Commission to deal with all such matters; there is not a line in the present law even remotely resembling this new provision. We believe that the new commission should be free to deal with its technical engineering problem in its own way.

This is not a trivial issue, gentlemen; it is fundamental. So far Congress, and we think wisely, has kept away from all purely engineering questions with regard to radio, recognizing that the solution of such problems is exactly what the commission exists for. Very probably some of you do not like its specific solutions in some instances any more than we do, but it hardly seems to us that the answer is to deprive the Commission of the right and power to do its best according to the technical evidence before it. What this section of the bill actually does is to put Congress into the electrical-engineering profession, with a provision which may be a serious burden upon the new commission before Congress can possibly get around to changing it.

Exactly the same objection applies to the provision on page 48 regarding 250-watt stations. A year ago, when this legislative suggestion first appeared, the proposed limit was 100 watts. Gentlemen, the Commission is free now to do approximately what this provision suggests, to do anything within reason of this kind, under the law as it stands. The "quota" here referred to is not mentioned in the existing act; it is purely a bit of administrative machinery set up by the Commission—and a bit of machinery, be it said in passing, which already creaks so much that the Commission is now in the process of overhauling it.

Here again, we submit that this new provision changes the entire purpose and scope of the law, that it puts the determination of engineering principles squarely up to Congress. The basic question raised by both of these proposed additions to the law is a technical one; how much power on a given channel, and what geographical distribution of that power, will give the maximum of service to the public? If Congress wants to answer that question, it seems almost superfluous for the new commission to have any engineering assistance at all.

We ask you, therefore, not to change the established basis of the Radio Act by undertaking to substitute legislative enactments for the regulations of the Commission in technical matters. We feel, absolutely irrespective of the merits of the specific proposals contained therein, that the entire passage from line 17 of page 47 through line 10 of page 48 represents a complete reversal of the position in this respect which Congress has up to now so wisely maintained.

DURATION OF LICENSES

Now, let me call your attention to another basic change in the Radio Act, which appears in lines 15 and 17 of page 48. The present law sets a limit of 3 years for broadcasting licenses and one of 5 years for licenses of any other class. The bill before you cuts these limits down to 1 year and 3 years, respectively.

Why is this proposed? Certainly not to correct any existing evil, for up to now the Radio Commission has never issued a broadcast-

ing license for more than 6 months. But it has always been the hope of the Commission and of the broadcasters, as until now it has apparently been the hope of Congress, that with greater stabilization in the radio field, licenses could be issued for long enough periods to give really adequate encouragement for development. The short-term license has been a serious barrier to the technical advance of radio, but at least there has always been the consolation that Congress recognized the ultimate disirability of giving some semblance of stability to the business by authorizing licenses for as much as 3 years.

Now it is proposed to destroy that hope by congressional action, and to say to this new commission:

> We in Congress refuse to let you stabilize radio. You shall not encourage the building of improved transmitters, the replacement of old apparatus by new and better equipment. You shall not give any broadcaster the assurance that if he builds a new plant for better service to the public, he can operate it for more than a year.

Gentlemen, the broadcasters are not now coming before Congress with any plea for longer licenses. They have been willing, realizing the many and rapid changes in radio technique, to accept the judgment of the Radio Commission in this matter, even though the short-term license has been for them a constant source of financial, technical, and legal instability. But they have had faith in the future, they have believed in Congress, in authorizing longer licenses than the Commission has seen fit to issue, desires to encourage the development of radio communication. They have felt that when the proper time came, the Radio Commission would act under the authority wisely given to it by Congress, and in its discretion stabilize the industry with license terms long enough to warrant adequate investments in transmitting and other equipment.

Now, after 7 years, it is proposed to destroy that hope, and to tell the new commission that broadcasting must remain unstable, hazardous, unable to look ahead with any assurance or confidence. If the new commission, after investigation, decides to restrict all broadcasting licenses to 1 year, or 6 months, well and good; but we do ask you to have at least as much confidence in the judgment of this new commission as you have had in that of the old one—a confidence which, in this respect, has certainly not been abused. We ask you not to change the existing law, with this feature of which there has never been a single word of complaint, in order to perpetuate a condition of instability even though the new commission may determine that a greater degree of permanence would be in the public interest.

REVOCATION WITHOUT HEARING

Next, I ask you to consider another basic change in the Radio Act contemplated in this bill. This change is embodied in the proviso on page 55, lines 6 to 12.

This section 312 is based on section 14 of the radio act. The last part of section 14 is a proviso that no order of revocation shall take effect until 30 days' written notice has been given, and that within those 30 days any person in interest aggrieved by the order may apply for a hearing. Upon the filing of such application, the order

of the revocation shall stand suspended until the conclusion of the hearing thus required.

What have we here in place of this provision? Fifteen days' notice instead of 30, no specific provision for a hearing, and no provision for suspension of the revocation order until the case has been heard.

Gentlemen, this seems to us a reversal of the entire theory of the radio act. Up to now, and everywhere else even in the bill before you, the law has been scrupulously careful to give the licensee at least his traditional "day in court." This bill has even gone to the length of putting in the words "after a hearing" on page 53, line 11, where they do not appear in the present law. Still more significant is the change which this new bill makes on page 42, line 16, which prohibits the commission from changing the wave length, power, or hours of operation of any station except "after a public hearing."

The commission, under this bill, cannot change a frequency or shift an hour of time without a public hearing, but it can revoke a license or impose a fine—and a fine which mathematically, as I shall show you presently, might mount up to a hundred thousand dollars or more—without a hearing at all.

The CHAIRMAN. Now, Mr. Bellows, you made that statement in your argument here a year ago on that bill, because you said that the words "apply for a hearing" did not give you hearings.

Mr. BELLOWS. It does not say "apply for a hearing"; it says "show cause", Senator. That is in the next paragraph.

The CHAIRMAN. That is a hearing. I just do not want the new Senators here to think that this is some terribly new thing. It was passed on before.

Senator HATCH. I just read that proviso there and it struck me that it did provide for the hearing.

The CHAIRMAN. Of course, it provides for the hearing, and that was the decision of this committee unanimously last year when Mr. Bellows made his same argument. I just want to interject that here for the benefit of those who were not here at that time.

Senator WHITE. I do not think the speaker has put his finger yet on the worst infirmity in that proviso. I will say something about that later myself.

Mr. BELLOWS. Very good. It may be said, it has been said by the chairman, that "to show cause" commonly means a hearing, but some of the members of your own committee have indicated that it does not necessarily mean this. The matter was discussed at a hearing before your committee on December 22, 1932, and this same provision was read. It was suggested—I quote from the printed record of the hearing—that the words "to show cause" mean the granting of a hearing. Then Senator Barkley said:

> Now, gentlemen of the committee, do they really mean that? Might not the Federal Radio Commission under that language simply say to a broadcaster: "You write us a letter protesting about this thing." If that were to be done, I say that would not be a hearing.

And Senator Barkley went on to say:

> The use of the words "to show cause" might leave it in the discretion of the Federal Radio Commission to say whether or not there shall be a hearing or just some correspondence exchanged on the subject.

A moment later, Senator Fess said:

Inasmuch as some difference of opinion is arising here in the committee at this time, let me suggest: What would be the objection to inserting the words "after a hearing"?

To this Senator Wheeler replied:

I can see no objection to that.

Gentlemen, we believe that the words "after a hearing" ought to be there, but we claim that this is not nearly enough. We urge that the provisions of the present law, giving 30 days' notice, and above all, providing for the suspension of the revocation order till the hearing is concluded, ought to be retained. There is no complaint that the present law in this respect has not worked. This new bill carefully safeguards the rights of the licensee in all minor matters and then subjects him to revocation of his license, to being summarily put out of business, on 15 days' notice, and with his right to a hearing at least doubtful.

Under this bill as it stands, gentlemen, the new commission would not be trusted to make reasonable technical regulations, or to determine the proper length of licenses, but it would have authority to revoke licenses on 15 days' notice. Even if "to show cause" does mean a hearing, suppose the licensee cannot be ready for a hearing in 15 days. Suppose he is in California, or Washington, or Oregon, and has to get together his witnesses and bring them across the continent. Under the present law, the revocation order is suspended until he has a chance to be heard. Under this bill his station could be closed in 15 days whether he was heard or not.

The present law was carefully drafted so as to give the Commission adequate power and at the same time protect the rights of the licensee. No trouble of any kind has arisen in connection with the administration of this section. We feel that it is utterly foreign to the whole spirit of the Radio Act to set up an arbitrary power of radio life and death as is provided in this section of the new bill.

The CHAIRMAN. Of course, a lot of trouble has occurred in revocation, particularly in Oregon and Kansas.

Mr. BELLOWS. Have there been any revocation proceedings, Senator?

The CHAIRMAN. There have not, because they could not work it out. They refused to renew the license in those cases. There would have been revocation if there had been a proper law.

Mr. BELLOWS. That is all I have on that section, Senator.

Senator WHITE. I want to comment on that, but I will not take the committee's time to do it now.

Mr. BELLOWS. The next is the penalty.

A THOUSAND DOLLARS A DAY

We now come to another innovation—a change which appears completely to alter the status and functions of the body administering the act regulating radio. On page 54, lines 9 to 12, the new bill adds the words:

or the station owner fined not to exceed $1,000 by the Commission for each and every day during which such offense occurs.

Let us see what this clause, inserted bodily in the provision of the present law providing for revocation of license, actually does. The revocation of a license is, in substance, a finding that the continued operation of a station is not in the public interest, convenience, or necessity as provided by law. It is not a criminal provision, but simply a necessary adjunct of the Commission's power in issuing or refusing to issue licenses.

When, however, the Commission imposes a fine, it says in effect this:

Your operation is still in the public interest, convenience, or necessity, or else we would revoke your license, but you are guilty of a crime, for which we are going to punish you.

Forthwith the Commission is set up as a criminal tribunal. in which it is at once judge, prosecutor, and jury. This is done although the present law, in sections 32, 33, and 34, provides an entirely proper, orderly, and efficient procedure for the imposition of fines or of imprisonment by the courts.

More than that, this criminal power can apparently be exercised without the complete assurance of a trial. The fine can be imposed without the certainty of even a hearing simply on 15 days' notice.

Gentlemen, is it really desirable or necessary to set up this new commission with, in addition to all its administrative duties, the powers and responsibilities of a criminal court? For 7 years the functions of the Radio Commission have been exclusively administrative and quasi-judicial; now it is proposed, by the insertion of a few words, to turn the new commission into what seems to us to be virtually a radio police court, or rather, in view of the summary nature of the proceedings indicated, into a drumhead court martial. The whole theory on which the Radio Commission has functioned under the present law appears to be completely changed by these few added words.

Certainly such a fundamental change as this would seem to be wholly within the purview of the President's recommendation that additional legislation should be considered, after study and investigation, at the next session of Congress. Let the new commission determine for itself whether it wants and needs to have the powers and functions of a criminal court—whether it wants the right to impose heavy fines with or without trial, or whether it believes, as Congress has believed until now, that justice and efficiency can both be best served by having punishment inflicted by the courts.

And this right to inflict criminal penalties is no mere gesture. A thousand dollars for each and every day during which the offense occurs, and this, for example, for any failure to operate substantially as set forth in the license—even though this bill says nothing about giving notice that the continuing offense is being committed.

A former chairman of your committee, Senator Couzens—I quote from page 15 of the report of the hearings on December 22, 1932—himself suggested that the words "after notice" certainly ought to be added after the words "the offense occurs." And what is the application of the "each and every day" phrase to the one which immediately follows it in this bill, on page 54, line 12, "for false statements in the application"? It is not even specified that the statements shall be knowingly or deliberately false.

It is also provided that a fine of not more than $1,000 a day may be imposed by the commission, without the assurance of a hearing, and without previous notice of the offense, for any violation of any regulations of the commission. For 6 months a station may have unwittingly violated some such regulation—and gentlemen, the Radio Commission has 146 printed pages of its regulations—and under this law the commission could fine that station $180,000. I don't say, of course, that the commission would actually do such a thing, but this is the power which this bill gives it.

If it is suggested that the changes in the Radio Act of 1927 made by this new bill are relatively unimportant, we contend that if this one thing—this matter of giving the commission the powers of a criminal court—were absolutely the only change made in the law, S. 2910 would still be revolutionary, and would thereby run counter to the advice and recommendation of the President. We feel, therefore, that we have the President's sanction in asking Congress not to make such drastic changes in the law, at least before the new commission shall have had opportunity to make the study and investigation which the President advises.

Senator WHEELER. Before you leave that, I do not know that I understand just your position there. You contend that if there is a violation of a rule or a regulation, perhaps, which the station may not be familiar with, or before they had had any notice that they had violated it, that the commission can impose a fine of $1,000?

Mr. BELLOWS. A fine of not more than $1,000 a day for each and every day during which this offense occurs; yes, sir.

Senator WHEELER. Notwithstanding the fact that they have been served no notice that they have violated the law?

Mr. BELLOWS. Exactly.

The CHAIRMAN. Well, what about the show-cause provision for revocation. This is all a minor punishment instead of revocation. So that the whole procedure that applies to this would apply to revocation.

Mr. BELLOWS. I am glad the Senator thinks $1,000 a day is minor punishment. I think it would put most of the broadcasters out of business.

The CHAIRMAN. Frankly, I did not favor that, but certain of the members of the committee wanted that in there, and it all goes back to the show-cause order before revocation.

Mr. BELLOWS. I do not think the show-cause order has anything to do with the each and every day during which the offense continues. You slap on a fine for an offense which has been continuing for 6 months. Of course, the station is entitled to show cause why it should not pay the fine, but the fine has already been imposed and the burden of proof to show why it should not be imposed is on the station. I think at least some notice should be given to the station of the continuing offense before the fine starts.

The CHAIRMAN. Notice would be given for purposes of revocation. There would not be any fine, except in lieu of revocation.

Mr. BELLOWS. It would seem that this provision of the bill could be made to conform to what we all would agree would be the case in practice

Senator WHEELER. I should not think there could be any objection to having an order to show cause, and after hearing revocation

should be had, and then giving them the alternative of either revoking it or imposing a fine not to exceed a certain amount.

Mr. BELLOWS. The only point is, Senator, that we feel that the right to revoke a license is necessarily a part of the right to issue a license.

Senator WHEELER. Yes.

Mr. BELLOWS. Whereas the right to impose a fine is a criminal procedure which, in effect, as I have said, admits that the station is operating in the public interest; then turns around and says:

> You have committed an offense and we are going to get after you,

which seems to be a more logical proceeding through the courts.

The CHAIRMAN. What other parts of the bill have you to take up?

Mr. BELLOWS. I have the section on the discussion of public questions and the right of appeal. Those two.

The CHAIRMAN. Could you summarize that? Most of the Senators are going, and we would like to get over to the Senate floor.

Mr. BELLOWS. I will be very glad to. Question 315 on pages 58 and 59, the section relating to facilities for candidates for public office. I will be very glad to summarize this, because it has been discussed before.

You are familiar, some of you, with the Nebraska Supreme Court decision which holds the broadcaster liable for any slander or libel spoken over his station, even though it be spoken by a candidate for public office or by someone speaking in behalf of such candidate. Section 18 of the Radio Act, which this section replaces, is unquestionably a bad provision and needs revision. Our contention is that the section as you have it makes it a good deal worse. In this statement I have quoted at some length from the discussion of that matter, quoting Senator Dill, Senator Couzens, Senator Wheeler, and one or two others who discussed it, and I have said—I will read one paragraph:

> Gentlemen, it seems to us, in the light of our experience as actual broadcasters, that this section of S. 2910 might well be headed "Radio discussion of public questions prohibited."

I am going right back to the point that Senator Wheeler brought up at the hearing when he said:

> If you make it impossible for the broadcasters to put on these people, you destroy the usefulness of radio, or damage the usefulness of radio.

We do not believe it is desirable to do that. Question 18 of the present law admittedly does need revision, both to safeguard the right of free speech and to protect the broadcasters, but certainly we do not want to see our liability for slander increased to a point where we shall have to bar all candidates for public office and all their supporters and all discussion of public questions to be voted on at an election from the air. Here, it seems to us, is an ideal place for the investigation and study which the new commission is to make. We suggest, therefore, that the new commission ought to deal with this problem, and recommend to Congress such legislation as it may decide is needed.

I comment briefly on paragraph 3 of this section regarding rates.

Senator WHEELER. What is your suggestion with reference to that?

Mr. BELLOWS. My suggestion is that this matter should be decided by the Commission.

Senator WHEELER. I mean, but you have given a lot of study to it, I know. What would be your suggestion?

Mr. BELLOWS. I am speaking offhand now. I would leave section 18 as it is, with a proviso that any broadcaster may, or has the right to, see in advance any speech submitted for broadcasting, to determine whether that speech contains material which is libellous or slanderous, and to bar such speech or such section of the speech from the air, if it is contrary to the laws of the State. It is clearly a matter of protection on that one point.

I have spoken briefly of the matter of paragraph C, of the rates to be charged for political utterances, and have pointed out that even if this paragraph may have had ample justification a year ago, the real need for it has since disappeared, owing to the code of fair competition under which all the broadcasters are now operating. No station can now discriminate between clients by charging any more or less than the published card rates for time.

Next is the appeal section, which I am going to pass over. That has already been discussed by Judge Sykes. I include a memorandum of counsel's opinion. I simply want to point out this: In striking out the appeal section you have apparently created a situation in which many of the cases, many of the most important cases, which come before the Radio Commission and which would come before the new commission, could never be taken to the courts at all, and I do not believe that it is desirable; I do not believe that it is necessary from any standpoint to do that. It is unquestionable that many of the cases which come before the Radio Commission and would come before the radio division of the new commission are entirely different from the bulk of the cases which come before the Interstate Commerce Commission. They represent different types of service; they are applications for increases or extension of service; they are applications for new stations, and apparently those could none of them have been appealed, and we do not believe that that is intended or desirable.

Senator WHEELER. The only question that could come up on appeal anyway would be the question of the law involved.

Mr. BELLOWS. Exactly. But, as we have seen in many of the cases which have been appealed, the question of the law involved is sufficient to get from the Court of Appeals a review, and in one notable case which the chairman has already spoken of, and which we all regard as the real foundation for court decisions on the Radio Act, and until that case is taken to the Supreme of the United States and a decision rendered, we cannot think that leaving out that entire section 16 of the Radio Act can produce anything but confusion, and that it will be just as bad for the new commission as it will for the broadcasters. There ought to be some provision along the line of section 16 which should appear in the act.

The CHAIRMAN. What are you going to do with the mixed cases of radio and wire? Which course of procedure are you going to follow?

Mr. BELLOWS. That is a perfect illustration, it seems to me, of the problems that are going to come before the Commission. It is going to be a tremendously complicated thing for them to work out, and

that is one reason why we urge so strongly that the Radio Act should not be repealed. They have got to evolve that themselves. There are mixed cases. I will say that.

The CHAIRMAN. Does the law make no provision for those cases?

Mr. BELLOWS. It may be necessary to make provision about those; it very likely will be, but it will be easier to make provision for mixed cases.

Senator WHEELER. What do you call "mixed cases?"

Mr. BELLOWS. Cases involving, I think, both radio and wire.

The CHAIRMAN. The contention is here that there should be a separate court procedure for the radio cases. The difficulty, as I see it, I do not think it is insuperable, but it is one reason that we did not put it in the bill, is to say that a certain kind of case before this Commission, an appeal from the Commission's order shall be appealed by one court procedure, and certain other kinds of cases by another kind of court procedure, and I am asking which procedure will you follow when you have some radio and wire both involved in the same case?

Mr. WHEELER. Why should you have a different procedure at all? Why not have the same procedure?

The CHAIRMAN. Well, the argument is that you need specially trained judges here in the District of Columbia to handle these cases. That is the primary argument.

Mr. BELLOWS. That concludes the statement. I would like to read just the last paragraph. There are a number of minor matters that I have not discussed at all, because I did not want to clutter up the record.

The major issue before you, insofar as S. 2910 affects the very life of radio broadcasting, seems to us so vitally important that I have been unwilling to obscure it by discussing minor details. That major issue is this: Is Congress going to seize this opportunity to repeal the Radio Act of 1927 and to write a new act, differing in several basic respects from the present one, thereby in our judgment launching the new commission on a sea for which the chart has been partly destroyed, or is it going to set up the Federal Communications Commission to take over—and once more I quote the President—"the present authority for the control of communications of the Radio Commission and the Interstate Commerce Commission"? Is it going to depend on that new commission "to investigate and study" and "make recommendations to the Congress for additional legislation at the next session"?

With wholehearted support for the President, the broadcasters believe that his message contains wise counsel for the Congress, and accordingly we ask you to strike out all of title II of this bill, and so to amend section 602 (a) as to make it abolish the Federal Radio Commission but to leave the Radio Act of 1927 intact.

The CHAIRMAN. Let me ask you this question: Laying aside all of the so-called "objectionable provisions" coming from 7116, and one or two other things, do you not think that even if we are to reenact a radio law, it will be well to bring into this bill, under title III, all of the amendments as now written, and strike out the dead matter referring to the Secretary of Commerce in the old law, and in that way give us a united and compact radio statute?

Mr. BELLOWS. Eventually, Senator, that has obviously got to be done.

The CHAIRMAN. Why not now?

Mr. BELLOWS. Because it seems to me very difficult to do that without involving the new commission in some new legal problems. If by merely changing the phraseology so, as you say, to strike out all the obviously immaterial matter, you can incorporate title II without any checking. You have gained that much.

The CHAIRMAN. And then put these amendments in where they belong, the amendments that have been passed since 1927. In other words, it is very awkward now to amend the radio law because you have got the Radio Act of 1927 and a series of amendments that really should be written into the statute.

Senator WHITE. That is one thing, Senator, but of course you are making many changes in existing law in these proposals, if they are approved.

The CHAIRMAN. Yes. I was asking, though, from the standpoint of rewriting the radio statute, disregarding that for the moment.

Mr. BELLOWS. My only question on that, Senator, would be this: The new Commission is going to have a lot of legislative recommendations for the next Congress or I miss my guess entirely, because the new Commission is starting out on an absolutely uncharted sea, and Judge Sykes and I know what the Radio Commission in the days when it was particularly inefficient was working within the matter of law back in 1927. So now it seems to me that the fewer changes you can make now, the more you can keep the Radio Act as it is, set up the machinery for the new Commission and then turn them loose on this problem of adjusting the two laws—I think the case that you brought up on appeals is a perfect example. It is going to be very difficult to write a new appeals section which will cover all the cases. It seems to me the legal division of the new Commission when it has made the study and investigation that has been suggested might properly do that, and that is really why we recommend leaving the Radio Act alone for the present. Many of these cases may be desirable, but we do recommend, as I say, having this process, which has obviously got to be done after the Commission is made up instead of before.

(Mr. Bellows submitted the following from his prepared statement without reading:)

PUBLIC QUESTIONS

And now we come to section 315, on pages 58 and 59, the section relating to facilities for candidates for public office. Gentlemen, there is only one section of the Radio Act of 1927 which has been seriously weakened by the courts and that is section 18, the section which this section 315 replaces. I do not need to repeat the story of the Nebraska case, and the decision filed on June 10, 1932, by Chief Justice Goss of the Nebraska Supreme Court in the case of *Sorenson* v. *Wood*. The story is all told in the record of the hearing on H.R. 7716 before your committee on December 22, 1932, with just one addition to it needed—or at that time we hoped to bring this case before the Supreme Court of the United States, in order to get a definitive ruling as to what section 18 really means. The Supreme

Court refused to let this case come before it, and we find ourselves still in the situation so well summarized by Senator Fess—I quote from the report of the hearing:

> If a broadcasting station has no authority to indicate what may be spoken over the air, then it would seem to me that to make it responsible for what may be spoken produces an impossible situation.

In that same connection, after Senator Dill had suggested that the station does not need to allow people to speak on either side of a question if it does not want to, Senator Wheeler very soundly replied: "But if you do that you take away the usefulness of radio." And finally, I quote what Senator Couzens said on this subject:

> Is it practicable to put into law a provision that a station may review a speech in order to ascertain whether there is anything libelous or slanderous in the speech before it is made? It seems to me that a station that is going to be made liable under the Nebraska Supreme Court decision must of necessity have the opportunity to show before a speech is made what it contains.

At that point Senator Dill interposed, "And that becomes censorship," to which Senator Couzens replied:

> Well, so far as protection against slander and libel is concerned, you should have it. I do not see how it is possible for a broadcasting station to otherwise protect itself. Newspaper reviews or copy for newspapers are submitted, of necessity, before publication. And if a newspaper owner says an article is slanderous and he will not publish it even if offered as a paid advertisement, that ends it. Why shouldn't a radio broadcasting station have the same power; to know whether a thing is slanderous or libelous before it is put on the air?

All this, gentlemen, applied to the situation as it now is under section 18 of the Radio Act of 1927. What does this bill do about it? Simply extend the scope of section 18 to cover not only candidates for public office, but all persons speaking in behalf of or against such candidates, and all discussions of public questions to be voted upon at an election. It says, in effect, that since the present situation is intolerable, this bill make it very much worse.

Section 18 of the present law obviously needs something done to it, in the light of the Nebraska case, something along the lines indicated by Senator Couzens, but we insist that it ought not to be made worse instead of better. The inevitable effect of section 315 is exactly what Senator Wheeler stated, to take away the usefulness of radio by driving political discussion off the air.

Let us see what will happen. A station allows John Smith to make a speech in support of the candidacy of Tom Jones. The only person who applies for permission to speak against Mr. Jones is James Brown. The station knows that Brown's speech is likely to be packed full of slander, and yet it has got to put him on, and give him as much time as it gave John Smith, and it cannot exercise the slightest censorship over anything he may say, even though it is jointly liable with him for any slanderous utterance. And though it may try to safeguard itself by making him sign an agreement to hold it harmless against action for slander or libel, his signature is not likely to be worth much, and if he refuses to sign such an agreement, and nobody else volunteers to speak in opposition to the candidacy of Mr. Jones, the station has got to let James Brown go on anyway. Under such circumstances, its only possible protection is to keep them all off the air.

Just one other point regarding section 315. Paragraph (c), on page 59, sets up certain regulations regarding rates. Most of us are wholly in agreement with the principle that rates for political talks should not be higher than the rates charged for any other types of program, but, considering what the functions of this new commission are to be, we suggest that this is emphatically a subject for commission regulation rather than for special legislation. Furthermore, even if this paragraph may have had ample justification a year ago, the real need for it has since disappeared, owing to the provisions of the code of fair competition under which all the broadcasters are now operating. No station can now discriminate between clients by charging any one either more or less than the published card rate for time.

In any event, we urge that this whole matter of political broadcasts and of the charges made therefor is for the new commission to investigate and study, with subsequent action by Congress if the commission shall report such action as desirable and necessary.

THE RIGHT OF APPEAL

Last of all, we come to the most far-reaching change in the Radio Act made by S. 2910. Briefly, this is the elimination of the provisions for appeal to the courts from orders of the Commission.

It seems to us probable that this omission was not wholly intentional. The index to this bill gives us reason to believe that something different was planned, for, on page 100, the heading for section 402 reads, "Application of District Court Jurisdiction Act—exception in case of radio matters." If, however, we turn back to page 70, we find that section 402 makes no reference whatever to radio matters, or to any exceptions to the application of the District Court Jurisdiction Act. Because this whole problem is essentially a legal one, I have requested counsel to prepare a short memorandum to be included herewith. This memorandum was written by Mr. D. M. Patrick, formerly general counsel of the Federal Radio Commission, and now associated with the firm of Hogan, Donovan, Jones, Hartson & Guider, of Washington. It reads as follows:

In our opinion, one of the most fatal defects in S. 2910 is the fact that there is no adequate procedure established for the review of decisions and orders of the radio division of the proposed Federal Communications Commission.

Section 602, paragraph (a), provides for the repeal of the Radio Act of 1927, as amended. This, of course, takes with it the appellate provisions of that Act which are embodied in section 16 of that act as amended by act approved July 1, 1930. The only sections of the bill which attempt to provide a review by the courts of decisions and orders of the proposed Federal Communications Commission and of its radio division are Sections 401 and 402, which provide in substance that the procedure to be followed in such cases is that now followed in securing a review of decisions, orders, and requirements of the Interstate Commerce Commission; by injunctive relief in the District Court at the instance of some person aggrieved thereby, or by mandamus on behalf of the Attorney General, the Commission or some person who is adversely affected by the failure of the party against whom the order is directed, to carry out its requirements.

While the Interstate Commerce Commission is required in certain instances to pass upon applications for certificates of public convenience authorizing the establishment of new transportation lines or the extension of existing lines as well as the approval of the issuance of securities for the same, such applications really constitute a very small part of that Commission's work. Moreover, the Supreme Court has held that, in the event of a denial of such applications, there is no manner in which the same may be reviewed in the courts. That

court has held that such orders are negative in their nature and that it was the implied, if not the express intent of Congress, to make the decisions of the Interstate Commerce Commission in such matters final.

On the other hand, applications of this character which involve authority to construct a new radio station, or which seek an increase in the facilities of an existing station, constitute a substantial portion of the entire applications upon which the Federal Radio Commission has been required to pass during its existence and doubtless will constitute a substantial number of the applications upon which the radio division of the proposed commission will be required to pass. If, as is to be supposed, in view of its decisions involving similar provisions as applied to the Interstate Commerce Commission, the courts take the view that the denial of such applications are negative in character, and refuse to review the exercise of the Commission's discretion, the result will be to make the decisions of the proposed Commission final and unreviewable in a large and substantial number of the cases which come before its radio division. We do not believe that this is a desirable result.

The Radio Act of 1927 as originally enacted, contained an appellate provision which gave the Court of Appeals of the District of Columbia broad powers to review and revise certain decisions of the Federal Radio Commission therein enumerated and including applications in the class heretofore considered. While section 16 of the act as amended by act approved July 1, 1930, limits and restricts the jurisdiction of the Court of Appeals in such cases to questions of law, it nevertheless preserves a right of review which we think is essential in such cases. In order to preserve this right of review and at the same time to secure the benefit of the decisions of the courts, including the court of appeals and the Supreme Court of the United States, in cases which have come to them under the existing law, we believe that section 16 of the radio Act as amended and as it now exists should be reenacted in substantially its present form rather than to leave the law silent and defective upon such a substantial question.

We further believe that there is enough difference between the functions of the radio division of the Federal Communications Commission as proposed and the other divisions of that Commission which will deal with common carriers as distinguished from broadcasting, to justify the establishment of a separate method of review from that division, and particularly in the class of cases heretofore considered.

Once again, gentlemen, we come back to what we cannot but regard as the disastrous results of repealing the Radio Act of 1927. It is under section 16 of that act that practically the whole body of existing radio law has been built up. It is under that section that the public, the Radio Commission, and the broadcasters have learned their respective rights, under that section that the inherent soundness of the Radio Act itself has been definitely established. And now it is proposed to sweep that section of the law entirely away.

The new commission is certain to have plenty of troubles without having to work out a new and untried course of legal procedure for dealing with radio problems. We cannot believe that the President, in asking that such a commission be set up, wanted it to come into being with such absolute authority as to deny in many cases the right of appeal to the courts. Such authority could be only a source of additional and wholly needless grief for the commission itself. As for the broadcasting industry, this change in the law would apparently deny a right which is implicit in our whole system of government—the right to test administrative rulings in the courts.

If section 16 needs amendment, as in at least one respect, its failure to allow appeals from refusals to grant applications for construction permits, it certainly does, let the changes follow study and investigation by the commission itself. We ask you not to strike out from the law the entire section by which the court decisions affecting radio

have been secured—the section which is at once the chief protection of the broadcaster and the bulwark of the Radio Commission. Because this change seems to us to undermine the very foundations of radio law, we most earnestly beg you, here as elsewhere, not to repeal the Radio Act of 1927 but to let it stand intact at least until such time as the new commission shall come before you and ask for changes in it.

CONCLUSION

Gentlemen, I have not discussed, and I am not going to discuss, titles I and II of this measure, although there are various matters in the first 39 pages of the bill which appear at least to need clarification. In title IV, I have dismissed only a single paragraph, section 402, which replaces section 16 of the present Radio Act. In these pages (68 to 86) again there are several things the precise meanings of which appear to be open to question. As for title V and title VI (pp. 86 to 98), I have dealt with exactly 10 words, "The Radio Act of 1927, as amended, is hereby repealed"—page 90.

I have not even discussed all the matters in title III, which represent changes from the present Radio Act. For instance, there is section 316—page 59—lines 20 to 25, and page 60, lines 1 to 8, the lottery section. The broadcasters have never objected to this in principle, though they do not wholly endorse this precise wording, as is clearly shown by the fact that we voluntarily included a similar provision in our own code of fair competition. Presumably a section like this would have been in the Radio Act long ago if it had not been for the policy of which S. 2910 is one more example—a policy of attempting to put through amendments to the Radio Act in omnibus form instead of individually. Title III of this bill is, in effect, just such an omnibus amending act.

The CHAIRMAN. This concludes the hearing until 10:30 next Tuesday morning.

(Whereupon, at 12 noon, the committee adjuorned until 10:30 a.m., Tuesday, Mar. 13, 1934.)

FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, MARCH 13, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:30 a.m., Hon. Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

I wish to insert in the record this morning certain letters that have been presented to me by those who are interested in this legislation. First, is a letter from Mr. Ira E. Robinson, former member of the Radio Commission, suggesting a certain amendment in which he is interested; another letter from Joseph Pierson, president of Press Wireless, suggesting certain amendments and giving reasons for them; another letter from Paul M. Segal, general counsel for the American Radio Relay League, making certain suggestions about this legislation; and another letter from A. J. Multer, making certain suggestions for changes in the bill.

The letters referred to follow:

WASHINGTON, *March 10, 1934.*

Hon. C. C. DILL,
United States Senate, Washington, D.C.

MY DEAR SENATOR DILL: In S. 2910, section 3 (h), you propose that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

I cannot think that you mean this as you have it. For the same to be the law would mean that every licensee of a broadcasting station would have a private long-range mouthpiece, denying his facilities to those of the American public not so favored. I think you meant merely to exempt, for the present, broadcasters from regulation of rates. Therefore, I beg to suggest that in the bill, after the sentence quoted above, there be added these words, "for the purpose of regulation of rates."

My experience in radio administration makes me to know that it will be a sorry day whenever a broadcasting licensee has any legal warrant to claim a monopoly in the use of the enlarged mouthpiece granted him, denying the use thereof to the very public, which has made him a trustee for their benefit.

The big radio interests have long wanted a declaration, contrary to the concept of the present radio law, that they are not common carriers, so that, for instance, they may exclusively advertise their own wares, or promulgate their own doctrines against municipal ownership of utilities. Why give it to them?

Sincerely,

IRA E. ROBINSON.

PRESS WIRELESS, INC.,
Chicago, March 8, 1934.

Hon. C. C. DILL,
Senate Office Building, Washington, D.C.

DEAR SENATOR: We have just received S. 2910, to be known as the "Communications Act of 1934." We note that a hearing on this bill is scheduled

to begin at 10 a.m. Tuesday, March 13. Since the bill in general seems to be a good one and a considerable improvement on the present laws, we do not want to appear as opponents of it. However, on first reading some questions do arise which, knowing of your broad-mindedness and liberal thought, we think it advisable to lay before you.

In section 2 of the bill we believe the provisions of the act should be made to apply to all emissions of energy in the ether spectrum between one half meter and 30,000 meters, irrespective of whether used in interstate or foreign communication, if the energy so emitted interferes with those communications. We do not believe section 301 meets our point, because section 301 only covers interferences to interstate or foreign communications which may arise from other communication systems; but much of the interference that we have in mind arises from the machinery or installations of industries or public utilities who sometimes display a contemptuous indifference as to the interference caused. The interference is caused, of course, because they are permitting to be emitted from defective parts of their property the particular types of electrical energy which are employed in communications.

In section 14 (d) we question the fairness of the authority given to the proposed commission to require any carrier to extend its lines or circuits. It seems to us that any carrier naturally would extend its lines or circuits if profitable to do so, and that the bill, as it stands, would tend to put the carrier under political compulsion, which would be an unfair interference with the carrier's management of its business.

In section 214 (c) the commission is empowered to enforce carriers to engage services or personnel on a competitive basis. If we understand this clause correctly, its tendency is to force carriers to accept lowest bidders; but our experience has been that the lowest bidders rarely furnish the best and most profitable service in communications, and the provision of the bill would seem to encourage a detrimental interference with the management of the business.

In section 605 the word "authorized" is used two or three times, but it is not defined from whom the authorization is to come. It is true that in line 7 of page 94 the phrase is used "authorized by the sender", but it seems to us that it clearly should be defined what is the identity of the sender in this case and of the source of the authority in the other cases. Does "sender" mean the member of the public who sends the message or does it mean the company operating the transmitting station? We submit that the company operating the transmitting station which is sending the message should be the "sender", since that company as a licensee of the commission is the focus of all the responsibilities in connection with the communication. Unless such a definition is adopted and incorporated in law, radio piracy is going to become more and more difficult to stop. Also, we think that section 605 should carry a penalty formidable enough not only to stop piracy of messages (such as news messages) for sale but also to stop the interception of messages by rival communication companies to be used in unfair competition. We would suggest a penalty of a fine of from $100 to $5,000 or 3 years imprisonment and/or revocation of license.

I do not see in the bill any prohibition against exclusive contracts with foreign governments, administrations, or companies with respect to communications between such administrations and the United States. It seems to us that when an American company is shown to hold such a contract it should be forced to cancel all said contracts or the commission should revoke all its licenses.

We believe also that any manufacturer, patentee, seller, or agent of, or for, communication apparatus should be required as a condition of the sale or purchase of such apparatus not to acquire or receive any control over the business, opeartion, or policy of the buying communication company.

We have not studied as carefully as we ought the provisions relating to the commission and the organization of the commission. However, at first reading it does not appear that the proposed commission in one respect is much improvement over the present commission. The same seven men, as we see it, enact the various rules which the various communications companies must follow, enforce those rules, and then pass judgment on those rules when their soundness, propriety, and consistency may be in question. We believe the judicial, legislative, and executive functions of an administration supervising communications should be entirely removed from each other. Certainly, as it appears to us, the identity of the judges with the executives in the past has resulted in much dissatisfaction, if not injustice.

Yours very truly,

JOSEPH PIERSON, *President.*

THE AMERICAN RADIO RELAY LEAGUE,
Washington, D.C., March 13, 1934.

HON. CLARENCE C. DILL,
Chairman Committee on Interstate Commerce, Washington, D.C.

SIR: In connection with proposed legislation, Mr. Hiram Percy Maxim, president of the American Radio Relay League, and Mr. Kenneth B. Warner, its secretary and general manager, have testified before your committee. It has been pointed out by them that the American Radio Relay League is a Nation-wide organizations, representing the most numerous class of radio station licensees, the amateurs. It is the headquarters society and the American section of the International Amateur Radio Union, composed of similar organizations in 23 countries of the world.

At the present time there are licensed within the United States approximately 45,000 amateur stations.

There has come to the attention of the executive committee of the American Radio Relay League certain testimony given before your committee on March 9 relating to the provisions of S. 2910, a bill to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes. I refer particularly to suggestions that under the terms of the proposed legislation it is questionable whether in the case of an applicant for a new license, there will be any judicial relief available in the event the proposed communications commission sees fit to deny such application.

The executive committee of the American Radio Relay League instructs me to present to your committee its view that if the right to judicial review is not afforded, a situation may arise which might endanger amateur operation in the event that a division of the communication commission might see fit to impose standards or restrictions of its own which are not now a part of our national policy. At the present time not only the Federal Radio Commission but all agencies of the Federal Government which have any contact with amateur operation, show the most friendly and encouraging attitude.

I am instructed to request that this letter be included in the record of hearings being conducted upon S. 2910. The American Radio Relay League has no desire to offer testimony in connection with the bill.

Yours respectfully,

PAUL M. SEGAL.

NEW YORK, *March 8, 1934.*

HON. CLARENCE DILL,
Office Building, Washington, D.C.

MY DEAR SENATOR DILL: I have studied with great interest your proposed Communications Act of 1934.

All disinterested persons, I am sure, must agree that it is indeed well planned and most comprehensive.

May I take this opportunity of giving you my suggestions, some of which no doubt have already been considered by you.

For the sake of convenience. I will set them forth in the order in which they present themselves when reading the bill:

Section 4, subdivision F. If it is intended that examiners shall act in a quasi-judicial capacity as they do in the present Federal Radio Commission, it would be well to put them in the exempt class rather than make it mandatory that they be taken from Civil Service lists.

Section 214, subdivision E should have been appended an exception permitting the Commission to act where a State commission has refused to accept jurisdiction on the ground that the matter involved Interstate Commerce. Without such an exception, a carrier might go before the State commission and claim the matter involved Interstate Commerce and thereby evade regulation by either the State commission or the Federal Communications Commission.

Section 215, subdivision A might be strengthened by adding the words substantially as follows:

"and/or the commission in making any order or determination may disregard such transaction and any moneys expended or due in connection therewith."

I am fearful that section 215 as it now reads may be held to deprive a carrier of its property without due process of law, insofar as it affects contracts heretofore entered into.

Even with my proposed amendment, the same objection might lie. I believe the only practical solution would be to require the carriers to be licensed, in which event the commission could refuse to issue a license until a carrier had relieved itself of or annulled the type of transaction condemned by that section.

Sections 219, subdivision B, and 220, subdivision E fail to provide a penalty for the making and filing of false reports. It is quite true that the general criminal statutes against perjury may apply here. It has been generally recognized, however, that such statutes have not served their purpose and that conconvictions thereunder are rare.

It no doubt will be more effective to insert in these sections a specific penalty for the filing of such false reports.

Section 221, subdivision B should have a similar exception to that recommended as to section 214, subdivision E, in the event you think that the former suggestion is well taken.

Section 303. It may be that the right to prevent unfair competition can be inferred from the present section. In order to avoid any doubt, however, don't you believe it well to put in a specific provision giving the commission authority to prevent unfair competition between licensees.

Section 312. There is grave doubt as to the constitutionality of any law which permits the imposition of a fine except by a court. In my opinion, the safer procedure would be to provide for forfeitures and fines in somewhat the same language as found in section 220, subdivision E, adding a provision permitting the Commission to suspend or revoke any license until the fine has been paid.

Section 315, subdivision B. The provision prohibiting the licensee from exercising censorship is a good one. In that connection, however, it must be borne in mind that the licensee is civilly liable for libelous broadcasts and that heretofore the Federal Radio Commission has, and no doubt the new commission hereafter will, hold a licensee responsible for obscene utterances. The prohibition against censorship should, therefore, be limited so as not to prohibit the licensee from preventing libelous or obscene broadcasts. Such limited right of censorship can be circumscribed by rules and regulations so as to prevent abuse thereof by the licensee.

I know that heretofore you have given considerable thought to the possibility of compelling licensees to pay a license fee which would, at least in part, pay for the cost of governmental supervision. From the fact that no such provision is found in the present bill, I assume that you have decided that the fee provision is undesirable.

I believe, however, that a provision should be inserted which will require licensees to pay for the cost of conducting hearings and investigations where it is found that such hearings and investigations were necessitated by the act of the licensee.

Trusting that these suggestions merit your consideration, I am,

Sincerely yours,

A. J. MULTER.

Senator WHITE. Will this record be available before we begin with consideration of the bill in executive session?

The CHAIRMAN. Yes; undoubtedly. We will not take up the bill until we have the record in.

Senator LONG. We are just going to hear evidence this morning, and will not take up the bill, I guess, this morning.

The CHAIRMAN. No; we will not take up the bill this morning.

Mr. Gifford, president of the American Telephone & Telegraph Co., is here this morning, and we will hear him now.

STATEMENT OF WALTER S. GIFFORD, PRESIDENT OF THE AMERICAN TELEPHONE & TELEGRAPH CO., NEW YORK CITY

Mr. GIFFORD. Mr. Chairman, I have a brief statement to make, and then I will take up the bill, if you like, more in detail.

The American Telephone & Telegraph Co. and its associated companies, comprising the Bell System, own and operate about 85 per-

cent of the telephone service of the country. It is responsible for giving dependable, accurate, and speedy telephone service, constantly improved and extended in scope by science and invention, at a cost to the users as low as efficient operation can make it, consistent with fair treatment of employees and the financial safety of the business.

The general plan of organization for this undertaking has been developed during a period of over 50 years. There are regional operating companies largely owned by the American Telephone & Telegraph Co., long distance lines, interconnecting the territories of these regional operating companies, owned and operated by the American Co.; a manufacturing company, the Western Electric Co.; a subsidiary for over 50 years of the American company to insure standardized equipment of high quality at a reasonable cost; an adequate research laboratory and a headquarters organization composed of experts in operating methods, accounting methods, and so forth, which have insured continued progress in the telephone art. The American Telephone & Telegraph Co. coordinates the service on a national basis and assures its constant improvement. It is not, therefore, merely a holding company in the sense that is generally meant. These long-standing organization relationships have been responsible for the present high development and efficiency of telephone communication in the United States, which is generally recognized as the best in the world.

Nearly 5 billion dollars of investment and 270,000 employees are devoted to the furnishing of this telephone service. The Bell system is practically a publicly-owned institution, there being 681,000 stockholders of the American Telephone & Telegraph Co. Of these stockholders 381,000 are women and no individual owns as much as one fifth of 1 percent of the stock outstanding, the average holding per stockholder being 27 shares.

There are interconnected in the United States approximately 16,600,000 telephones, of which 13,163,000 are Bell telephones, the balance being owned by over 6,000 connecting telephone companies and 25,000 connecting rural telephone lines. Telephone service is available to subscribers and nonsubscribers through public telephones, so that today practically anyone anywhere can speak with anyone else anywhere else any time of the day or night.

By the use of radiotelephone, developed in our laboratory, overseas telephone service furnishes connection to other countries throughout the world and with ships at sea, with the result that 92 percent of the world's telephones can be reached from practically any telephone in the United States.

We believe the people of this country are entitled in good times and bad to the best possible telephone service at the lowest possible cost. That is our own measure of our own success. There have never been any "telephone fortunes." The company did not even in boom times pay extra or stock dividends, nor did it split up its stock. The company has no watered stock, but, on the contrary, has received an average of $114 per share ($100 par) for the 18,662,275 shares of stock outstanding. In 1933 the system as a whole earned 3.8 percent on the stockholder's equity—that is, his investment in the business—including his interest in the surplus.

In my remarks about the bill before this committee, I am speaking as the representative of this enterprise, in which I have worked for

30 years and have in mind the interest of the telephone users as well as the employees and stockholders.

Regulation is not new to us. From the beginning we have welcomed it. We are now regulated by 45 State commissions, many municipalities, and by the Interstate Commerce Commission. I suppose, however, that we all agree that there can be such a thing as too much regulation to permit management to function efficiently and with the rapidity constantly needed in a business of this character. Within the past year we have become further regulated through the National Industrial Recovery Act and the Securities Act. We have also recently furnished voluminous reports to the House Committee on Interstate and Foreign Commerce in answer to their questionnaire no. 5, covering a period of 10 years and going into practically every phase of our business.

The Bell system is one organic whole—research, engineering, manufacture, supply, and operation. It is a highly developed relationship in which all functions serve operations to make a universal Nation-wide interconnected service. In the conduct of the business, responsibility is decentralized so that the man on the spot can act rapidly and effectively. At the same time, from company or system headquarters, he is within instant reach of skillful advice and assistance as well as material and supplies. The injection of a commission with a veto power between these functions, as this bill does, will disorganize the telephone business, for I am certain that no power on earth can insure effective management and good service if it is necessary that the ordinary transactions of this Nation-wide enterprise shall wait upon hearings before a commission in Washington.

There are six times as many telephones in relation to population in this country as there are in Europe. Moreover, long-distance calls in this country can be made in nearly all cases without even hanging up the telephone. This high development and almost instantaneous service did not just happen—it is the result of initiative and ability, fostered and given free rein in a privately owned and privately managed enterprise.

By giving the Commission power over all transactions, the present decentralized and adaptable operation will be transformed into a rigid, centralized, bureaucratic operation. This will devitalize the very principles of management which have been mainly responsible for the progress of telephony in this country.

This bill proposes to so largely place the power to manage in the Commission as to set up a regime of public management of private property. Of the 681,000 stockholders who own this property the overwhelming majority are women and men of small means who have invested their savings in this business. To most of them this investment is vital. As trustees responsible for good telephone service to the Nation and responsible for the safety of the investment of these hundreds of thousands of people, we must oppose to the full extent of our ability the passage of this measure.

The telephone business is now, in our opinion, adequately regulated. There has been no evidence that any change is necessary. A representative of the Interstate Commerce Commission testified 4 years ago, and again the other day, that complaints to that body

of rates, charges, or service of communication companies were infrequent. As a matter of fact, we cannot find that there have been any so far as we are concerned in the last few years. Under that regulation the most rapid strides have been made in improvement in quality, speed, scope, and economy of operation of long-distance service. These economies were promptly passed on to the users of this service by reductions in rates, resulting in savings of many millions of dollars a year to the public. The rates for the longer distances have been substantially cut in two since 1926.

But, if in the reorganization of the Government there is need to transfer our regulation from one body to another, I earnestly urge that such action be limited to exactly what the President asked be done. His recommendations were as follows:

I recommend that the Congress create a new agency to be known as the Federal Communications Commission, such agency to be vested with the authority now lying in the Federal Radio Commission and with such authority over communications as now lies with the Interstate Commerce Commission—the services affected to be all of those which rely on wires, cables, or radio as a medium of transmission.

It is my thought that a new commission such as I suggest might well be organized this year by transferring the present authority for the control of communications of the Radio Commission and the Interstate Commerce Commission. The new body should, in addition, be given full power to investigate and study the business of existing companies and make recommendations to the Congress for additional legislation at the next session.

In support of this position, I briefly outline our major objections to bill S. 2910, which we shall be very glad to go into as fully as the committee desires.

I have now prepared short memoranda on several sections of the bill which seems to us vital.

Senator WHITE. Mr. Chairman, may I interrupt right there? Has there been a draft of the bill prepared showing the sections of the Interstate Commerce Act from which the provisions here have been taken?

The CHAIRMAN. Yes.

Senator WHITE. Is that available to members of the committee?

The CHAIRMAN. I do not think it is yet, but we are getting it printed for purposes of executive session.

Mr. GIFFORD. I shall speak wholly on the new matter. I have no comment to make with reference to matter that is now in either the Radio Act or the Interstate Commerce Act, so all of my remarks will be directed toward completely new matter in this bill which goes beyond what the President's message recommended be done, which is merely transferring existing law into a new commission and giving the new commission time to study it.

The CHAIRMAN. Let me ask you, Mr. Gifford, what regulation has there been of the telephone business by the Interstate Commerce Commission?

Mr. GIFFORD. Senator, there has been potential regulation all the time.

The CHAIRMAN. I know.

Mr. GIFFORD. May I finish?

The CHAIRMAN. Yes.

Mr. GIFFORD. After all, if we run our business in such a way that we do not have to be regulated, do not have to have rate cases, I should think we were very successful, and that is what we have been trying to do. We have made four reductions in long-distance rates, which are under the Interstate Commerce Commission regulation, in the last few years. Some rates have been substantially cut in two. We have improved this service till it is better there than any other part of the service, due to inventions and things of that sort. The Commission has had no complaints about our rates.

The CHAIRMAN. The fact is there has been practically no regulation.

Mr. GIFFORD. I do not agree with you. I say all the regulation it needs.

The CHAIRMAN. Oh, well, but I ask you what regulation? What has been regulated? What has been done to the telephone company except to allow them to merge and combine until one company owns 85 percent of the business?

Mr. GIFFORD. Well, our accounts are regulated. And we had many hearings on a new system of uniform accounting by the Interstate Commerce Commission.

The CHAIRMAN. Has there been any regulation of your rates?

Mr. GIFFORD. There has not been any action taken. There is regulation.

The CHAIRMAN. Can there be any regulation without regulating the holding company?

Mr. GIFFORD. Yes, indeed; certainly.

The CHAIRMAN. What is your objection to regulating holding companies? We regulate the holding companies of the railroads.

Mr. GIFFORD. I did not know that.

The CHAIRMAN. We do not allow them to merge; the holding companies to merge.

Mr. GIFFORD. But may I go on with section 215; then I think I can answer you a little more briefly than I could ahead of it.

The CHAIRMAN. Very well.

Mr. GIFFORD. Section 215, pages 28 and 30, entitled "Transactions relating to services, equipment, and so forth", establishes and defines the Commission's authority over such transactions.

This section is one of the most far-reaching proposals for the usurpation of the functions of managements by public authority that has come to my attention.

By paragraph (a) of the section the Commission is given authority over the following transactions:

> Transactions heretofore or hereafter entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the service rendered or to be rendered by such carrier in wire or radio communication subject to this act.

The use of the word "transactions", which in this connection is the broadest word in the dictionary, and the enumeration of everything the company requires with which to carry on its business, have the effect of giving the Commission jurisdiction over practically every activity and every act of the management.

The CHAIRMAN. This is examination, though.

Mr. GIFFORD. No; I beg your pardon; it says at the end of this that they may declare such transactions void or authorize such transactions. It is not examination.

The CHAIRMAN. How are you going to regulate these things if the Commission does not know all about these transactions and have power to control them?

Mr. GIFFORD. We have no objection to the Commission knowing about the transactions.

The CHAIRMAN. How can you regulate them if you cannot control them?

Mr. GIFFORD. You do not regulate the transactions; you regulate the rates.

The CHAIRMAN. But this paragraph is designed to allow the Commission to pass on these service contracts between the holding companies and their subsidiaries and affiliates; that is, the selling of equipment to the local telephone company.

Mr. GIFFORD. This paragraph (a) has nothing to do with affiliates and holding companies.

The CHAIRMAN. Well, it does with subsidiaries.

Mr. GIFFORD. No, (b) has; (b) is the one where we are a parent supplying subsidiaries, but the paragraph I am talking about has to do with where we buy supplies from anybody, whether we have any interest in it or not, the furnishing of supplies, furnishing research—you could not even hire people from an employment agency without approval of the Commission.

The CHAIRMAN. Well, you can do it, but they have a right to set it aside if it is not in the public interest.

Mr. GIFFORD. Can you run a business if someone may veto every act you do 3 months later? They are the managers under that system, complete managers.

The CHAIRMAN. Well, go ahead.

Mr. GIFFORD. As I say, the use of the word "transactions" in this connection is the broadest word in the dictionary, and the enumeration of everything the company requires with which to carry on its business, have the effect of giving the Commission jurisdiction over practically every activity and every act of the management. This is true even if the anomalous expression "and/or" be taken to mean "and", since obviously every such transaction not only may affect the charges and the service but inevitably must do so, in the nature of the case. If the words "and/or" be read disjunctively as mean simply "or", then I take it that the jurisdiction of the Commission is extended to all transactions of whatever nature which may affect the charges or the services, whether they relate to any of the enumerated categories or not. That interpretation, however, would not seem to broaden the authority materially, if at all.

Paragraph (a) then goes on to provide, in substance and effect, that if the Commission disapproves of any transaction, even though completed, it may substitute its judgment for that of the management, and may set the transaction aside altogether or authorize such alternative transaction as the Commission thinks proper and desirable.

It is the duty of a telephone company at all times to render adequate service at fair and reasonable rates. The management of the

company is charged with the responsibility of performing this duty, and the determination of the ways and means of doing this is a function of management. This right of management is a property right protected by the Constitution. The function of regulation by public authority, on the other hand, is to hold the company to the performance of these legal obligations—that is, render adequate service at fair and reasonable rates. If the service is inadequate the regulatory authority may demand that it be made adequate. If the rates for service are excessive the regulatory authority may demand that they be reduced. But the methods, the ways and means, the "transactions" by which these results are to be obtained rest with the management. This is, or at least has been, the American system of private ownership and operation of business subject to public regulation. It has worked on the whole successfully; notably so in the field of electrical communication to which this bill relates, with the result that the American people receive the best communication service at low rates, incomparably in advance of the service anywhere else in the world.

This section of the bill goes very far, indeed goes almost the whole way, toward substituting public management in place of public regulation. It would introduce a regime of management by the Government of privately owned communication systems, that is, a regime of public management and private ownership.

Paragraph (b) relates to the same transactions as those above described, when the transactions are between affiliated companies. In such cases the transactions cannot be entered into at all until after the Commission has given its approval. And here again the Commission is authorized to substitute its judgment for that of the companies and to veto the transaction altogether or to lay down the terms upon which it may be entered into.

Senator WHITE. May I ask you as to your construction of paragraph (b), is it your construction of (b)—and, for illustration and to make it specific, that the A. T. & T. could not buy a particular type of radio tube from the Western Electric Co. without the approval of this body that is to be set up?

Mr. GIFFORD. Well, we certainly could not buy anything. Our companies buy 50,000 items a day, probably. Every one of those items is a transaction. I do not know how it could work at all. I do not see how we could go on with it. We could not hire anybody because hiring people has to do with the furnishing of personnel. We could not transfer anybody—in case a sudden storm came up in New York State and we wanted to transfer some men from Massachusetts over into New York we could not transfer them without previous approval of the Commission under this act—approval before we did it.

Senator WHEELER. You could not purchase a single item without permission of the Commission?

Mr. GIFFORD. We could not purchase an item. Business would just stop.

Paragraph (c) caps the sheaf by providing that no such transaction, whether between affiliates or otherwise, may take place without competitive bidding, if the Commission decides that there ought to be competitive bidding, and this without any provision for a hearing. How we could have competitive bidding on research or per-

sonnel I do not know. And incidentally, it has been stated in the press occasionally that this bill does not cover financing. Well, it does cover financing. We cannot make any arrangements to finance without approval of the Commission.

This entire section is new matter and is revolutionary. Nothing I can think of could be more opposed to both the letter and the spirit of the President's special message than these provisions. Nothing so drastic and far-reaching in the matter of regulation has even been suggested heretofore, so far as I am aware. We have witnessed revolutionary legislation designed to cope with the present emergency. The President sought and the Congress granted that legislation for that purpose. Here there is no emergency whatever, and the President has not only not asked for legislation of this character but has expressly and definitely sought nothing more, for the present, than the transfer of existing powers and duties to a single new commission.

Senator DIETERICH. You said previously in your statement that you were regulated by the States, by municipalities. Is that correct?

Mr. GIFFORD. That is correct.

Senator DIETERICH. Do the State utilities commissions, or similar commissions, perform the functions of regulating your rates?

Mr. GIFFORD. Yes, indeed.

Senator DIETERICH. And in the municipalities in which you operate, the city councils regulate your rates in those municipalities, subject to State regulation?

Mr. GIFFORD. No, Senator; generally the municipalities do not regulate rates except in three States where there are no commissions. That is where they come in.

Senator DIETERICH. And this would have the Government agency supervising your purchasing equipment and such as that, and another agency supervising your rates?

Mr. GIFFORD. Yes. Although, of course, the idea is that the Interstate Commerce Commission would—well, I do not know what the idea is, as a matter of fact. They would be supervising.

Senator DIETERICH. That is idea, that the Government should operate the telephone companies?

Senator KEAN. In nearly all of the States of the Union at the present time you are regulated by a commission, and they go into the value of your property and fix your rates according to the value of your property in that State? Is that right?

Mr. GIFFORD. That is right. You see, to answer the chairman's question that he asked before I started to read that section of the bill, the function of a regulatory commission is to regulate, to see that there is adequate service, fair rates, and no discrimination. They may, and do, go into these service contracts fully. They may, and do, the State commissions as well as the Interstate Commerce Commission, if it wanted to—it does not ask to—go into the cost of performing these services under the contracts. They go into Western Electric costs of manufacture and profit under the supplies sold by the Western Electric Co.; they may then, if they so find—they have not found, but if they should so find—that the prices paid the Western Electric Co., because they are in this system, connected affiliates, that the prices paid are exorbitant or high, they may be disallowed, either in the valuation or in the cost of materials going into maintenance.

The CHAIRMAN. Who may do that?

Mr. GIFFORD. The State commissions.

The CHAIRMAN. The State commission can control the price between States?

Mr. GIFFORD. They cannot make us charge different prices, Senator, but they can disallow in a rate case and reduce our rates.

The CHAIRMAN. Is not the great difficulty today in the regulation by State commissions that they cannot reach the companies outside their borders?

Mr. GIFFORD. No; I think not.

The CHAIRMAN. Well, that is the trouble in my State; I think it is the trouble in every State.

Mr. GIFFORD. Your State has full information on telephone activities.

The CHAIRMAN. They say not.

Mr. GIFFORD. Well, I do not know that I had better answer directly on that, because I have not checked up on it. But I do know that two States, Ohio and Wisconsin, have received full and complete information on the profits of the Western Electric Co.

The CHAIRMAN. You have no objection to the Commission having full power to learn about all these things?

Mr. GIFFORD. Not the slightest.

The CHAIRMAN. But you do not want them to have any power to pass on it?

Mr. GIFFORD. You cannot run the business if they do, Senator. That is my point. But if they find that these things are extravagant, in their judgment, they can reduce our rates, and then we will have to fight that out, and if they were right they will win, and they are not right, we might win.

Senator SMITH. I want to ask you, here in paragraph (b) the question was asked you a moment ago that you could not go out and buy anywhere. As I read this, it says:

> Where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a parent or subsidiary of or person affiliated with such carrier, no such transaction shall be entered into,

And so on. It seems to me the object of that is to inquire whether there is a monopoly as to the furnishing of equipment, all within one circle, rather than to go out and buy from others.

Mr. GIFFORD. Well, I think the inquiry is all right, Senator. I have no objection to the inquiry. This, however, says that we cannot do any transaction, as I say——

Senator SMITH (interposing). No; you misunderstand me or I misunderstand that paragraph.

Mr. GIFFORD. The second, the last sentence.

Senator SMITH. I know the last sentence has reference to the predicate indicated in the second part of that paragraph. It seeks to find out what are the prices, what are the conditions under which you purchase from an affiliate, or the appointment of persons coming from an affiliate or an associated organization with you. In other words, you are keeping it all—the object here seems to be that you are keeping all your purchases within your own organization. You see, it says:

> is a parent or subsidiary of or person affiliated with such carrier, no such transaction shall be entered into, after the organization of the Commission, except with the approval of the Commission.

Mr. GIFFORD. "No such transaction" covers everything you do, and you cannot read that paragraph, Senator, alone. You must read paragraph (a) in which they refer not only to the furnishing or seeking to furnish, but which relates to the furnishing of.

Senator SMITH. Well, I had in mind that this from paragraph (a) and paragraph (b) had more reference to the affiliates and holding companies and those holding within.

Mr. GIFFORD. Paragraph (a) has nothing to do, as I read it, with the holding company at all. You can buy anything from anybody under paragraph (a).

The CHAIRMAN. The Commission could exercise its power, but it is not mandatory. It may examine these things, and it can. It is not mandatory.

Mr. GIFFORD. It quite clearly substitutes the Commission's judgment for the judgment of management. I think we ought to have a clear understanding of what we are doing. That is what you are doing. The point I am making is that to regulate rates you do not need to do that, and I think it would be an unfortunate thing to do; that all you need to do is to give them power to investigate and get all the facts, and if you pay too much they can just say they will not allow this in your operating expenses and reduce your rates.

The CHAIRMAN. Have you any suggestion of an amendment that will carry out what you think is permissible in this matter?

Mr. GIFFORD. The only suggestion I have, Senator, is to leave all the new matter out entirely.

The CHAIRMAN. You do not want anyone passing on this question?

Mr. GIFFORD. I think it is too important, and I think we ought to have more time, and I think if we had a Commission we could work out something over a period of some months. I have had this bill exactly 2 weeks, and this is a very important matter, and I do not know any reason for the haste.

The CHAIRMAN. The whole trouble is that regulation of telephones under present law has been nil. It just has not amounted to anything. There has not been anything done about it.

Senator WHITE. That is not necessarily due to a defect in the law, Senator.

The CHAIRMAN. I think it is. I may be wrong in that, but I think it is.

Senator WHITE. The law may not go as far as you would like the law to go, but there is a substantial body of regulatory law with respect to wire communication. Now, if there has been no action under the law, it may be due either to dereliction of the Commission, or it may be, on the other hand, that the companies have been so conducting their business that the Commission has had no occasion to act, whichever way you want to look at it.

Mr. GIFFORD. May I point out——

Senator DIETERICH (interposing). I understand Mr. Gifford's position is that if these authorities are transferred over to this Commission in obedience to the message of the President, that they have the power then to go in and make these examinations, and what he is asking for is that they give a sufficient time so that they can study the situation in order to determine whether or not and what regulation is necessary, and I do not see where there could be any quarrel about that.

Mr. GIFFORD. May I make this comment, Mr. Chairman? Last year, including affiliates and everything, as if this was one company organized under some Federal incorporation law, if we had it, the total earnings of that company on cash put into the business, either through surplus or the stockholder's $114 a share he has paid in, for the year was 3.8 percent. There is not much opportunity under the law to regulate rates under these conditions, down.

The CHAIRMAN. There is a big dispute about that.

Mr. GIFFORD. I agree with you on that.

The CHAIRMAN. As to the valuation you are using.

Mr. GIFFORD. This is not valuation; this is cash.

The CHAIRMAN. As to the amount of money that is invested in this business and how it is invested through interconnected companies.

Mr. GIFFORD. Well, it is very simple if anyone will take the time to go into it, but it is not simple to do in a few minutes.

The CHAIRMAN. Well, will you go ahead with any other sections you wish to comment on?

Mr. GIFFORD. Section 218, pages 30 and 31 of the bill, is entitled "Inquiries into Management." I wish to read the section. It will be understood as I read that I have inserted brackets to indicate the part that is new, and that the rest of the section is the same as the present provisions of the Interstate Commerce Act and is applicable to telephone companies:

SEC. 218. The Commission may inquire into the management of the business of all carriers subject to this act, and shall keep itself informed as to the manner and method in which the same is conducted.

That is in the present act. This parenthesis brackets now is in the new act:

(and as to technical developments and improvements in electrical communications to the end that the benefits of new inventions and developments shall be made available to the people of the United States.

That is in the new item.

The Commission may obtain from such carriers (and from parents and subsidiaries of, and persons affiliated with, such carriers) full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

My comments are directed to the new matter. There is no objection to the part that is old.

Before I discuss the meaning and effect of these new provisions in their context, it is important that the committee understand certain features of the telephone business and of the way in which the business is organized and conduced in the Bell system.

The new matter in this section relates to technical developments and improvements and to new inventions. These go to the heart of the telephone business. The art of telephony, both radio and wire, is one of the least static and most rapidly changing of all the arts. This has been true from the very beginning of the telephone. I doubt whether any other field of business exhibits this characteristic in a greater degree. In the first place, electrical science as a whole is young and might almost be said to be still in the pioneering stage. There is no doubt that untold possibilities lie ahead of it, to the great benefit of mankind. The same thing may be said of the particular application of electricity in the field of communication. In the second place, the telephone business is peculiar in that the prin-

ciples of mass production applicable in most industries do not pertain to the business of an operating telephone company. On the contrary, there is, by reason of the nature of the telephone business, an inherent tendency toward constantly rising cost of operation per unit of service as the number of subscribers and the size of the telephone exchange grows.

Senator KEAN. Will you just go into that a little further? I have always thought that was a very interesting thing in the telephone business, different from any other business that exists. In other words, if you have this table and everybody here has a telephone, and then the other seats are filled; you just have to add that much to your capital, do you not?

Mr. GIFFORD. To get the other people in on it; yes. And it multiplies in sort of a geometrical ratio, the amount of interconnections you have to arrange for.

Senator KEAN. So, instead of being able to force more through your pipes or through your wires, every time you get a new subscriber you have got to attach so much more capital?

Mr. GIFFORD. That is right. This is well recognized in the business. It is necessary for this reason that nothing be left undone to overcome this tendency toward mounting costs. To do this the function of scientific research and development, by means of which cheaper and better ways of providing equipment, apparatus, cable, and all kinds of plant, and cheaper and better methods of operation are realized. For this purpose we have in the Bell system, as you all know, a large laboratory manned by able scientists and a large technical engineering and research organization. I trust it is not boasting, certainly it is not personal boasting, but is the mere sober statement of a fact, to say that the telephone service in this country by and large is the best and cheapest in the world. That, of course, is not due solely to those who have been and are now in the business; it is due also to the genius and enterprise of the American people, who appreciate and demand such service and are willing to support it.

Our research and development work frequently leads to patents. The Bell system now has patents and rights under patents in its field to the number of 15,000, and 1,300 applications for patents pending. These patents and rights under patents are not obtained for purposes of exploitation but in order to give us a clear field. They are not capitalized; neither their cost nor their much greater value is capitalized; not a dollar is carried on the books as a capital item. This means that we do not claim a value for them upon which to earn a return. But we require the patents for our protection, so that someone else will not claim what we have in fact produced and attempt to exact tribute from us for such inventions.

Senator WHEELER. Do you acquire them or develop them?

Mr. GIFFORD. We develop them, and sometimes acquire them. The vast majority in number we have developed ourselves.

Senator WHEELER. What effect will this control have on your development?

Mr. GIFFORD. That is what I was going to finish with, if you do not mind. That is what I am leading to.

Senator WHEELER. All right.

Mr. GIFFORD. This is the reason why we take out telephone patents.

I might enlarge greatly upon this theme, but I think enough has been said to give point to our objections to the new matter in section 218. It does not give us enough assurance to be told that the power given to the Commission will always be exercised discreetly and fairly. We cannot know this. On the contrary, we do know from experience that public regulatory authorities, not usually but sometimes, abuse their powers. It is for this reason that we are concerned with the nature and extent of the power conferred, particularly when the law is not yet enacted but is being formulated.

Does this section mean that the commission is authorized to keep itself informed as to everything the companies are doing looking toward technical developments, improvements, and new inventions, and that it may require from the companies full and complete information concerning these activities?

Senator WHEELER. Do you spend any money on it?

Mr. GIFFORD. Yes; we spend a great deal.

Senator WHEELER. But could you under this control?

Mr. GIFFORD. We could not, under this other feature 215, that I referred to. We could not without approval of the commission. Apparently that is what it must be deemed to mean; that is what it seems to say. Must we report to the commission upon demand a particular project that we are about to undertake; report what our objective is; what we know now and what we hope to discover; what sum of money we think it will cost? Is that whole project and the expenditure to be subject to the scrutiny of the commission and to its determination as to whether we may go ahead or not, how far we may go, along what lines, how much money we may spend under this section and the provisions of section 215 that I have already discussed? Such reports are public documents, I suppose, but even if they are thought to be confidential we cannot feel secure.

Have I not said enough to show, at least, that the new matter in this section is of great importance and might prove a serious handicap to the companies and an equally serious detriment to the public interest? We regard this section as a dangerous extension of regulatory authority, without precedent in this country, and a radical departure from all past practice, and as an unwarranted invasion of the rights of management.

If we confine our attention in this connection to radio development in the field of telephony, all that I have just said is accentuated and reinforced by consideration of paragraph (g) of section 303, on page 42 of the bill. This provision authorizes the Commission to investigate new uses for radio and "generally do any and all things it may deem desirable to promote, encourage, and develop the larger and more effective use of radio in the public interest."

The CHAIRMAN. Do you object to that?

Mr. GIFFORD. I do not know what it means, but if it means the Commission is to set up a research organization of its own, I think I should. I think we had better leave that to private management.

The CHAIRMAN. In other words, you want this monopoly to have control as to whether or not these new inventions shall be used, whether or not the people shall receive the benefit of them?

Mr. GIFFORD. What monopoly do you refer to, radio?

The CHAIRMAN. You have a telephone monopoly here, and you want the telephone monopoly to be unregulated as to how it spends its money on these things, and nobody know anything about it.

Mr. GIFFORD. What I really want, Senator, is to continue to improve the telephone service of this country and reduce expenses.

The CHAIRMAN. But if there is an invention you want the right to continue to do that suppressing?

Mr. GIFFORD. I believe the object of better telephone service, at less cost, can be better accomplished under private regulation and management than it can under this bill.

The CHAIRMAN. I understand, but the trouble is that you are arguing this bill on the basis of competitive business, when in reality we are undertaking to regulate a monoply; and how can the people be protected against monopoly, unless somebody has control to go into its business and know about its business?

Mr. GIFFORD. This business has been running 50 years. We have the best telephone and communication service in this country that anybody has in the world, and we are regulated by courts and commissions. There is not a secret in the business that is not known, except some of these new developments that are not yet disclosed as they might relate to patents.

The CHAIRMAN. But I want to know what objection you have to giving this commission power to encourage the use and development of radio, new uses for radio? I notice you mention that. I want to know what objection you have to that.

Mr. GIFFORD. I do not object to it being given the power to encourage development, but this is to develop.

The CHAIRMAN. Well, what objection do you have to the Government having a provision for developing? Every other nation in the world is developing radio.

Mr. GIFFORD. Are we not also?

The CHAIRMAN. I am talking about the Government doing it. You go to England, to Germany, to any of those European countries, and you will find the finest engineers in the country developing new uses for radio. What objection is there to this Commission having a department to do that?

Mr. GIFFORD. Well, we spent, I do not know how much, but we must spend a million or a million and a half dollars a year developing radio. If we have to tell all that we are doing on developing radio to a new commission, and that commission may take that information and make use of it, I think it would be very difficult to keep up the expenditures on our part. In other words, you may be starting in a scheme where you transfer your research activities from private business over to the Government.

Senator WHITE. May I interject there, Mr. Chairman, this subsection (g) to which the witness has referred, on page 42, was that included in the original draft of the bill?

The CHAIRMAN. No; it was not.

Senator WHITE. I was going to say this is the first time it has caught my eye, and I wondered if I had overlooked it.

The CHAIRMAN. I put that in because I wanted to see what objection there would be to it. I am quite interested in the objections.

Mr. GIFFORD. When this provision is read in conjunction with section 218, it would not be surprising if any commission so au-

thorized might understand that it has been clothed with the most sweeping powers, sufficient to enable it to assume the direction and control of this branch of our work.

Now, I am only trying to state the issue as to what the question is that you are yet to decide.

Section 214 is entitled "Extension of lines and circuits" and comprises five paragraphs (a) to (e), inclusive, pages 26 to 28. This is new, so far as relating to communications business is concerned. It requires the companies to obtain a certificate of convenience and necessity before they may extend, construct, acquire, or operate any line or circuit. It provides for notice to and service upon the governor of any State in which the line or circuit is to be constructed or operated, and publication of notice for 3 weeks in a newspaper of general circulation in each county. The commission is given full authority to grant or deny the application as made, or to attach whatever terms and conditions it may consider proper.

The words of this section follow substantially the text of the Interstate Commerce Act, section 1, paragraphs 18 to 22, except that the draftsman has substituted the words "line or circuit" for the words "line of railroad." That is to say, this bill proposes to take provisions of the present law that are applicable only to railroads and apply them to telephone companies. The final paragraph of this section reads as follows:

(e) The authority conferred upon the Commission by this section shall not extend to the construction, operation, or extension of lines or circuits within a single State.

The corresponding provision of the present law is limited expressly to "spur, industrial, team, switching, or side tracks."

Before considering the meaning of the provisions of this section as applied to the telephone business, I wish to make the general comment that there is no presumption in favor of the legislative method that has been followed in drafting this section. There is no reason to suppose that laws which are proper or necessary in connection with railroads are desirable or will work when applied to telephone systems. It has not been supposed heretofore that any sound conception of public policy required restrictions of this kind so far as telephone companies are concerned, and we do not know of any reason whatever why Congress should now, contrary to past experience, come to a different conclusion. Moreover, no one should be surprised if it appears from an examination of these provisions that they become impossible and absurd when the attempt is made to apply them to an entirely different business from that for which they were originally enacted. Such a process of drafting important legislation is almost certain, it would seem to me, to lead to surprising and unintended results.

Looking more closely at these provisions, we find that they deal with "lines" and "circuits." As these terms are not defined in the act, when applied to the telephone companies, they will be given the meaning they have in the telephone business. Telephone lines and telephone circuits are quite different things and the act applies to both. The telephone company cannot extend a line or a circuit, or construct a new line or circuit, or acquire any line or circuit, or operate any line or circuit, or either acquire or operate any extension of any line or circuit, or use any additional or extended line or circuit

for any transmission, without applying to the Commission for a certificate, notice to one or more governors, 3 weeks' published notice in an indefinite number of counties, and so forth. Then at the end of the section come paragraph (e), quoted above. It is necessary to determine what this paragraph means. That is the paragraph that says that the authority conferred on the Commission shall not extend to the construction, operation, or extension of lines or circuits within a single State.

I have already pointed out that in the corresponding railroad provision the lines of railroad excepted were spur, industrial, team, switching, or side tracks. These are definite and well-understood railroad terms. The Interstate Commerce Commission has jurisdiction over all new lines of railroad, extensions of existing lines of railroad, and so forth, except only the five kinds of tracks enumerated. But I have already pointed out that every telephone, and hence every telephone circuit, is an interstate telephone and circuit, to which the Federal power reaches because they are instrumentalities of interstate commerce. When a new telephone with its attendant circuit is installed, an additional interstate line or circuit to that telephone is opened up. The limitation of paragraph (e) is to "the construction, operation, or extension of lines or circuits within a single State." The construction incident to the installation of a telephone takes place within a single State. But what of the operation or extension of lines or circuits? A telephone engineer will tell you that this circuit, when used in an interstate call, as it may be at any time, is operated in every State through or into which it extends. He will also tell you that this installation of the telephone and attendant circuit constitutes an extension of an interstate line. Then there are also superimposed phantom circuits or carrier circuits, that is, additional circuits superimposed upon existing pairs of wires. When such circuits are provided they may and ordinarily do extend over long distances and are likely to be used chiefly for interstate business. They are actual communication channels; they are the railroad tracks of the telephone carrier of communications. They add to the existing facilities of communication. Are all of these instances covered by the provisions of this section? A telephone man, reading the plain words of the law and applying them to telephone operation, giving to the words the only meaning they can have when so applied, will say that all these cases I have referred to are subject to the requirements of these provisions.

But even if a much narrower interpretation than this be taken, the following facts have been given to me by our operating officials as illustrative of some of the difficulties the commission and the companies would encounter under the provisions of this section. By saying "narrower interpretation" I merely meant interpreted along the lines of not going across State boundaries.

The CHAIRMAN. Lines of interstate commerce.

Mr. GIFFORD. Of course, I tried to point out here, technically, any line that you suddenly telephone over from your telephone to anywhere in another State is an interstate line while it is so being used. That is what I pointed out here, but I assume that is not meant by this provision.

These provisions would prevent the placing of a new circuit on an existing pole line—mind you, we cannot do this until the Commis-

sion has approved and until they have notified the governor and had 3 weeks notice and published it in the papers. These provisions would prevent the placing of a new circuit on an existing pole line, although sudden changes in the demands for service frequently make it necessary to do such work, which could be done in a few days, if necessary, except for the securing of the permit. It would also prevent the connecting up of additional spare circuits even though they were standing idle at the moment in the cables or on the pole lines. In 1933 over 8,000 such cases occurred in the operation of plant subject to this act, and the service requirements in many of these cases compelled the completion of such work on a few hours' notice. Under the present are sometimes additional circuits are provided by the placing of what are known as carrier circuits on existing wires. This could not be done without permission under the law as proposed.

2. The adaptation of the working plant to the current changes in traffic volumes and to other conditions requires the frequent rearrangement of circuits and the connecting of one circuit with another. Over 6,000 such changes in plant subject to this act were handled in 1933, on each of which a permit would have been required. Many of these changes were made on a few hours' notice—some of them on a few minutes' notice.

3. The act would prevent providing for the service needs of the Government, the press, the broadcasting companies and other industries, new circuits which are often hurriedly connected up, many times to meet a temporary situation. Often we are not advised of the requirements more than a week or two before the need for the circuits; sometimes we have only a few hours' notice. More than 7,000 such cases arose in 1933. Such cases could not be met under the provisions of the act. Similar cases arise in connection with storm damage and other catastrophes.

4. This was incidental. I cannot believe it was meant. All communications within the District of Columbia are defined as interstate. The proposed law as now worded would prohibit even connecting up a new subscriber station without authorization from the Commission. Over 47,000 telephones were connected up in 1933. Apparently that is a slip, unless you intend to do away with the present regulatory commission in the District.

The CHAIRMAN. Mr. Gifford, of course you have taken the word "circuit" here in its technical sense, and evidently there was no intent on the part of anyone to do any such thing as you are discussing.

Coming down to the meat of the proposal, which is to require a certificate of convenience and necessity for a new interstate telephone line—that is the intent of this section—of course, it is not worded to take the meaning of "circuit" as you do. But what is your position on that?

Mr. GIFFORD. I think that in order to avoid duplicate plant in communication companies, I rather favor that, but how to do it and do it without time to study it that I think the new commission should have, I do not know. It is a very difficult thing to do, because it is like regulating the number of cars that should go on a train, to take them on or off.

The CHAIRMAN. I am not at all certain that this provision ought to be in here, but there is no use to discuss the technical thing you

discussed, because that is ridiculous and would not be possible. The word "circuit" has been used in a technical way by you and not intended so by those who wrote the bill.

Senator WHITE. Of course, Mr. Chairman, we can only gather the intent of people from the language that they use.

The CHAIRMAN. I recognize that, but if the Senator had helped me write this bill he would have found how difficult it was to do these things.

Senator WHITE. I was not invited. [Laughter.]

The CHAIRMAN. You were invited, but you did not participate.

Senator WHITE. I did not know about it.

The CHAIRMAN. I guess you were too busy with the air mail. [Laughter.]

But my point is this, laying all this aside, the question I would like to get an answer to is whether or not you think it is a desirable provision to prohibit or to require a certificate of convenience and necessity for interstate telephone line construction?

Mr. GIFFORD. So far as the telephone business is concerned, I do not think it amounts to anything one way or the other, but by working with the commission, if they want to take it up we can go over our projected program in advance and get together on some working basis.

The CHAIRMAN. I may say to you that there was some doubt as to the wisdom of it being put in here. We had to get the reaction to see what would happen.

Mr. GIFFORD. All right.

The CHAIRMAN. It is easy enough to criticize all these details, but if some of you gentlemen will try to write one of these bills to transfer these powers, you will find it is very difficult.

Mr. GIFFORD. That is just the point I am trying to make. I cannot do this in 2 weeks and I have been in business for 30 years, and I think the really wise thing to do is to follow the other recommendation and let some commission sit down and study this for 6 months and then make some recommendations, and I hope we can all agree to them.

Section 219, pages 31 to 33, is "Annual and other reports." This section authorizes the commission to require annual and special reports, indicates the kind of information they shall contain, provides penalties for failure to comply, and so forth. The text is for the most part the same as that of the Interstate Commerce Act, section 20, paragraphs 1 and 2, which are applicable to telephone companies. There is, of course, no objection to these provisions.

Among the new provisions that have been incorporated into this section are the following:

1. Reports may be required "from any parent or subsidiary of, or person affiliated with, any such carrier."

Senator THOMPSON. Mr. Gifford, you say "the new provisions" and then there is nothing that would indicate to the members here what those new provisions are.

Mr. GIFFORD. I beg pardon, Senator. I will find them right away. The new matter is in the third line of this section 219. The section begins: "The Commission is authorized to require annual reports under oath from any carriers subject to this act." The next phrase is

new, " and from any parent or subsidiary of, or person affiliated with any such carrier."

Senator THOMPSON. That is as far as it goes?

Mr. GIFFORD. That is new; yes.

The second part that is new is on line 18. There are one or two other places I would like to call attention to. In line 18 the parentheses part " and the names of all holders of 5 per centum or more of any class of stock ", and on line 22 the phrase beginning " the names of all officers and directors and the amount of salary, bonus, and all other compensation paid to each ", is new.

My comments will be confined to the first of the above amendments, namely, the requirement of reports from any parent, subsidiary, or person affiliated with the telephone company. In reading this provision it is necessary to turn back to page 5 of the bill, paragraphs (j) and (k) of section 3, for certain definitions. The word " parent " is there defined to mean any person or group of persons controlling one or more corporations, and so forth, but that is not all. It is further provided that the ownership or control of 15 percent or more of the stock of any corporation shall be prima facie evidence of the control of the corporation, and each member of any such group is defined as a " parent." There are nearly 700,000 stockholders of the American Telephone & Telegraph Co. Under this definition any group from among this number whose aggregate holdings of stock are 15 percent of the total stock are prima facie in control of the corporation.

Incidentally, if you take the largest holders, you would need to take about 2,000 largest holders in order to get up to 15 percent control of the stock. Whether each member of such a group is a " parent " by this definition, or is only prima facie a " parent " may not be entirely clear.

Senator WHEELER. In any event, it would take 2,000 of the 700,000 to control?

Mr. GIFFORD. Yes; to get 15 percent, not control, which under this is prima facie evidence of control.

Senator KEAN. I would like to call your attention to this situation. Suppose that a trust company has a large number of trusts and they happen to have telephone stock in those various trusts. They could not vote that without the consent of the executives or trustees, but they might have, added all together, they might have, and if they registered all in a single name for convenience sake, they might represent 5 percent, and yet they would not control that 5 percent, or they would have to go to their principals to sign proxies before they could control it, and yet under this they would be said to control, and yet they could not vote probably 1 percent of that stock.

Mr. GIFFORD. The reason I have not gone into that is that we do not have anybody that owns 1 percent; in fact, our largest holder only owns one fifth of 1 percent of our stock. So it is so far beyond anything that we would have to report that it did not concern me at all. That is the reason I have no particular study or comment upon it.

Under this definition any group from among this number whose aggregate holdings of stock are 15 percent of the total stock are prima facie in control of the corporation. Whether each member

of such a group is a "parent" by this definition, or is only prima facie a "parent" may not be entirely clear.

The CHAIRMAN. They would not be a parent company or a parent corporation.

Mr. GIFFORD. They are a parent under the definition, Senator. That is the way it is worded. Let me finish it. I just want to call attention to it. I think you would like to have me call attention to it. It is entirely clear, however, that every stockholder, even if owning only one share, is a member of a group of stockholders who together own 15 percent or more. Hence, apparently every stockholder is at least prima facie a "parent" as here defined.

The CHAIRMAN. That would be true of 50 percent, would it, or 75 percent, under your kind of reasoning?

Mr. GIFFORD. If you are going to have individual stockholders as a parent. No, not 75 percent.

The CHAIRMAN. Why not? They can get together as a group.

Senator WHEELER. What percent would you ordinarily have present voting at an annual meeting?

Mr. GIFFORD. We have about 60 percent. Between 60 and 70 percent.

Senator WHEELER. It would be rather difficult to assemble 60 percent, would it not?

Mr. GIFFORD. By proxy, of course.

The CHAIRMAN. I think, Mr. Gifford, your reason is absolutely unfounded, for the reason that this refers to a parent of other corporations; it does not refer to a parent of this particular company. I cannot see any basis for that reasoning.

Mr. GIFFORD. Under the wording of paragraph (k) of section 3, by which each member of any group may be deemed a parent.

The CHAIRMAN. That, of course, refers to companies or corporations.

Mr. GIFFORD. It may not have been intended to, but it is quite clear to me that it does not, but that it refers to what I am saying. I will not take time to comment upon the definition of "subsidiary" or upon the very curious wording of paragraph (k) of section 3, which reads as follows:

> (k) Two or more persons shall be deemed to be affiliated if they are members of a group, composed of a parent and its subsidiary or subsidiaries, or of a parent, its subsidiary or subsidiaries, and other corporations, of which each member except the parent is a subsidiary of some other member.

Returning now to section 219, and reading the words "parent", "subsidiary", and "affiliate", in the sense defined in section 3, I simply throw up my hands. And yet this is a serious proposal of important legislation.

The meaning and effect of the section is not clear, upon any admissible interpretation of the words used. The provisions near the end of paragraph (a) and the provisions of paragraph (b) contemplate reports from carriers only, whether parent or subsidiary companies. The difficulty in ascertaining the meaning of the section arises from the insertion near the beginning of the section of the new matter relating to parents and subsidiaries. When the draftsman came to the latter part of the paragraph he apparently forgot all about this new matter, and dealt only with carriers. If the sec-

tion is to be taken to mean that annual and other reports can be required only from carriers, that is, from companies engaged in a public calling, and not their subsidiaries which are not public utilities at all, it is then unobjectionable in this respect. I am advised that it is impossible to foresee how it would be construed.

"Section 220, pages 33 to 37, defines the authority of the commission with respect to the matters indicated by its title, namely "Accounts, Records, and Memoranda; Depreciation Charges." It covers all accounting, including specific provisions with respect to the important matter of depreciation accounting.

This section is one of the most harmful and destructive sections of the bill and in that respect is to be classed with section 215, which I have already discussed."

Since 1906 the Interstate Commerce Commission has had plenary authority to regulate and prescribe uniform accounts and accounting methods and procedure of the companies subject to its jurisdiction. Originally these were only the railroads but in 1910 the act was amended to include telephone companies. One of the early acts of the Interstate Commerce Commission was to prescribe uniform accounting for the railroads; and its action in this respect marked one of the greatest advances ever made in public regulation in this country, and is universally recognized as one of the most salutary achievements of the Interstate Commerce Commission.

In 1912 the Interstate Commerce Commission promulgated a uniform system of accounts for telephone companies, classifying them as A, B, and C companies according to their size and making appropriate differences in the accounting systems for the respective classes. This system became effective for A and B companies on January 1, 1913, and has remained in effect ever since, with such minor changes as experience proved to be desirable. The system has been recently revised by the Commission after careful investigation, in the course of which the companies and the State commissions were given full opportunity to be heard.

The revised system was made effective January 1, 1933, and contains the provision that the accounts therein prescribed may be subdivided to the extent necessary to secure the information required by any State commission having jurisdiction. The fundamental features of the original system of accounts and reports are not disturbed, since experience has shown them to be sound and suitable for the telephone business, to which they apply. In this way the continuity of the history of the telephone business as recorded in its accounts and other records during the past 20 years will remain unbroken and its value unimpaired. As in the case of the railroads, this scientific and uniform treatment of the accounts and accounting practices of the telephone companies of the country is of the highest importance and of inestimable advantage both to the companies and the public. Surely no one in this day and age will question the desirability of uniformity in the accounting system, methods, and practices of the telephone companies throughout the country.

The text of section 220 is in the main a reprint of the existing provisions of the Interstate Commerce Act and therefore by these provisions the new Federal commission seems to be given plenary

and exclusive control over the entire matter of accounting. Complete and appropriate visitorial powers are vested in the commission, as now they are in the Interstate Commerce Commission. The Commission's orders are made mandatory under heavy penalties for violation. It is provided that after the commission has prescribed the forms and manner of keeping accounts it shall be unlawful to keep any other accounts or to keep the accounts in any other manner than that prescribed or approved by the commission, as under the present law. The commission is given authority to make changes from time to time as it may be advised, and provision is made for notifying the State commission of any proposed revision and giving them an opportunity to present their views. All the foregoing provisions are sound and should be continued.

With reference to depreciation accounting and charges, the Interstate Commerce Commission's system of accounts covers the subject, as any complete system must do, and for the past 20 years the telephone companies have complied with these provisions as required by law. In the act of Congress known as the "Transportation Act of 1920" the Interstate Commerce Commission is directed to prescribe the depreciation rates and charges of telephone companies. The Commission has conducted an exhaustive investigation into the matter and has by final order laid down the principles and prescribed the rules by which the depreciation charges are to be determined. The present status of this matter is that the telephone companies are ordered to file depreciation rates and supporting data with the State commissions on August 1 of this year, and the State commissions are to make their recommendations to the Interstate Commerce Commission. Such rates as the Interstate Commerce Commission finds to be proper it will prescribe, to be put into effect on January 1 of next year. In the matter of depreciation accounting, therefore, as in other respects, uniformity of methods and principles of accounting has been maintained, and the public interest has been and will continue to be fully safeguarded by the Federal regulations described. Now we find a most astonishing situation. We have seen that paragraphs (a) to (g), inclusive, of this section would in terms transfer to the new commission all of the existing authority of the Interstate Commerce Commission in all matters pertaining to accounting, including depreciation, and would therefore do exactly what the President has recommended, if it were not for paragraphs (h) and (j). These two paragraphs undo and strike down practically everything that has gone before.

These paragraphs are as follows:

(h) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(j) Nothing in this section shall (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier, the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices; or (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State law.

"Referring to paragraph (h), the first clause is unobjectionable. The second clause would authorize the commission to abdicate entirely and surrender its jurisdiction to the State commissions, if the commission believed that this would be "consistent with the public interest." The commission might, for example, under this clause, permit the State commission in any State to take sole and exclusive control of the depreciation charges and all accounting of telephone companies." This sacrifice of uniformity is bad enough, but paragraph (j) is still worse.

Paragraph (j) deals first, in clause (1), with depreciation accounting and charges, and in clause (2) with the entire field of accounting and records. With respect to depreciation it provides that nothing in this section shall limit the power of the State commission to prescribe the depreciation rates and charges. In like manner with respect to the entire matter of accounting, it provides that nothing in this section shall relieve the carrier from keeping any accounts, and so forth, which may be required by any State commission acting under the provisions of the State law. It must be kept in mind that practically all State statutes confer upon the State commissions very broad authority over the accounts of utilities subject to their jurisdiction, including telephone companies. These general and sweeping provisions, of course, comprehend the matter of depreciation accounting, but in addition many State statutes contain express provisions with respect to depreciation accounting, and these provisions present all sorts of fundamental differences in theory and practice.

Comment upon this wholly anomalous situation seems to be unnecessary. This section makes an orderly advance and then beats a disorderly retreat. Paragraph (j) and the last part of paragraph (h) strike down practically all the sound and salutary provisions of the preceding paragraphs, and introduce chaos in place of the present orderly, sound, tried, and tested accounting. This would create an impossible situation even for a company operating in only one State. As applied to companies whose property and business cover two or more States, and even as many as nine States in the case of one of our companies, it is clearly out of the question.

The CHAIRMAN. Of course, this is all permissive, is it not, if the Commission sees fit to use the methods?

Mr. GIFFORD. If you do not expect the Federal Commission to do it, or do not they think they ought to do it, why permit it?

The CHAIRMAN. They might want to do it.

Mr. GIFFORD. I am not pointing out what will happen if it does do it.

The CHAIRMAN. You will have a chance to show that to the Commission.

Mr. GIFFORD. I am trying to show it to the committee here now.

The CHAIRMAN. There is 98 percent of the telephone business within the State, and the State commissions insist that they shall not be wiped out of their regulatory powers by this law, and it seems to me there is much justification for giving the Federal Commission some powers here to work with the State, and I do not think—of course, you assume that the Commission will ruin you, and I assume the Commission will be fair.

Mr. Gifford, I assume there is no reason for putting this provision in unless you think the Commission may act under it, and I am trying to point out that if they do act under it, what may happen.

Uniform accounting and reporting in the telephone industry, as well as in other lines of business activity, is being more and more recognized as of great value to investors, to the public, and to management.

Senator KEAN. How much do you write off a year? I mean what percentage?

Mr. GIFFORD. For depreciation?

Senator KEAN. Yes.

Mr. GIFFORD. Something like 4½ percent a year.

Senator KEAN. For instance, suppose I have a telephone on this desk. I hire a telephone from you. In how many years do you write that telephone off?

Mr. GIFFORD. I cannot answer for that particular piece of property, but for the property as a whole it averages about 4½ percent. The life is about 20 years, on an average. Each class of property has a different rate, based on our experience. It is obviously essential for the proper presentation of consolidated financial statements now rapidly becoming a public requirement.

It is unthinkable, to my mind, that the Congress would enact a measure so reactionary as this, because the whole trend of modern times is to force us to make consolidated statements. Literally, if the Commission asked us to do it, we would have to keep two sets of books, one for the State Commission and one for the Interstate Commerce Commission.

Take our Southern Bell Co. that operates in nine States. Theoretically each one of the nine States might prescribe different accounts, and they are on the statute books of those States that have by law been superseded in the past 20 years by the authority of the Interstate Commerce Commission. Now, you would have 9 different methods of keeping accounts there, plus 1 for the Interstate—10 sets of books. And you could not combine them, could not make a combined statement, and it would just mean chaos, I am afraid. I point it out as one of those things again that I think should be still further studied. Of course, it has been a matter of controversy, as you probably know, Mr. Chairman, for a great many years. They had extensive hearings now long ago—a year and a half ago—I guess it was last year——

The CHAIRMAN (interposing). Before the House committee.

Mr. GIFFORD. Before the Interstate Commerce Commission and before the State commissions on this new system of accounts.

The last section, 606, pages 95 to 97, paragraphs (a) to (d), inclusive, carries the title "War Emergency—Powers of the President." The section is broader than its title, as I will point out.

Paragraphs (a) to (b) are war measures and I pass them over with the comment that they are new legislation, in that they are here a revival of provisions of the Interstate Commerce Act applicable, in the words of that act, "during the war in which the United States is now engaged." In other words, these provisions were enacted during and for the continuance of the World War and are no longer operative in the present law.

Paragraph (c) authorizes the President, upon proclamation "that there exists war, or a threat of war, or a state of public peril, or disaster, or other national emergency", to take over the use or control of any telephone office or station, upon just compensation to the owners. This paragraph is an adaptation of the existing provisions of section 6 of the Radio Act which authorizes the President, upon the proclamation above referred to, to seize any radio station. It is here extended to the telephone system.

This paragraph might be deemed to confer upon the President the power, which he has not sought, to take over the control and operation of the telephone systems of the country, upon proclamation by him of the existence of a national emergency. At least until such time as the President shall indicate that the interests of the country require that he be invested with such power, I respectfully submit that the Congress should not thrust it upon him. Especially is this so in view of the President's special message in which he expressly excludes conferring new powers incident to the creation of a Federal Communications Commission.

I think, Mr. Chairman, that is all I have to say.

The CHAIRMAN. Are there any questions?

Senator WHITE. Can you give us any data, Mr. Gifford, as to rate reductions? I notice in your opening statement you said that within a brief period of time there have been four reductions in rates by the telephone company. Have you at hand any data as to that?

Mr. GIFFORD. I think they amounted to between $15,000,000 and $20,000,000 total, about $5,000,000 apiece. They were long-distance rates, interstate rates, rates subject to the regulation of the Interstate Commerce Commission. Those were the ones that were reduced in 1926, 1927, 1929, and 1930. 1930 was the last.

Senator WHITE. Could you translate that figure in percentages of reduction, roughly?

Mr. GIFFORD. In the longer-haul rates, they cut them in two. The rates from here to San Francisco were practically cut in two, a 50 percent reduction. In the shorter haul the percentage reduction is not as great. There were very substantial reductions in those long-haul rates.

Senator KEAN. I would like to ask just one question in regard to this. This depreciation of 4½ percent ought to reduce your rates, because that reduces the value of your property so that in a short time it ought to reduce your domestic rate, ought it not?

Mr. GIFFORD. Well, that does not reduce the value of the property.

Senator KEAN. If you write it off, it does.

Mr. GIFFORD. If you write the property off?

Senator KEAN. If you write off so much at 4½ percent a year, in 2 years it is 9 percent.

Mr. GIFFORD. But you have replaced it.

Senator KEAN. I know you have to replace some of it.

Mr. GIFFORD. You are talking about the amount we have accumulated as reserve, not yet used?

Senator KEAN. Yes; still used and useful but has been written off.

Mr. GIFFORD. That is not going up much. That remains about the same. We rebuilt—I forget how much plant we took out last year,

lost stations. When parts wear out they wear out at a pretty even rate.

Senator KEAN. For instance, suppose in the city of New York you have a subway which you put down, which you draw wires through. The cost of that subway you are writing off all the time. Is that true?

Mr. GIFFORD. No; we do not write it off, as a matter of fact; we carry it on at the original cost on our books and set up a reserve on the other side. Some day, theoretically, we will have to rebuild the subway, and we will need the full amount of reserve to rebuild it with, theoretically, because we may build something besides a subway when the time comes. But the subway will wear out some time. We spent last year on plant replacement—we took out of service $195,000,000 worth of plant that was worn out or had become obsolete or was no longer useful.

Senator KEAN. $195,000,000?

Mr. GIFFORD. Yes, sir.

Senator KEAN. How much did the write-off amount to?

Mr. GIFFORD. Well, the write-off—the total depreciation expense was $171,000,000, but you cannot compare that, Senator, because there is salvage in that plant written off, and so forth.

Senator KEAN. So that the probability is that you wrote off $171,000,000, and you increased your plant by $195,000,000?

Mr. GIFFORD. No; we took $195,000,000 out.

Senator KEAN. You wrote that off?

Mr. GIFFORD. We wrote it off entirely. It is kind of a revolving fund, you know.

Senator KEAN. I understand perfectly well what it is, but it ought to be so that it gradually decreases. What I am interested in is decreasing the value of your capital.

Mr. GIFFORD. We could do that if we could charge high enough rates to have a sinking fund to amortize our capital.

Senator KEAN. What I was trying to get at is, If you write this thing off properly, if it is written off properly, it ought to write off as the capital decreases. It ought to write off so that eventually you can deliver service at cheaper rates to the consumers.

Mr. GIFFORD. Well, capital in the form of buildings and pole lines and so forth will not decrease unless the amount of business decreases. That will be there all the time. Are you not talking about if we had bonds, about a sinking provision to write down the bonds?

Senator KEAN. Exactly; but the write-off ought to be the same thing as a sinking fund.

Mr. GIFFORD. We do not earn enough to write off that.

Senator KEAN. You ought to earn enough to write off some of it.

Mr. GIFFORD. We do not. We are not earning——

Senator KEAN (interposing). I think that has been one of the failures of the Interstate Commerce Commission, that they did not, when times were good, force the railroads to write off more, so that they could produce lower rates for the people at the present time. That is one of my complaints of the Interstate Commerce Commission. What I want is to see you forced to write off in good times enough so that in the future people will get cheaper rates, owing to the decreased value of your capital.

Mr. GIFFORD. I get your point.

Senator WHEELER. 3.7 percent. Is that your net?

Mr. GIFFORD. That is what the whole system earned last year.

Senator WHEELER. Now, you were speaking of the long-distance calls, long-distance messages. What part of those do the lines get? For instance, you take an independent line in some States?

Mr. GIFFORD. It is a contract arrangement. We have different contracts.

Senator WHEELER. They get a certain commission?

Mr. GIFFORD. A certain commission for business originating on their line and a certain pro rata for the use of their line. I am not familiar with the figures. I suppose they differ with different companies.

Senator CAPPER. In the part of the country I come from the Bell Telephone is generally regarded as a monopoly. I wonder if you could give us any information, any data as to how much your company has spent in the last, say, 20 years in absorbing competing telephone lines?

Mr. GIFFORD. Oh, very little, relatively very little. You go back to when we began to do that, which was when Mr. Vaile was president of the company, there were two telephone systems in the town, you know, and the object was to eliminate one of them. But the business was very small then, one eighth of the size it is now, so that at the time that took place, the absorbing of other companies, they were small relative to the 5 billions of investment we have today—a small item. I mean I would not venture to guess, but I think a couple of hundred million dollars out of the 5 billion would more than cover it. It is not a big item.

Senator CAPPER. Well, the Bell System is practically a monopoly today?

Mr. GIFFORD. It has to be, in the telephone business. It is not a monopoly in the sense—I can illustrate it in this way: Suppose there were two telephone companies in New York State, one of them operating in New York City and the other one operating in every other place in New York State. Suppose the one that operated in New York City had 2,000,000 telephones and the other one had 1,000,000. Which one is the monopoly? I mean, neither of them are a monopoly, related to the other. They are a monopoly in the particular place that they are in, but the fact that one telephone company owns all of the telephones in Albany, Syracuse, and different places does not seem to me to make that company a monopoly any more than the company that operates only in New York City would be. It is different from any other business in that respect.

Senator WHEELER. Mr. Gifford, your company is coded?

Mr. GIFFORD. Yes; we are working under the President's reemployment agreement.

Senator WHEELER. How much has that added to the cost of your operations?

Mr. GIFFORD. It has added about $18,000,000 or $20,000,000 a year.

Senator WHEELER. What percentage?

Mr. GIFFORD. On our gross revenue that is about 2 percent; 22½ percent on our cost of service.

Senator KEAN. What did that leave you net?

Mr. GIFFORD. It took $18,000,000 out of our net.

Senator KEAN. What percentage net is that?

Mr. GIFFORD. Of our net? That is something larger again.

Senator WHEELER. What is that money used for?

Mr. GIFFORD. That would be 14 percent of our net. I beg pardon.

Senator WHEELER. That $18,000,000 or $20,000,000 that this coding costs you, how is it distributed, or could you give that?

Mr. GIFFORD. It has gone into additional employees and adjustments, some adjustments, not a great many, on minimum wages and some further adjustments that went with that. But it is the effect of the N.R.A. Just what adjustments we made growing out of the President's agreement amounted to that.

Senator WHEELER. Did that go to the payment of added expenses of administrators?

Mr. GIFFORD. No; we do not have any administrator yet at all.

Senator WHEELER. It simply goes to the employment of additional help? Is that it?

Mr. GIFFORD. Yes; we have employed several thousand more people and we have increased the pay, particularly in the smaller communities.

Senator WHEELER. Has the old employee had the price that you pay him increased, the rate? Is he getting more money now under the code than he received before the code?

Mr. GIFFORD. We have made no cut in wages at all since 1929—no cut in wages.

Senator WHEELER. But you have reduced the number of hours?

Mr. GIFFORD. We have reduced the number of hours.

Senator WHEELER. Does the old employee get as much for his services now as he did before?

Mr. GIFFORD. Not in the pay envelop; no.

Senator WHEELER. In other words, he has lost?

Mr. GIFFORD. He has lost, but he lost before the N.R.A.

Senator WHEELER. And the gain has been in the employment of additional help? Is that it?

Mr. GIFFORD. That is the gain to the people we have employed, but not a gain to him.

Senator WHEELER. In other words, he has lost—the old employee has lost?

Mr. GIFFORD. That is right.

Senator WHEELER. You are required to regiment your employees? That is, they have the opportunity to join the union?

Mr. GIFFORD. They have had that for 14 or 15 years.

Senator WHEELER. They are all unionized?

Mr. GIFFORD. No; they are not unionized. They have had associations, employees associations, beginning at the time of the war, and they have kept them up ever since. I think we have perhaps two or three small union groups, and the rest of them are all in employees associations.

Senator WHEELER. So you can say definitely, Mr. Gifford, that your old employee has lost by coding?

Mr. GIFFORD. Well, I am not sure that he has.

Senator WHEELER. In his work opportunity and the amount that he receives?

Mr. GIFFORD. I am not sure that I could say that. We were doing this spreading the work before this coding happened. We started

in in the beginning, because—well, most of the large companies started in long before the N.R.A. to do this spreading of work, and of course the cost of living has come down some, and insofar as the spreading-

Senator KEAN (interposing). It has been going up lately.

Mr. GIFFORD (continuing). Insofar as the spreading of work is not too great, cutting the pay envelop too much, the man is not so badly off compared with 1929. He may even be in purchasing power about the same. In our business we have not cut the wage rate at all.

Senator WHEELER. But he has lost by reason of the number of hours and the number of days he works weekly?

Mr. GIFFORD. There is no doubt about that.

The CHAIRMAN. Thank you, Mr. Gifford. We will now hear Mr. White, if he is here. I think we might run on a little while, if the Senators can stay.

STATEMENT OF R. B. WHITE, PRESIDENT OF THE WESTERN UNION TELEGRAPH CO.

Mr. WHITE. Mr. Chairman and gentlemen, the Western Union has very carefully considered the proposed bill and find that we can adjust our practices to conform with its requirements without much difficulty and without many changes. However, we welcome this opportunity to present a few questions concerning some doubts and also submit a few suggestions which we hope will not only improve the bill but also will be satisfactory to others concerned.

As we understand it, this bill announces and formulates a policy with regard to communication services in the United States similar to that announced and embodied in the Transportation Act of 1920 with regard to the railroad systems of the country.

As in the case of the railroads, while it is important by adequate regulation to make sure that the rate charged shall not be unreasonably high, it is also of paramount importance to make sure that the service offered the public shall at all times be efficient, adequate, Nation-wide, and uninterrupted. In general, satisfactory provision seems to be made for retaining these objects by the proposed bill; however, we think it might be strengthened by some provision tending to guard the communications service against interruptions in consequence of labor disputes, on some terms which would fully safeguard the interests of labor. The matter has been so handled in the case of the railroads, and we understand legislation which would have the same effect is now being considered for the railway, express, and Pullman companies, and it would seem both desirable and proper to take similar action at this time, so far as communication companies are concerned.

There is a certain incongruity in all cases in charging one regulatory body with the duty of regulating rates and permitting another regulatory body to regulate expenses, especially in view of the primary tendency of the rate-regulating bodies to keep the rate down and the other to keep the expenses up. Such a situation has been avoided so far as the railroads are concerned, and the national communications systems, especially under the new policy, declared in this bill, are precisely analogous to the railroads. Provision should be made which will assure the communication employees rights for

collective bargaining, adequate hearing and the just disposition of any grievances which they may have from time to time, and at the same time tend to prevent sudden and disastrous interruptions to service.

Communications are an essential arm of commerce, indispensable from the standpoint of national defense, and a service upon which the public generally is dependent.

We would also like to submit one question with reference to the companies subject to the act. The act will apply, according to its language to all interstate and foreign communications by wire, and to all persons engaged within the United States in such communication, which is defined very broadly as "the transmission of writing, signs, signals, pictures, and sounds of all kinds, by the aid of wire, cable," and so forth. Most of the bill, however, refers to common carriers engaged in interstate or foreign commerce by wire or radio. The term "common carrier" or "carrier" is defined as a person engaged in communication by wire or radio as a common carrier for hire.

There is some question as to whether this language would or would not include certain types of communication not now subject to regulation. It would seem it was the intention to have that portion of the act which covers the leasing of lines to businesses requiring this service, to prevent such concerns, groups, or associations of such concerns from entering the commercial telegraph business in a small way for special selected users. It is not clear that the bill does cover such an arrangement. This practice has been indulged in to some extent in the past, and of late there has been some extension of the service. The effect is to create small telegraph systems, unfettered in their actions, since their service is unregulated. The Western Union feels that the act should be strengthened in this respect and the doubt removed, and this could be done by the addition of the following words after the word "cable", line 16, page 12, "and of all facilities used for the transmission of public or private messages, regardless of ownership of such facilities."

Senator WHITE. May I interrupt you right there? Where do you suggest that change to come in?

Mr. WHITE. Line 16, page 12.

Senator WHITE. I had the page and the line confused. All right.

Senator KEAN. Mr. White, suppose I had a telegraph from here to my factory. Suppose I owned the right-of-way and I put up a telegraph line. Would not that come under this language?

Mr. WHITE. Well, you had the line when the act went into effect, and you could not put it up until you secured permission, as I understand it.

Senator WHITE. Will you read the language again that you suggested?

Mr. WHITE. Yes. The suggestion is that you add the following words after the word "cable" in line 16, page 12:

and of all facilities used for the transmission of public or private messages, regardless of ownership of such facilities.

The CHAIRMAN. What is your reason for that?

Mr. WHITE. Well, it is a reason I attempted to give before I suggested it, Senator, and that is that it will prevent the establishing

of small, independent—"independent" is not exactly the right word, but there has been a tendency for lessees of lines to engage to a small extent in communication business for special users or outside users, and they are without regulation.

The CHAIRMAN. The minute they did that, thought, they would go beyond their private use for themselves, would they not?

Mr. WHITE. That is not clearly defined. That is the reason we are raising the question.

The CHAIRMAN. Your purpose is to reach that?

Mr. WHITE. That is right.

The addition of lines 13 and 14 to the present law in section 201 (b), page 15, we think is not sufficiently clear as to the manner in which it would apply to contracts between telephone companies and railroads. Since the Western Union has far and away a preponderance of contracts with other common carriers, we are greatly interested in knowing what is intended by the addition of these lines to the present interstate commerce law. We suppose it was the intention to further safeguard public interest by the addition of these lines, but it suggests that a competitor might use this provision in filing objections to a contract and urge that the terms were against public interest.

Senator WHITE. Will you indicate again that new language?

Mr. WHITE. I am not indicating any new language.

Senator WHITE. I thought you referred to new language there in the act.

Mr. WHITE. Oh, yes; I did, sir. The addition of lines 13 and 14 to the present law in section 201 (b), page 15.

Surely the control of railroad practices under the Interstate Commerce Commission and the control of communications under the new commission would safeguard public interest without adding to the present interstate commerce law. We feel that these additional lines should be omitted.

In connection with certificates of necessity and convenience, we think the provisions in section 214, page 26, for requiring such certificates are in substance wise and salutary provisions. The language of the bill, however, is perhaps broader than is or should be intended. We suggest one change in section 214 (a) and one in section 214 (e), as follows:

By adding after the first word "circuit" in line 17, page 26, the words "in the territory or to points or places not already served by such carrier with service of the same class." I will repeat that shortly. And after the word "any", line 17, page 26, the word "such", so that it would then read:

SEC. 214. (a) No carrier shall undertake extension of its line or circuits, or the construction of a new line or circuit in the territory or to points or places not already served by such carrier with service of the same class, or shall require or operate any such line or circuit or extension thereof, or shall engage in transmission over or by means of such additional or extended line.

The rest of the language would be the same.

Section 214 (e) would then read:

The authority conferred upon the Commission by this section shall not extend to the construction, operation, or extension of lines or circuits within a single State, or to local, branch, or terminal lines or circuits not exceeding 10 miles in length.

We feel that it was not the intention to require a company to obtain such a certificate for additions of lines or circuits between points where it then has a circuit line or circuit in use. No good can come from such a requirement, and it will operate to the detriment of good service.

Even with these suggested changes, there might be some small extensions which would not be of sufficient importance to require notice to be given to the Governors of States, or published for 3 consecutive weeks. We think it might be well to leave to the discretion of the Commission, on receipt of application for such certificate, the question of how and to whom notice of application shall be given. The Commission might be authorized to deal with this matter specifically in connection with any particular application.

The Commission should have authority to require any reports or information from the companies which it may find necessary or useful in the discharge of its duties. Under existing law the Interstate Commerce Commission has full power in that respect. We do not see the necessity for making it mandatory in this bill by section 219, page 31, line 7, that the report shall show all the details which are expressly enumerated. We think it would not be unreasonable to leave to the Commission the task of prescribing the form and contents of such reports as it requires.

Mr. Chairman, the Western Union has nothing further to add concerning the bill at this time, but inasmuch as other testimony will follow, we would like the privilege of submitting some additional statements if we should find it desirable to do so.

The CHAIRMAN. I want to ask you about the first part of your testimony regarding the labor situation. Do you think that this bill should carry certain provisions about labor? Or do you think there should be certain amendments to the Labor Act that now applies to railroads?

Mr. WHITE. Well, I think you would probably like to follow the easiest course and at the same time one that would be reasonably acceptable to both sides. I should think the easiest way to do that would be to amend the Railway Labor Act.

The CHAIRMAN. The reason I mentioned that is we have been told that there was going to be a revision of the Railway Labor Act presented to Congress within the next few days or the next few weeks, and I call your attention to that with the view that you might want to propose amendments to that, rather than to this bill, since this bill is not an attempt to deal with labor as such.

Mr. WHITE. No; I was not suggesting that this bill be amended in that respect, but I was suggesting the fact that as it stands today, we, like other communications companies, are operating under a modified President's agreement, and we are being urged to submit a labor code. The competitive features of our business seem to be cared for entirely, so far as this bill is concerned, so there is no question of competition entering into the situation as it does in other business, and we find difficulty in that act by reason of the fact that we manufacture nothing and our selling price is fixed, and it seems to me with the control of our selling price fixed in this body, and the control, more or less, of our wage price fixed in another body, we are in a situation where it is very difficult to op-

erate; and besides, it might operate, if it was not administered properly, so that this commission would not have any power.

Senator THOMPSON. Mr. Chairman, I suggest the propriety of furnishing to each member of this committee the suggestions of changes that Mr. White has made here. Of course, we will get the printed copy after a while.

Mr. WHITE. I will leave a copy of my remarks with you for each member of the committee.

Senator CAPPER. Mr. White, is there real competition in the telegraph business?

Mr. WHITE. Yes, sir.

Senator CAPPER. The Western Union has no interest in the Postal Telegraph Co.?

Mr. WHITE. No, sir.

The CHAIRMAN. Are there any other questions? If not, we thank you very much, Mr. White, for your very constructive statement.

Now, Mr. Sarnoff, I think, is here and says he will only take a few minutes. He wants to leave and not come back tomorrow, and I think we might hear him at this time.

STATEMENT OF DAVID SARNOFF, NEW YORK CITY, PRESIDENT RADIO CORPORATION OF AMERICA

Mr. SARNOFF. Mr. Chairman and gentlemen, for the Radio Corporation of America and its subsidiaries I am here to say that we are heartily in accord with President Roosevelt's recommendations for the creation at this time of a unified Federal communications commission.

We believe that this commission should take over the functions of the Federal Radio Commission and those of the Interstate Commerce Commission so far as the latter relate to communications. We suggest that there also be transferred to the proposed new commission the functions of the Postmaster General relating to certain telegraph rates and the functions of the Executive Department concerning the granting and revoking of cable-landing licenses.

We are also in agreement with the suggestion contained in the President's message to Congress that the new commission be given full power to study the business of existing communication companies and to make recommendations to Congress for additional legislation at the next session. So far as this bill creates that commission and authorizes it to make such studies and recommendations we favor its prompt passage, and I am here to offer you and that commission every form of cooperation our companies can give in making such studies.

So far as the bill before you would create new law at this time and go beyond the suggestions of the President, we do not see how it can avoid raising controversial issues, which I understand the committee desires now to avoid.

Statements you have already heard point out many particulars in which this bill would modify existing regulations and create new ones. We respectfully recommend to your committee that the bill be limited to the scope of the President's recommendations and that the new commission be created promptly, so that it may proceed to make the study suggested and to recommend to Congress such ad-

ditional laws and regulations as it may find necessary and desirable in the public interest. In that way the country will have the speediest possible benefit of President Roosevelt's recommendations. Mr. Chairman, I have nothing further, and I thank you for the privilege of appearing.

Senator WHITE. Mr. Chairman, it strikes me that what the witness has said is not of much help to us if we are to proceed with the consideration of this bill as it is drafted. I would like to ask, if it is the decision of the committee to go ahead and consider these changes in law which are incorporated in here, whether Mr. Sarnoff would then be ready and agreeable to discuss the proposals in some detail, so that we might have the benefit of his judgment as to the specific provisions in the bill?

Mr. SARNOFF. I am entirely ready and willing to do that, Senator, if it is the wish of this committee. I limited my statement to general observations, on the understanding which I had, that it was not desired to raise controversial issues at these hearings, but if it is, I can promise some. [Laughter.]

Senator WHITE. I do not doubt your capacity to do that.

The CHAIRMAN. Is there any other question or any other statement? Mr. Sarnoff, we thank you very much.

We will now adjourn until 10:30 tomorrow morning, when we will hear Mr. Behn, of the Interstate Commerce Commission, and Mr. Murphy and two or three other witnesses.

(Whereupon, at 12:30 p.m., the committee adjourned until 10:30 a.m., Wednesday, Mar. 14, 1934.)

FEDERAL COMMUNICATIONS COMMISSION

WEDNESDAY, MARCH 14, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:30 a.m., Senator Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. I have some letters here and some statements to be inserted in the record.

First, I have a letter from James B. McDonough, Fort Smith, Ark., relating to the desirability of the provisions of this bill to cover the routing, the joint-rate matter, and telegraph and telephone mergers.

Next is a letter from Harris K. Randall, of the American Radio Audience League, suggesting certain amendments.

Then a statement by Hoyt S. Haddock of New York, representing the American Radio Telegraphists Association, suggesting certain amendments in connection with the civil-service provisions of this bill.

(The papers referred to follow:)

FORT SMITH, ARK., *February 27, 1934.*

HON. CLARENCE C. DILL,
Chairman Committee on Interstate Commerce,
Senate Office Building, Washington, D.C.

DEAR SIR: This letter refers to the proposed action by Congress to pass a law creating a new agency. to which agency it is proposed to transfer authority and control over interstate telephone communications and other matters.

In the press dispatches of this morning I notice a statement by the President recommending that such new commission be created, and that the same be vested with authority now lying in the Federal Radio Commission "and with such authority over communications as now lies with the Interstate Commerce Commission." If the proposed act of Congress should so limit the authority and power of such commission, said act would fall far short of what the country wants and of what the interstate telephone business has needed since the Transportation Act of 1920. The new act should, as a matter of justice, give to such commission full and complete authority and power to regulate and control the instrumentalities and facilities used by telephone companies in interstate commerce, including the places of transfer of messages, the routing of such messages, the fixing of rates, and the division of such rates. Unfortunately for the law and the public, the Interstate Commerce Commission has held that it did not have such authority and power (*Oklahoma-Arkansas Tel. Co.* v. *Southwestern Bell Tel. Co.* 711).

Under date of February 15, 1934, I wrote you a letter pointing out fully the unfortunate defect in the present law. To that letter I attached a letter addressed to the Secretary of Commerce dated December 26, 1933. For ready reference I herewith hand you a copy of each of said letters. The fact that the present Interstate Commerce Commission has held that it has no jurisdiction of the routing of messages, and over the control and management of the instrumentalities and facilities used in interstate commerce, unless the proposed act of Congress is made clear on the subject and the jurisdiction of the new agency

made amply broad, the courts would hold that said new agency had no such jurisdiction. It is therefore of the highest importance to all independent telephone companies, as well as to the public interested in rates, the division of rates and proper service, to have the new law so broadened that there can be no question about the jurisdiction of the new commission to regulate all the instrumentalities and facilities used in interstate commerce.

With the law as it now is, the Bell assumes the power and authority to route all messages, thereby giving that company the line haul, and makes the rates and fixes the divisions thereof, and there is no power, according to the Interstate Commerce Commission, whereby the people and connecting telephone companies can have their rights protected. With the law as now construed by the Interstate Commerce Commission, the Bell may route messages over its own lines from points in Oklahoma and Arkansas to New York by way of Denver, Kansas City, or even cities in the far West, thus compelling the conversation to be had over distant and roundabout routes instead of using a direct communication line. It often happens that the independent company has the most direct line. Instead of sending the messages over that line, the Bell routes said messages in a roundabout way, and every switching of such roundabout message is the cause of delay and injury to the public.

That is fully illustrated in the actual case cited above. Heavener, Okla., is an important railroad center. The Oklahoma-Arkansas, for the purpose of giving quick, dependable service, built two extra circuits directly from Heavener to Fort Smith to be used solely in the quick service demanded by the community of Heavener. The Bell refuses to receive the calls over those direct lines, although the lines are still intact and may be used at any moment, and routes the messages by way of its own lines at Poteau from the latter place to Fort Smith, and thus causes a delay by an extra switching at Poteau.

If a hearing is had on this bill, and if any of the committee so desires, the Oklahoma-Arkansas will be glad to present its views proving the defect in the existing law and the great need of the public to have the law amended.

Trusting that this Congress may do something to remove the defect in existing law, I remain,

Yours very truly,

JAMES B. MCDONOUGH.

FEBRUARY 15, 1934.

Mr. CLARENCE C. DILL,
Chairman Committee on Interstate Commerce,
Washington, D.C.

DEAR SIR: I am counsel for the Oklahoma-Arkansas Telephone Co. We have been engaged in an effort to establish under the law the right of the Interstate Commerce Commission to control the use in interstate commerce of the instrumentalities, facilities, and appliances used by telephone companies in said commerce. I enclose copy of a letter which I wrote to the Honorable Secretary of Commerce on December 26, 1933. I wrote that letter after the public press had announced the appointment of a committee to draft a bill for the purpose of enacting legislation to cure the evils heretofore existing.

Since 1920 there has been a defect in the interstate commerce act of Congress with reference to the regulation and control by the Interstate Commerce Commission of the instrumentalities and facilities used by telephone companies in such commerce. In the Transportation Act of 1920, through oversight or otherwise, the effectiveness of the control of the Interstate Commerce Commission over telephones was practically destroyed. At least, such is the ruling of the Interstate Commerce Commission. The evil to be remedied is to take certain power from the Bell Telephone Co. and lodge the same in the Government, either placing the same with the Interstate Commerce Commission or with some other commission to be created by Congress. As the law is now construed to be by the Interstate Commerce Commission, there exists no power in that commission to regulate and control the routing of messages in interstate commerce, which includes the fixing of the line-haul, nor any power to fix the rates, nor any power to fix the division of rates.

From 1910 to 1920, as innumerable decisions of the Interstate Commerce Commission prove, the Commission considered that it had power to regulate the use of the instrumentalities and facilities in interstate commerce. The Commission, in the decision referred to in this letter addressed to the Secretary

of Commerce held that it was without such power. I have always been of the opinion, and am still, that the Commission has ample power to control the points of transfer of interstate messages, and the line-haul, and the rates and the division of rates. Owing to the defects existing in the law as construed by the Commission, the Bell Telephone Co. has absolute power of life and death over every independent telephone company. Your attention is directed to the facts set forth in this letter dated December 26, 1933.

The purpose of writing you is to request that Congress investigate the matter and pass an amendment to the Interstate Commerce Act plainly imposing upon the Interstate Commerce Commission or other commission the duty and absolute obligation to control the instrumentalities and facilities, including the routing of messages, the fixing of rates, and the division of rates between all companies engaged in interstate commerce. Since the Transportation Act of 1920, as the records will show, the Bell has exercised the power to decide the line hauls, and thus the revenues, and the rates, and the division of rates, and that power the Bell has used to the injury of all independent telephone companies.

What I wish to call your attention to is this defect, and to suggest that it will be a matter of benefit to the people at large if the interstate commerce act can be amended so as to place the telephone companies under the control of some commission as they were under the original act of Congress of 1910. If I have not made myself clear in the matter, I will be glad to answer any questions which you may ask and will be glad, also, if the committee would desire it, to come before the committee at Washington, D.C., and present the points fully. The matter is called to your attention because a wrong exists as it is and it should be remedied. I am sending a similar letter to each of your committee. I trust that the matter will be investigated and a proper bill enacted to remove the wrongs.

Yours truly,

JAMES B. MCDONOUGH.

DECEMBER 26, 1933.

DANIEL C. ROPER, Esq.,
Secretary of Commerce, Washington, D.C.

DEAR SIR: I am counsel for the Oklahoma-Arkansas Telephone Co., a company which owns a small, though valuable, telephone system with its principal office at Poteau in the State of Oklahoma, and with exchanges at Poteau, Heavener, Winter, Howe, and Monroe, in the State of Oklahoma. Said company also owns rural telephone lines in part, and in part has connections with other rural lines as shown on the map herewith enclosed. This company, as are all independent telephone companies in the United States, is necessarily interested in the bill to be submitted to Congress in the near future. You are chairman of said committee, and I am sending to each member of the committee a copy of this letter to you.

The purpose of this communication to you and the committee is to call attention to a defect in existing law as to the regulation of the transmission of messarges in interstate commerce. To illustrate the defect in the law, it is necessary to give you a brief history of the 5-year-old controversy between this company and the Bell with reference to the routing of messages in interstate commerce, the fixing of rates on such commerce, the division of the rates, and the determination of the points of transfer of said messages and the lines to be used in the transmission.

On January 22, 1928, the Southwestern Bell Telephone Co., hereinafter called the "Bell" in the nighttime and on a Sunday, cut the cables at Poteau, which cables were connected with the toll board of the Oklahoma-Arkansas Co., and contrary to the laws of Oklahoma established a toll board at Poteau and extended the new cables into an office which it had established in a building adjoining the office of the Oklahoma-Arkansas, and thereby took over all the interstate commerce which had been enjoyed by the Oklahoma-Arkansas and its predecessors in title for 25 years and more. The Oklahoma-Arkansas sought relief in the courts, and before the Corporation Commission of Oklahoma, and the Interstate Commerce Commission. The Supreme Court of Oklahoma (*Oklahoma-Arkansas Tel. Co.* v. *Southwestern Bell Tel. Co.*, 143 Okla. 76, 291 Pac. 3) held that the Bell had unlawfully established its toll board in Poteau and reversed the decision of the corporation commission to make an order removing said toll board.

It would make this letter too long to call attention to all phases of the controversy. Prior to 1928, the Oklahoma-Arkansas had constructed at an expense of something like $15,000 a quick, direct telephone line from Heavener, a railroad center and an important city, to Fort Smith and had there, by consent of the Bell, connected the same on the toll board of the Bell. The Bell by the unlawful installation of its toll board at Poteau, which city is shown on the map as well as the other cities referred to, destroyed the two quick circuits between Heavener and the outside world. Prior to that unlawful discrimination the Bell did no business at any of the towns where the Oklahoma-Arkansas owns exchanges. The Bell, after the installation of said unlawful toll board, refused to answer calls coming to it at its Fort Smith toll board over the lines of the Oklahoma-Arkansas. The latter company, believing that a court could restore the right of transferring messages at Fort Smith over its two lines from Heavener, brought a suit in the Federal court at Fort Smith.

That case went to the court of appeals of the eighth circuit. (*Oklahoma-Arkansas Tel. Co.* v. *Southwestern Bell Tel. Co.*, 45 Fed. (2d) 995.) That court ruled that the Interstate Commerce Commission had jurisdiction, but said court also discussed the merits of the controversy even though it held that the Interstate Commerce Commission had jurisdiction. The Supreme Court of the United States refused to review that case by certiorari (*Oklahoma-Arkansas Tel. Co.* v. *Southwestern Bell Tel. Co.*, 283 U.S. 822). As soon as the Supreme Court of the United States refused to review that case the Oklahoma-Arkansas filed a petition with the Interstate Commerce Commission at Washington, D.C., asking that that Commission take jurisdiction of the controversy and grant the relief prayed for. The Commission refused the relief. After two petitions for rehearing had been filed and denied, the Oklahoma-Arkansas filed in the Supreme Court of the District of Columbia a mandamus suit against the Interstate Commerce Commission praying that that Commission be compelled to take jurisdiction of the case and decide it on its merits. The said Commission in its opinion (183 I.C.C. 722) held that it did not have jurisdiction and yet, notwithstanding that holding, it also decided the case supposedly upon its merits.

The Supreme Court of the District of Columbia on December 12, 1933, refused to mandamus the Interstate Commerce Commission to take jurisdiction. The Oklahoma-Arkansas has therefore exhausted apparently all its remedies to have restored to its use in interstate commerce toll lines of the value of more than $50,000 and lines which brought in an income of $6,000 a year and more. The property of the Oklahoma-Arkansas is worth over $200,000.

The above facts are stated for the purpose of proving to your honorable committee that there should be a provision in this new bill giving the Interstate Commerce Commission or other proper commission jurisdiction and power to make proper orders routing messages in interstate commerce, fixing rates and divisions of rates, and preventing any telephone company from wrongfully sizing and converting to its own use the property of another company.

If your committee desires it, I will be very happy to appear before your committee or subcommittee, or before you, for the purpose of presenting this matter further. Our purpose now in calling your attention to the matter is to point out these defects in the hope that Congress may enact proper legislation to prevent the wrongs complained of.

Yours truly,

JAMES B. MCDONOUGH.

MARCH 12, 1934.

Mr. JAMES B. MCDONOUGH,
505 Merchants Bank Building,
Fort Smith, Ark.

MY DEAR MR. MCDONOUGH: I have your letter of March 9 and am glad to have this additional information from you regarding the communications bill.

Thanking you, I am,

Sincerely yours,

JAMES B. MCDONOUGH,

FORT SMITH, ARK., *March 9, 1934.*

Senator C. C. DILL,
Chairman Interstate Commerce Committee,
United States Senate, Washington, D.C.

DEAR SIR: Referring to my letter of March 8, which is enclosed herewith:

I wish to add a word as to the reason for some of the amendments to Senate bill no. 2910. Most of these suggestions speak for themselves. The necessity for these amendments is well illustrated by the decision of the Interstate Commerce Commission in the case of *Oklahoma-Arkansas Telephone Co.* v. *Southwestern Bell Telephone Co.* (183 I.C.C. 711). Prior to that decision the circuit court of appeals of the eighth circuit had held that the Interstate Commerce Commission had jurisdiction over that controversy. The Interstate Commerce Commission, without discussing that decision, held that it did not have jurisdiction, although after so holding it, made an effort to pass on the merits of the case, although, as known to every lawyer and court, it could not pass on the merits of the case after having held that it had no jurisdiction.

The amendments suggested on page 1 of my letter dated March 8 have for their purpose the clarifying of the bill so as to make it certain that the communications commission shall have power to regulate the use in interstate commerce of all instrumentalities, facilities, apparatus, and appliances used in interstate commerce, as well as the services of said instrumentalities in interstate commerce. The Interstate Commerce Commission has the view that Congress has never imposed upon that body any duty to regulate the service of the instrumentalities and facilities. Notwithstanding the Interstate Commerce Act gave to the Interstate Commerce Commission the control of the instrumentalities and facilities used by telephone companies in interstate commerce, nevertheless the failure of the Interstate Commerce Commission to exercise that power left all of said power in the companies themselves. The result was that the large company, by its position, influence, and financial power, was enabled to frighten the small company into accepting a less sum than its services were worth on all joint business. In other words, the Interstate Commerce Act as construed by the present Commission, gives no control over the instrumentalities used in interstate commerce to the Federal Government, and thereby leaves all of said control absolutely in the largest and most influential telephone company, to the injury of the public in roundabout service and to the injury of the small telephone company in compelling it to accept less than it ought to have and less than its services are worth.

For illustration, it often happens that two telephone companies have more than one point of connection where physical connection may be made by the wires of the two companies. Unless the Government gives control of that matter to the communications commission, the larger telephone company will always secure the lion's share, regardless of justice and right, of the joint revenues. The larger company will take the position—and that has been done time after time—that the transfer point of a conversation, which must use the lines of both companies, shall be at a certain city or toll board. That decision will necessitate the line haul over the line of the larger company. That line may be an indirect or round-about line, and it may require the use of 5 or 6 switches in order to reach the point of destination. Under the present law, as construed by the Interstate Commerce Commission, there is no power in the Government to control the routing. One company will insist that the transfer must be made at a certain point, and the other company will insist that it must be made at another point. The two companies are, therefore, parties to a lawsuit, as it were. There is no power to compel them to adopt one place or the other. It follows that the weaker must always yield, and thus it will lose a line haul, although its wires may give the best, quickest, and most direct service to the public. The public are interested in having the quickest and most direct service. In some cases, by reason of the roundabout, indirect routes being compelled to be used by the larger company, an hour or sometimes several hours' delay occur.

In the same way, under the present law, the larger company will fix the rates. The present law requires that the rates shall be reasonable and just. The Interstate Commerce Commission, however, has generally left the fixing of those rates to the larger company. The larger company demands certain rates, and the small company can have no influence or power to fix a different rate. In the same way, the divisions are fixed, presumably by agreement, but always really by the larger company.

Another evil that exists is that the larger company, which owns most of the lines of communication, may favor one small company as against another. The Interstate Commerce Commission has held, in the case above cited, that it has no jurisdiction to grant the relief. It has held in that case that the interstate commerce act does not give any power to the Commission to fix the divisions of rates, or to name the places of transfer, or the line hauls, although it knows that the larger company may actually destroy the smaller company by taking its business away from it by wrongful routing of messages.

In the same case the Interstate Commerce Commission held that the act did not apply where one common carrier discriminated against another. The Commission said that section 3 against discriminations applied only to prevent discrimination as against customers or patrons. That holding is too absurd to be seriously considered, and yet its wrong demands serious consideration.

Substantially all of the suggested amendments are intended to cure the wrongs discussed in this letter as well as in my former letters to you.

In order that each member of your committee may have the suggestions, I am sending to each member a copy of this letter to you.

Yours truly,

JAMES B. MCDONOUGH.

FORT SMITH, ARK., *March 8, 1934.*

Sen. C. C. DILL,
Chairman Interstate Commerce Committee,
United States Senate, Washington, D.C.

DEAR SIR: I enclose for confirmation copy of telegram which I sent you this morning relating to amendments to Senate bill no. 2910. I have been counsel for the Oklahoma-Arkansas Telephone Co. for about 14 years and, during that time, have made a study of the questions involved in the amendments which I believe ought to be made to this bill.

First suggestion. Page 3, section 3, line 4, immediately preceding the word "writing" in that line, add: "conversations, speech, voices."

Second suggestion. Page 3, section 3, line 7, immediately following the word "facilities", add: "apparatus."

Third suggestion. Page 3, section 3, line 8, before the word "services", add the word "all."

Fourth suggestion. Page 3, section 3, line 8, after the word "to" add: "and used in."

Fifth suggestion. Page 3, section 3, line 8, after the word "transmission" add: "including services by and with all instrumentalities, facilities, and apparatus used in interstate commerce."

Sixth suggestion. Page 4, section 3, paragraph (h), line 18, after the word "person" add: "or persons."

Seventh suggestion. Page 4, section 3, paragraph (h), line 18, after the word "in" add: "the transmission of."

Eighth suggestion. Page 4, section 3, paragraph (h), line 18, change the word "communication" to "communications", and add in said line after said word the following: "conversations, speech, voices, sound, writing, signs, signals, and pictures."

So that said paragraph (h), as thus amended, would read as follows:

"Common carrier" or "carrier" means any person or persons engaged in the transmission of communications, conversations, speech, voices, sound, writing, signs, signals, and pictures by wire or radio as a common carrier for hire, except where reference is made to common carriers not subject to this act; but a person engaged in radiobroadcasting shall not, insofar as such person so engaged be deemed a common carrier.

Ninth suggestion. Page 7, section 3, paragraph (v), line 4, add: "and includes the use of all instruments, appliances, apparatus, and facilities employed or used in interstate commerce, whether located in exchanges or elsewhere."

Tenth suggestion. Page 12, section 5, line 13, after the word "broadcasting" add: "including all instrumentalities, appliances, facilities, apparatus, and all services in connection therewith, including the routing of communications, points of transfer of communications in joint or separate interstate commerce, the fixing of all charges for all services in handling said interstate commerce, and the division of said charges between carriers subject to the act; and to require common carriers subject to this act to add and include ample instrumentalities, appliances, and facilities as will be necessary and essential to give adequate interstate service to the public."

Eleventh suggestion. Page 15, section 201, line 14, after the word "interest", add: "but no such contract shall in any manner whatever lessen the power of the Commission to regulate and control the use in interstate commerce of all the instrumentalities, appliances, facilities, and apparatus of all carriers subject to this act, nor shall any such contract lessen or affect the power of the commission to route messages, determine the line haul, and places of transfer, and the lines and wires to be used, and the rates and divisions thereof to the carriers."

Twelfth suggestion. Page 15, section 202, line 22, after the word "locality", add: "or community or common carrier subject to this act."

Thirteenth suggestion. Page 15, section 202, line 23, after the word "locality", add: "or other common carrier."

Fourteenth suggestion. Page 15, section 202, line 24, after the word "disadvantage", add: "nor shall any common carrier subject to this act have power to route messages or communications, or determine the line haul, or the places of interchange of communications, or fix rates or the divisions thereof, except as the same may be approved by the commission."

Fifteenth suggestion. Page 18, section 204, line 8, after the word "charge", add: "rate or division of rates, or the routing of communications."

Sixteenth suggestion. Page 18, section 204, line 15, after the word "charge" add: "rates and divisions thereof, and the routing of messages."

Seventeenth suggestion. Page 19, section 205, line 21, after the word "charge" add: "rates, divisions thereof, routing, exchange of communications or messages, and transfer points."

Eighteenth suggestion. Page 19, section 205, line 25, after the word "charge" add: "including rates and the divisions thereof."

Nineteenth suggestion. Page 26, section 214, line 24, after the word "circuit" add: "If the territory through which a contemplated extended line or circuit is already, in part or in whole, occupied by another common carrier, the right of extension will not be granted without due notice to the carrier already occupying said territory and after due hearing by the commission, and no common carrier subject to the provisions of this act shall invade or occupy the territory served by another carrier without due notice and a due and lawful hearing by the commission."

Twentieth suggestion. Page 27, section 214, line 5, after the word "operated" add: "and the commission, if the territory is already occupied by another carrier, shall give due and timely notice to the end that the carrier already occupying said territory may appear and defend its right, if any, to continue to occupy said territory."

Twenty-first suggestion. Page 28, section 214, line 20, after the word "State", add: "unless said proposed extension of lines or circuits constitutes a part of an interstate line. If said extension is to be used in interstate commerce, the commission has jurisdiction as provided in this section."

Twenty-second suggestion. Page 38, paragraph (b), line 22, after the word "commission", add: "Provided the commission shall have jurisdiction, and it is made its duty, to regulate and control all instrumentalities, facilities, appliances, and apparatus, and all service in connection therewith, insofar as they are used in interstate commerce; and the commission is authorized to compel carriers subject to this act to install for use in interstate commerce proper appliances, instrumentalities, and facilities necessary and useful to give adequate public service."

It is necessary to make this amendment in order to prevent a conflict of jurisdiction between State and Federal commissions. Some State commissions have assumed jurisdiction over instrumentalities and facilities used in interstate commerce. The same facilities are often used for both intrastate and interstate commerce. The State commission has the power to regulate the facilities used exclusively in intrastate commerce. The State commission, however, should not have power superior to that of the United States to regulate the instrumentalities and facilities used in both intrastate and interstate commerce. If the bill is not clarified, and if this conflict remains, the situation will be used by the big companies to weaken the control of the United States commission, and the big company will use the power to discriminate against and injure the small companies, and will use the power (as the big companies now do) to discriminate against localities, individuals, and persons. This conflict of jurisdiction has been illustrated in the *Shreveport Rate Case* (*H. E. & W. T. Ry. Co.* v. *United States*, 234 U.S. 342), and in the *Minnesota Rate Case* (*Simpson* v. *Shepard*, 230 U.S. 352), and in the *Bell Telephone Com-*

pany Case (*Smith* v. *Illinois Bell*, 282 U.S. 133), and other cases. If the bill should fail to make it clear that every instrumentality and facility used in interstate commerce is placed under the control and power of the communications commission, the act will not be as useful and effective as the public desire.

Twenty-third suggestion. Page 90, section 602, line 11, after the word "wireless" add: "so far as they conflict with this act."

The reason for that amendment is that there are many good provisions in the Interstate Commerce Act of Congress, and the language used in paragraph (b), lines 8 to 11, on said page 90, might repeal many valuable provisions of the Interstate Commerce Act. This amendment will, therefore, preserve the valuable provisions of the Interstate Commerce Act and will repeal only those that are in conflict with this act. This is illustrated by what happened to section 3 of the Interstate Commerce Act at the passage of the Transportation Act of 1920. The act of 1910 had plainly placed the control of telephones with the Interstate Commerce Commission. As the Supreme Court of the United States has repeatedly held, one of the prime purposes of the Interstate Commerce Act was to destroy unlawful and immoral discriminations by carriers. Section 3 of said original act of 1887 applied to all carriers subject to the act. Through inadvertence or otherwise, when section 3 came up for consideration in connection with the passage of the Transportation Act of 1920, the words "by railroad" were added as modifying "carriers." (See Interstate Commerce Act, sec. 1 (19), (21), and sec. 3 (3).)

Page 14, section 201, line 19, after the word "charges" add: "and the divisions thereof."

Twenty-fifth suggestion. Page 14, section 201, line 23, after the word "interest" add: "In establishing through routes the Commission has power, and it is made its duty, to determine or approve the routings, including the line hauls, the points of wire connection for joint communications, or the points of transfer of communications, and the rates and division of rates to be charged by the several companies."

I believe that section ought to be made clearer by the suggested amendments so that the present power in a large company to route all messages, fix the charges and the divisions thereof, thus starving the little company or driving it out of business, will be prevented. There has been no greater evil in the telephone system of this country than the power assumed by the large companies of routing the messages, fixing the rates, and the division of rates. A large company, although a small company may have a more direct line between two centers, may use its own line and thus delay the service by having a number of additional switches at different places. What the public wants and needs is quick service. The quickest service should be required. No company should be permitted to route the messages so as to give it an unreasonable share of the revenue, to the detriment of the quick service which the public demands.

With your bill as a whole, I am greatly pleased. The amendments which I have suggested above appear to me to be necessary so as to prevent the evils which have been harmful to the public service and injurious to the small companies.

If it is deemed necessary or desirable by any member of your committee, I will be glad to come to Washington and appear before the committee and explain the above matters more fully.

Thanking you and each member of the committee for considering these suggestions, I beg to remain,

Very sincerely,

JAMES B. MCDONOUGH.

P.S.—I will on tomorrow forward to each member of your committee a copy of this letter to you.

AMERICAN RADIO AUDIENCE LEAGUE,
Chicago, Ill., March 10, 1934.

HON. CLARENCE C. DILL,
Chairman Committee on Interstate Commerce,
United States Senate, Washington, D.C.

MY DEAR SENATOR DILL: May I offer some brief remarks for consideration of the Interstate Commerce Commission, in regard to section 307 of the Senate communications bill?

I represent no commercial interest, but speak informally for a group of civic leaders, chiefly in Chicago, who are interested, as you know, under the name

of American Radio Audience League, in bringing about a separation of the licensed control of traffic on valuable public broadcast channels from the private business of purveying radio transmission thereon, and in bringing the licensed control of channels to the hands of agencies free to give a more wholehearted service to the public interest. I speak also as manager of the Chicago Civic Broadcast Bureau, an Illinois corporation not for profit, designed as an active instrumentality for the attainment of these ends in this area.

It is very unfortunate that the word "station", used as it is in so many different senses, in relation to broadcasting, has never been defined by law. If, however, we are to take it in the sense defined by rule 188 of the Federal Radio Commission—that is, a set of radio transmitting apparatus—then a question arises as to what is meant by the proviso in section 307 (b) of your bill, against reservation of clear channels "for the use of one station", etc.

I would inquire, Can a frequency be reserved for the use of any set of radio apparatus? Is it not clear, on the contrary, from section 307 (a) preceding—the so-called "Davis amendment"—that frequencies can be properly reserved only for the service of certain portions of the people of the United States?

This may look to some like a mere technicality, but its implications may lead far. Nowhere, to my knowledge, has Congress recognized a public obligation to reserve a portion of the public domain in the air for the use, as apparently intended here, of a set of apparatus belonging to any person. The whole proviso might indeed be cited in support of a very dangerous assumption, i.e., that the government owes to any private party whatsoever the right to occupy a channel, merely on the established fact that such party is "capable of rendering service in the public interest."

For example, the great network companies have unquestionably been held to be such persons, within the meaning of the law. Under this proviso, if such a person applies for a Pacific coat assignment on an Atlantic coast clear channel, it might be argued that the licensing authority is commanded to grant it, absolutely regardless of whether the public interest will be served by the granting of any more licenses whatever in that locality.

Further than this, the proviso might be claimed to lend color to the notion of a "station" as a human institution or legal entity apart from any particular license or licenses or set of apparatus. Such a concept seems to have been relied upon by various litigants seeking to evade the radio act's stringent outlawing of private property rights in the air. We trust that nothing will be inadvertently allowed to creep into a new act, which might help to overthow the now domainant concept of the air as inalienable public domain. For this reason, it is highly advisable, in our opinion that the word "station" be defined by law, either in the words of rule 188 of the Commission or otherwise.

Our own view, as you undoubtedly know, is that the possessors of costly radio apparatus are very dubiously qualified indeed to hold a lucrative exclusive occupancy under a Federal license, of communication channels worth to them from 1 to 5 million dollars each. Our aim is to foster the appearance of applicants of a more desirable type, and to assist them in obtaining these valuable licenses. Without going here into this far-reaching question, I wish nevertheless to urge that nothing be enacted which might abridge the freedom of the licensing authority to act according to the dictates of the public interest in the broadest sense, or which might have the effect of freezing the present control of the traffic on the channels by parties primarily concerned as sellers of transmission service rather than as servants of the public interest.

Respectfully submitted.

HARRIS K. RANDALL.

AMERICAN RADIO TELEGRAPHERS ASSOCIATION, INC.,
New York.

We recommend that bill S. 2910 be amended in section 4, subsection f, page 9, lines 7 and 8, and section 5, subsection c, page 13, lines 18, 19, and 20, by omitting the words "without regard to the Civil Service laws of the Classification Act of 1923, as amended."

We feel that the success of the radio division of the new commission depends entirely upon a staff of competent persons who are skilled in the art and technique of radio, and who have considerable background in the application of such skill. The present technical staff of the Federal Radio Commission seems to us to be second to none insofar as technical employees are concerned within our Government. Through the efforts of this present technical staff

much has been done to maintain the supremacy in the advancement of radio in these United States, because this staff was free and qualified to carry out its work in the interest of the general public.

If these technical positions had been filled by political appointments as are the Commissioners, we no doubt would have at present a staff of persons who know little or nothing about radio as did the Commissioners almost without exception.

We further recommend the amendment of this act by including the following language: "An act approved July 23, 1918, amending section 1 of an act entitled, 'An act to require apparatus and operators for radio communication on certain ocean steamers', approved June 24, 1910, is hereby amended by inserting the word 'three' in lieu of the word 'two' in the first sentence of section 1, paragraph 2, of this act."

This change would make the sentence so amended read as follows: "The radio equipment must be in charge of three or more persons skilled in the use of such apparatus, one or the other of whom shall be on duty at all times while the vessel is being navigated."

This one word in the act has for 22 years been unsatisfactory to the general public, and it would seem that this is a most opportune time for this Congress to rectify this most inhumane and unjust practice of permitting steamship operators to force radio operators to work a minimum day of 12 hours; and a maximum day of 24 hours.

Upon the elimination of this word "two" and substituting therefor the word "three" hinges the efficiency of effecting the proper safeguard of lives upon the high seas and for the maintaining of working conditions commensurate to the health of those who are placed aboard these vessels for the specific purposes of effectively safeguarding the lives of our loved ones.

HOYT S. HADDOCK, *President.*

Senator WHITE. Mr. Chairman, may I make an announcement at this time? In order that the chairman may know and that other members of the committee may know, I want to have it a matter of record that I propose at some appropriate time—I do not know just when that will be—to offer an amendment which will perhaps be in the nature of a substitute for the pending bill, and which will be designed to carry out the specific recommendations of the President with respect to a single commission with unified control, and which will stop there. I do not know just when I will offer that, but I thought I would like to have it in the minutes.

The CHAIRMAN. You will try and offer it in time to put it in the hearings?

Senator WHITE. I will try and get it in shape. I have given some thought to it and have done some work on it, but I do not have it in shape yet, so that I am ready to present it.

The CHAIRMAN. You have not introduced it yet in the Senate?

Senator WHITE. No.

The CHAIRMAN. We will now hear Colonel Behn.

STATEMENT OF SOSTHENES BEHN, PRESIDENT INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, NEW YORK CITY

Mr. BEHN. Mr. Chairman, I would like, with your permission, to make a short statement.

The International Telephone & Telegraph Corporation is affected by the provisions of S. 2910, now under consideration by this committee primarily through its ownership of the controlling interest of four American communications systems, namely, the Postal Telegraph Co., operating a land-line telegraph system throughout the United States; the Commercial Cable Co., operating telegraph cables across the Atlantic Ocean; the All America Cables, operating

telegraph cables extending from this country to Central and South America and the West Indies; and the Mackay Radio & Telegraph Co., which operates a point-to-point telegraph system for domestic telegraph business between various of the principal cities of the United States, as well as radio-telegraph across the Pacific Ocean, across the Atlantic Ocean, to South America, and with ships at sea.

The International Telephone & Telegraph Corporation is therefore interested in the provisions of the bill, both as they relate to operating companies in the communications field and as they relate to " parents ", or companies owning stock interests in such operating companies.

The International Telephone & Telegraph Corporation is in accord with the proposals expressed in the message of the President to provide for the organization of a communications commission, to which shall be transferred all of the regulatory powers provided by existing legislation insofar as such powers relate to the electrical communications business. We are heartily in favor of the proposed mandate to such new communications commission to make a careful study in an orderly way of whatever additional legislation on the above subject is required and to recommend such legislation for action at the next session of Congress.

We are accordingly in complete accord with what was said, at the session of this committee held yesterday, by Mr. Gifford, president of the American Telephone & Telegraph Co., with regard to the features of S. 2910 which are new and untried in their application to communications. While Mr. Gifford in commenting on specific sections of the bill spoke only from the standpoint of his company and the telephone business, the International Telephone & Telegraph Corporation desires to state that the sections of the bill specifically commented on by Mr. Gifford would produce equally chaotic results in their application to the telegraph, cable, and radio-telegraph business. We suggest, moreover, that as the plan is to set up a new regulatory commission with a specific mandate to make a full and complete study of what additional legislation may be required in the public interest and to recommend the enactment of such additional legislation at the next session of Congress, it is peculiarly appropriate that the bill should limit itself at the present time to the transfer to the new commission of existing regulatory powers and not attempt to do either a half-way or what may turn out to be a destructive job in advance of such careful, orderly study being made. The bill does not purport on its face to be emergency legislation. The message of the President made no reference to anything in the nature of a national emergency existing in this field and we believe it would be difficult to sustain the claim that such an emergency does exist in this field as would demand the immediate enactment of additional regulatory provisions in advance of the study and report for which the bill provides.

I do not at all agree with the statement made before this committee that section 214, appearing at pages 26–28 of the bill, would be all right if there were added a clause after the word " circuit ", in line 17, page 26, which would in effect prohibit, without the previous approval of the Commission, the extension by any carrier of a circuit into territory or points and places not already served by such carrier with service of the same class. In this connection I

would point out that the existing public policy of the United States, which is continued in the proposed bill, compels competition in the telegraph field. A competing telegraph company, in order to render adequate service to its patrons and the public, must be able to extend its lines and facilities without limitations. The section with the suggested alteration would tend to check this competition, and specifically to check it in favor of the existing service of any of the competing companies.

Another specific suggestion made was an objection to giving the Commission the power to disapprove contracts between any carrier subject to this act and any other carrier not subject to this act, where the Commission is of the opinion that such contracts are not in the public interest. It was stated that such power might be used to interfere with the railroad contracts of the Western Union. These exclusive railroad contracts eliminate Postal Telegraph from many of the principal railroad stations throughout the country, curbing to that extent the competitive activities of the Postal Telegraph Co., and we believe that such exclusive contracts are clearly against the public interest and the existing public policy of the United States.

The CHAIRMAN. Do you not think there ought to be some organization to step in and see that competition is permitted?

Mr. BEHN. After a careful study, Mr. Chairman, I think that is a proper question to be brought out by the Commission or additional legislation at the next Congress.

The CHAIRMAN. And you are opposed, as I understand it, to any certificate of necessity at all for an extension of lines?

Mr. BEHN. Absolutely. So long as there is competition, the Postal must be allowed——

The CHAIRMAN (interposing). Do you assume that the competition would not allow the Postal to extend its lines?

Mr. BEHN. Those things are decided for one reason or another. The Postal cannot become static; it must aggressively go forward as a competing company.

In calling your attention to the above two suggestions and their consequences, it is with the purpose of showing the necessity of an exhaustive study of the new regulatory provisions included in the bill. On the one hand it is proposed to regulate the telephone monopoly and, on the other hand, the competing position of the wire, cable, and radio-telegraph services. The restrictions and regulations are excessive and, I may even say, destructive for the control of a monopoly of either the telephone or telegraph and they are totally inappropriate and inadequate for the fair and equitable regulation of the competing telegraph services.

Senator WHITE. May I interrupt the witness there? I am interested in your reference to the exclusive contracts for transmission upon railroad rights-of-way and upon lines that possibly are owned by the telegraph company or by the railroad company. I have never heard that question discussed, although I tried to make a study at one time of some of the legal phases of it. Have you anything bearing directly on that question of policy along the legal problems involved that you could make available to the committee?

Mr. BEHN. Well, I should be glad to submit something to the committee, Senator White.

Senator WHITE. I would like very much, Mr. Chairman, because, as I say, some 3 or 4 or more years ago I undertook to study that somewhat, and of course I did not have time to do it, which seems to be the common fate of Senators in such undertakings.

The CHAIRMAN. If Mr. Behn will submit something of that kind, we will put it in the record as part of his statement.

Mr. BEHN. I would like to repeat that I am not advocating any new legislation at this time or any action against the Western Union at this time, and I have called attention to these two points merely to show the necessity of a study.

The CHAIRMAN. I think it ought to be stated—I am not trying to defend myself or anybody else, but it ought to be stated that the viewpoint of the President was—I think I speak advisedly when I say this—that by the transferring of the powers of the Interstate Commerce Commission and the Radio Commission to a new commission, without setting up new powers, he did not mean a literal binding of the Congress to nothing new in the bill. He fully understood that there were defects in the regulatory powers of the Interstate Commerce Commission over telephone and telegraph. He had read the bill, and while he cannot be held to support all the details of it, it was after reading the bill that had been prepared that he sent the message, and what he had in mind primarily, I think, was the fact that there was a demand for power to be given to permit mergers and that power be given to control bond issues, and there had been some talk about setting up sinking funds; and it was to avoid those entirely new proposals—but so far as giving this commission the power to control rates, there was not any intention of not putting it where it was so evidently necessary to have such power to make rate regulation effective; there was no intention that the committee or that Congress should be held to a literal transfer of the existing powers of the Interstate Commerce Commission over telephones that has proven so ineffective in the past. I do not want to say that I quote the President, but I say that it is hardly fair to hold that this committee or the committee that prepared this bill had violated so terribly the injunction of the President when he suggested a transfer of existing powers. Now, we may put in some things that must be taken out. I never wrote a bill yet that did not have something the matter with, and I never expect to, but I do want to say that in self-defense.

Mr. BEHN. I think the next paragraph, Mr. Chairman, gives clearly my point of view on that.

In calling to your attention the above two suggestions and their consequences, it is with the purpose of showing the necessity of an exhaustive study of the new regulatory provisions included in the bill. On the one hand, it is proposed to regulate the telephone monopoly, and, on the other hand, the competing position of the wire-, cable-, and radio-telegraph services. The restrictions and regulations are excessive and, I may even say, destructive for the control of a monopoly of either the telephone or telegraph, and they are totally inappropriate and inadequate for the fair and equitable regulation of the competing telegraph services.

The CHAIRMAN. In other words, you think there might well be a difference in the powers given this commission over the monopolistic

telephones of this country and the competing telegraph-cable companies?

Mr. BEHN. The situations are diametrically opposed.

The CHAIRMAN. That is a very good point, I think.

Mr. BEHN. There is one provision in the bill as written which, while it certainly affects other companies whose representatives have been heard here, would seriously affect, if enacted in its present form, the International Telephone & Telegraph Corporation. I refer to section 310 (a), subsection (5), appearing on page 52, with regard to the "limitation on holding and transfer of licenses"; the licenses referred to are radio licenses, and the section concerns itself with the extent of alien ownership and/or control which shall be permitted in any company owning or operating a radio station, or in any company owning or voting the stock of any company which owns or operates a radio station.

I shall confine myself chiefly to the question of the possibility of practical compliance with the terms of the section as written in the proposed bill. The company which owns and/or operates a radio station can, as a practical matter, be set up so that not more than one fifth of its capital stock may be owned or voted by aliens.

When we come to the attempt in paragraph (5) to apply the same rules to holding companies we arrive at a situation which would be totally impracticable for the International Telephone & Telegraph Corporation and, I believe, for any of the other existing holding companies. As a matter of fact, so far as we have been able to ascertain, less than 10 percent of the outstanding capital stock of the International Telephone & Telegraph Corporation is owned abroad. A large part of that stock is undoubtedly owned by Americans living abroad. Also I say—so far as we have been able to ascertain—for the reason that no corporation is ever in a position to know who are the real owners of its stock. All it knows is who are registered as such on its transfer books. And, as you gentlemen know, frequently stock certificates pass from hand to hand for long periods of time without the new owners ever registering themselves as stockholders. Even when an owner becomes a registered owner of stock there is no machinery in existence at the present time, and there would not be except at a very high cost in the case of any corporation of substantial size, to determine the nationality of the registered stockholders. The corporation knows that "John Smith", residing at no. 100 Central Park West, New York, is the registered owner of 100 shares of its stock. Presumably John Smith is an American citizen. He can easily be a citizen of another country. Moreover, whatever may be the nationality of its stockholders today, a part of its stock may be acquired by foreigners tomorrow or next week or next year. But the test proposed in paragraph (5) of this section is not a test based on fact, but one based on possibility. If more than 20 percent of the stock may be owned or voted by foreigners, it becomes the duty of the Commission to cancel the radio license granted to any subsidiary of the corporation. Far greater thought and care must therefore go into the preparation of a section covering this point.

Senator DIETERICH. Mr. Chairman, for the information of those that were not here when the witness began, who is the witness and what does he represent?

The CHAIRMAN. Colonel Behn, president of the International Telephone & Telegraph Corporation.

Senator DIETERICH. Might I ask further what is the International Telegraph & Telephone Corporation?

The CHAIRMAN. It has been explained in the record, Senator.

Senator DIETERICH. Very well.

Senator WHITE. Might he not state again just what are the constituent operating companies of the International Telephone & Telegraph Co., for the benefit of the members who have come in?

Mr. BEHN. The International Telephone & Telegraph Corporation, Senator, is a holding company, and it appears before this committee in connection with the communication companies which it controls—the Commercial Cable Co., the Postal Telegraph Co., the All-America Cables Co., and the Mackay Radio & Telegraph Co.

The CHAIRMAN. I may say that we had considerable discussion about this a year or so ago. Some of us made a fight to keep this provision, the provision proposed, from being much more stringent than this one is. I thought the officials of your company stated that this provision could be complied with. I am a little surprised now that you should come here——

Senator WHITE (interposing). Is not this much more drastic than the legislation under consideration last year?

The CHAIRMAN. Yes; but it is not as drastic as the War and Navy Departments' suggestions.

Senator WHITE. Mr. Chairman, it looks to me as though this section was nationalism run wild.

The CHAIRMAN. Well, it may be, but there is pretty strong demand that there shall not be any ownership of any kind outside of American ownership of our communication companies.

Mr. BEHN. And thereby invite international retaliation, Mr. Chairman. It is a very serious question. We are perfectly willing to sit down and cooperate with the committee in order to obtain every possible safeguard for the national defense, but as between that and ruining an international set-up, inviting retaliation from foreign countries, I think there is a vast difference.

Senator LONERGAN. Are there similar corporations in other countries?

Mr. BEHN. Oh, yes, indeed, Senator.

The CHAIRMAN. In the case of the other companies, the Government owns them. There is not any foreign ownership.

Mr. BEHN. I beg pardon, Senator.

The CHAIRMAN. Well, most other companies.

Mr. BEHN. The largest international corporation, communications corporation, is the British Merger, which is a consolidation of the cable and wireless of Great Britain and its dominions.

Senator HATFIELD. Government owned?

Mr. BEHN. Privately owned. They have a limitation of 25 percent for an ownership, and Senator Marconi, who is a foreigner, is a director of that company, a director of the International Communications, Ltd., and also the Cable & Wireless Co., which is the holding company, and there are provisions in there with a declaration of intention that the control of the company shall remain British. We are perfectly willing to have such a declaration of intention in a holding company that controls communications in this

country, but not in the way prepared in the bill, totally impractical in its present form. There has been a bugaboo raised about national defense, and I have asked to appear before the joint board of the Army and Navy to go into that question.

The CHAIRMAN. Now, Mr. Behn, you do not want to give the impression that the British merger is not directly controlled by the British Government, do you?

Mr. BEHN. I do, absolutely, Mr. Chairman. It is a private company, a cable and wireless corporation which has four subsidiary companies, the Eastern, the Eastern extension—let me see if I can recall them—the Western Telegraph & Marconi Wireless, and they control the International, the Imperial & International Communications, Ltd. There is an advisory committee of representatives of the Dominion who are consulted on questions of general policy, but the stock is not owned by the Government.

The CHAIRMAN. No; but the control is under the Government.

Mr. BEHN. The control of the Government in the form of the advisory committee is much less, Mr. Chairman, if I may say so, than the proposed control set up in the present bill.

The CHAIRMAN. I want to put some other witnesses on about that when you are through.

Mr. BEHN. The International Telephone & Telegraph Corporation understands that the provisions in question have been sought with the idea that they might be desirable in connection with the national defense. This corporation is and always has been ready and eager to cooperate to the fullest extent in its power with the military authorities of the United States in working out such safeguards as may be necessary in the national defense, and we believe that, given adequate time, it will be entirely practical to work out adequate safeguards. We feel that the subject matter of the paragraph in question is again peculiarly the type of subject matter which should be made the object of a careful and thoughtful study and incorporated in new legislation to be recommended by the new commission. There is no immediate danger that I can see in any of these situations, and the existing provisions of the Radio Act limit foreign ownership in these companies.

The CHAIRMAN. Just how far do you think this law should go in the prohibition of foreign ownership and foreign directors?

Mr. BEHN. Well, Mr. Chairman, it exists today with respect to the radio licenses.

The CHAIRMAN. But it does not apply to the holding companies.

Mr. BEHN. It does not apply to holding companies, and we are prepared to sit down and consider in what practicable form it can be made to reach out to holding companies.

The CHAIRMAN. Well, I think you had better—some of us tried to save you from trouble last year, and I think the sentiment is even stronger today to put the complete control—to make it completely American control.

Mr. BEHN. Then I suppose we might as well abandon all pretense of international trade.

The CHAIRMAN. No; I do not see yet what your serious objection to this provision is.

Mr. BEHN. Because it is totally impractical.

The CHAIRMAN. In what way is it impractical?

Mr. BEHN. You put a limitation in there that if 20 percent of the stock is foreign owned then the company loses all of its licenses.

The CHAIRMAN. But the only thing that a company can be held to is what is on the books, is it not?

Senator WHITE. That is not what it says.

The CHAIRMAN. Then, if we put in there "as of record", would not that cure it?

Mr. BEHN. Well, the question is, Mr. Chairman——

The CHAIRMAN (interposing). And voted?

Mr. BEHN. I have no right to speak for any other company.

The CHAIRMAN. Well, your company is the only one seriously affected by this bill, is it not?

Mr. BEHN. No; the American Telegraph & Telephone is involved. They have radio licenses and they have no limitations in their stock. I do not know what ownership they have, probably small. I consider that our ownership is very small, 9.35, as a matter of fact.

The CHAIRMAN. You are familiar with the contention of the Army and Navy officials that they do not want foreigners to be informed of the methods which they want to develop in the communications business for purposes of national defense?

Mr. BEHN. I am not at all sure, Mr. Chairman, that that is the well-considered opinion of the Army and Navy, and I have asked to appear before the Army and Navy to discuss that very same matter.

Senator WHITE. Mr. Chairman, you suggest that this apply only to ownership of record. That does not help the situation, because the ownership of record may be in one place and the beneficial and real ownership may be in an entirely different place, and you would not have cured the situation at all.

The CHAIRMAN. I do not know any other way, outside of voting power and the record power. I do not think you can set up a secret service system to follow down every ownership of stock.

Senator WHITE. Well, I agree that it is a pretty troublesome problem. I know that.

Mr. BEHN. It is a very difficult one.

Senator THOMPSON. Could you not pass a law that the company should be bound by what the record shows, and that the record should show who owned that stock and their citizenship and where they reside?

The CHAIRMAN. Of course, Senator, the theory is that the stock certificates are secretly transferred.

Senator THOMPSON. But if the law was such that they would be bound, the company itself, by what appeared of record, that would not catch your point? That would not cover your difficulty?

The CHAIRMAN. No.

Mr. BEHN. I would like to repeat, Mr. Chairman, that we are perfectly willing to cooperate with your committee.

The CHAIRMAN. What are you prepared to do? What can you do? You say it is impractical; now, what can you do?

Mr. BEHN. I think we ought to sit down with counsel and find the ways and means.

The CHAIRMAN. You can tell us what is your position about ownership.

Mr. BEHN. Well, we are today in this position: That if you pass a provision such as the present one, we could not comply with it.

The CHAIRMAN. Why could you not comply with it?

Mr. BEHN. Because the stock is issued, and we would have to call in all of the stock, 6,600,000 shares. I do not believe—and I have no right to speak for them—that the American Telephone could comply with it, because their stock certificates do not bear any prohibition against alien purchase or vote. Now, it is not likely that anybody is buying 20 percent control of the A. T. & T., and most unlikely, and probably their percentage of alien ownership is small.

The CHAIRMAN. Well, I come back to my question: What can you do on alien ownership? What are you willing to do?

Mr. BEHN. I am willing to sit down and consider it.

The CHAIRMAN. Can you not tell me now? Are you willing to stand 30 percent, 40 percent, 50 percent?

Mr. BEHN. No; it is not so much a matter of percentage as it is the form. It is the legal form in which it can be done and made practical so as not call in all of the stock. It is more than a question of percentage. I certainly believe that 25 percent——

The CHAIRMAN (interposing). Then you do not want any provision in here at all about foreign ownership?

Mr. BEHN. Not at this time; and we are ready to work with the new commission to find a formula that will reach into the controlling companies. The law provides against alien ownership in direct operating companies at the present time. That is safeguarded there.

The CHAIRMAN. But you do not want it applied to holding companies? The holding company is a device set up to dodge the law.

Mr. BEHN. I do not think so, Mr. Chairman.

The CHAIRMAN. That is a device that has been used by all big corporations. You do not object to applying it to one company that does not control, but you object to its applying to companies that are in power?

Mr. BEHN. I beg pardon, Mr. Chairman. I do not say I am objecting to applying it; I just want to work out a formula so that it can be done practically without causing damage.

The CHAIRMAN. You have known that this provision has been up here for the last 2 or 3 years. You have said before this committee previously that you were gradually working out something; now you come before us and tell us that it is absolutely impractical, that it cannot be done; that you must go out of business if anything of this kind is put in.

Mr. BEHN. Mr. Chairman, if you will allow me, I said impractical in its present form, and that we are willing to cooperate to find a form which will reach into the holding companies.

The CHAIRMAN. We have been trying to get you to cooperate for 3 or 4 years. Four years ago we had this up.

Mr. BEHN. We have always been willing to appear and submit our views.

The CHAIRMAN. But you do not say yet what percentage of foreign ownership you can approve in the law.

Mr. BEHN. With your permission, Mr. Chairman, I will submit a memorandum on this question.

The CHAIRMAN. Do you not know now?

Mr. BEHN. No; I am not prepared to answer that now.

The CHAIRMAN. After all these years' consideration you are unable to give us an opinion?

Mr. BEHN. This covers a legal phase that has to be considered very carefully.

The CHAIRMAN. Well, go ahead.

Senator DIETERICH. Is the witness authorized to give an opinion? Are you authorized to give an opinion?

Mr. BEHN. No; I am not authorized to give an opinion. I am president of the company but without consulting counsel to see in what legal way a thing of this sort can be done, it would be foolhardy on my part to advance an opinion.

Senator HATFIELD. Would you be in position then after consulting your attorney to say?

Mr. BEHN. Yes; I would be.

Senator HATFIELD. Would it not then require action of the board of directors?

Mr. BEHN. It should be confirmed by the board of directors, of course, Senator.

The CHAIRMAN. But you have no position to state on the percentage of foreign ownership for which you can stand?

Mr. BEHN. Well, on that question—yes; I can answer you very definitely.

The CHAIRMAN. How much?

Mr. BEHN. Twenty to 25 percent is quite all right, if we can find a practical form in which to do it.

The CHAIRMAN. If we do not apply it to the operating company?

Mr. BEHN. I am not saying that at all. It now exists with respect to the operating company, and we are willing to have it apply to the holding company. It is merely a matter of form, and I will say to you that 25 percent foreign ownership is entirely satisfactory if we can find the proper legal form that will not be destructive.

The CHAIRMAN. You want 25 percent instead of 20 percent?

Mr. BEHN. I suggest 25 percent. The British has 25 percent. I think it is a rather fair figure, 75 and 25.

The CHAIRMAN. Then it will not be impractical to enforce a 25-percent ownership?

Mr. BEHN. Not at all.

The CHAIRMAN. You say it is impractical to enforce 20 percent?

Mr. BEHN. No; I have not said that. I have not said that at all. If you will allow me, I am saying that I am perfectly willing—you have asked me to state a figure, and I think 25 percent is a fair figure, but it is the matter of the practical legal form in which to set it up.

The CHAIRMAN. Why is it so impossible to apply it to a holding company and it is possible and you do apply it to an operating company?

Mr. BEHN. Let me explain that, if you will. The operating company, the direct operating companies, are wholly owned by the holding company, which is an American corporation and which is today practically 99 percent American ownership—it could not be any more American than that. The stock certificates of the operating company can be easily changed, and the statutes, the bylaws, amended to give every possible safeguard and protection, but when it comes to

the holding company, the stock is issued, listed on the exchange, distributed throughout the world. We cannot put in any limitation on that stock without calling the stock in and reissuing a new certificate of stock, which is an expensive way of doing it; therefore, we have to consider very carefully with our lawyers, and it should be approved by the board, the form in which this can be done, so that we can include it. Now, admitting that we find a form—and I think we can find a form—we are entirely willing to have a limitation of 20- or 25-percent preferred. I think that answers your question.

Senator THOMPSON. I should think, Mr. Witness, that you would have considered before you appeared on the witness stand, that these questions would be pertinent to the issues that we wanted to discuss and that as a witness you would have prepared yourself so that when you came here you could help us to arrive at a proper conclusion, and not come here and plead for more time on every proposition that is acute as between you and the committee. I do not mean that in an insulting way at all, but I just thought that that would possibly give you an idea of what we are trying to accomplish. Do you not think you should do that?

Senator DIETERICH. Mr. Chairman——

Senator THOMPSON (interposing). You do not want to answer the question?

Mr. BEHN. I will answer the question, but the Senator addressed the Chair.

Senator THOMPSON. I thought I had the floor.

Senator DIETERICH. That is all right. I withdraw all adverse claims to the floor.

Mr. BEHN. Senator, we have had a couple of weeks in which to study this whole question, and this is a very fundamental question as to the practical form. There is no question of difference between the committee and my point of view as to establishing definite American control of communication companies as well as the controlling company of such direct operating companies—no question. We are perfectly willing to work that out. It is merely the form, and it takes a little time; it takes consultation to find a practical way in which it can be done.

Senator THOMPSON. Then I am right back to my original proposition. How did it happen that you did not come prepared to discuss that proposition now?

Mr. BEHN. It is a slightly complicated matter.

Senator THOMPSON. I know, but we will never get away from that. It will always be complicated.

Senator DIETERICH. Will the Senator yield?

Senator THOMPSON. Yes.

Senator DIETERICH. I understand the witness' attitude is that, following the suggestion of the President of the United States to transfer powers now in existing commissions to a new commission, you have studied this problem, and his position is that if we follow that out and create this new commission they would gladly take that matter up with the new commission and work it out with the commission. Let them study the proposition and bring it here. I do not understand that there is such an emergency on this that it must be done immediately. It may be that I am not familiar with the past

history of it, but it is a matter that is so important that every reasonable time should be given these interests to present their cause to this new commission and let them study it, because they will have to do with it. Let them familiarize themselves with it. They can have their hearings during the recess of Congress and ascertain what the proper regulation should be, and report it back to the Congress so that they can give it intelligent action, instead of bringing it in here to a new committee, that I will confess, as far as I am concerned, I am not familiar with it and I am not going to injure either this Government or any legitimate business in this country by hasty action.

The CHAIRMAN. I want to say to the Senator from Illinois that in the bill of a year ago Mr. Behn or a representative, I am not sure which, were entirely satisfied with this same provision, except that it did not have the word "operating" in it, and it did not have the word "owned" in it. The same language was used in a bill which Mr. Behn approved.

Senator DIETERICH. But that bill was never enacted?

Mr. BEHN. It was passed by Congress.

The CHAIRMAN. It passed through both House but was never signed by the President.

Senator WHITE. I think the President showed better judgment than the two Houses did.

The CHAIRMAN. If I remember right, the Senator from Maine was not certainly objecting to that provision as finally worked out.

Senator WHITE. I was not objecting to that particular provision; I objected to the bill as a whole, and I fought for three quarters of an hour in opposition to it, I remember, and to little effect.

The CHAIRMAN. I remember the Senator fought with me to save this language.

Senator WHITE. But I will say this, the Chairman and I have been wrestling with radio problems for some 7 years, and here is a subject matter that has been in controversy during those entire 7 years, and if the Senator and I have ever been together on it, I am not sure of the time. It has been a matter upon which we could not agree, and we most always agree, because I most always have yielded to him. [Laughter.]

The CHAIRMAN. The record will not bear out that last statement. [Laughter.]

Go ahead, Mr. Behn.

Mr. BEHN. The International Telephone & Telegraph Corporation, with its far-flung activities, throughout the world, controlling as it does the largest American international communications system, which is second only in size to that of the Imperial & International Communications, Ltd., the British merger of cables and wireless, is, I submit, a vital force in the development of American trade and commerce with foreign countries, and through its communications services to Europe, Pan America, and Far Eastern countries, it is in position to effectively assist the administration and Congress in their policies and efforts to develop international trade and good will.

I would like, Mr. Chairman, to reiterate my statement that I feel, and I want to thank Senator Dieterich for his statement, that new legislation should be left to a careful study of the new regulatory body, and that the transfer of the existing regulatory powers should

be made to this commission. So far as the interests that I represent are concerned, we are willing to cooperate with that new commission in every way for the national defense, for the proper and fair control of communications, and to assist in every way that we possibly can in their efforts to bring about proper legislation.

The CHAIRMAN. I want to say that this is one provision in which I feel free to say the President is interested, and I think it desirable that your organization prepare some statement setting forth the way in which you think this law can be made satisfactory, and not wait until the commission has been created and set up.

Mr. BEHN. I shall be very glad to undertake to do that.

Senator DIETERICH. Mr. Chairman, if that is true, then I do not understand the message of the President. I understand the message of the President to be, and his advice to the Congress, that the existing powers granted to existing commissions be transferred to this new commission for the purpose of creating a broad power that would bring in the different matters over which they had jurisdiction, to make a study of them and report them to the Congress, and it seems to me that that would be the orderly and proper way to proceed. I do not understand that there is any national emergency that requires immediate action on this. We have existed up to this time without this legislation.

The CHAIRMAN. This is not new, Senator Dieterich.

Senator DIETERICH. I know, but it is new because there has been no law—you may have had your controversies, but there has been no law. My idea is that this new commission could settle this thing, and the chances are that when the new commission made its report Congress would follow the report of that commission.

The CHAIRMAN. I think we would like to have a statement from Mr. Behn, because I am sure that we are going to be asked and urged by Government officials to do something about this situation over which we have been struggling for several years, and I am not wedded to this language, but I am anxious that we can do something to satisfy those officials of the Government who are insisting that the present law does not properly take care of the national defense.

Senator WHITE. I think if we could sit down apart from the influence of one branch of the military government of the United States, or one military branch of our Government is what I want to say, something could be worked out.

The CHAIRMAN. Well, I think you will have to sit down and work this out.

Senator WHITE. May I just interject another word, then I will have to leave, I am sorry to say. Just for the information of the two Senators who were not here when we met, I gave notice that at some appropriate time I am going to offer an amendment, possibly in the nature of a substitute, which will seek to carry out the specific recommendations of the President, and which would stop there. I have a preliminary draft of it, but it is difficult even putting that into form, and I am not prepared to offer it at the moment, but I think ultimately you have got to pass here on this situation.

Senator DIETERICH. That is a matter for executive session?

Senator WHITE. Yes. I just wanted to give notice now so you would have it in mind.

Senator LONERGAN. Mr. Chairman, I would like to ask the witness a question. Are there some stockholders who are not residents who buy the stock merely for investment purposes?

Mr. BEHN. Most of them do.

Senator LONERGAN. Well, do not all of them?

Mr. BEHN. I suppose there are some who speculate, but most of them buy for investment.

Senator LONERGAN. What I have in mind is, they do not buy the stock for the purpose of having a voice in the management, do they?

Mr. BEHN. No, sir.

Senator LONERGAN. Could not your problem be solved by creating a voting trust, insofar as stock ownership outside of the country is concerned?

Mr. BEHN. You see, Senator, in order to create a voting trust, you would have to call in and get the consent of all the existing stockholders. These certificates have been issued without any limitation as to their right of ownership or vote. Now, you just cannot meet and pass a resolution that hereafter, from today on, anyone who is a foreigner cannot own a share stock if it is in excess of 20 percent. Everyone must be put on notice. As it turns out, about 9.35 percent of our company is owned in foreign countries. That includes Puerto Rico, the Virgin Islands, which are America, and doubtless a great number of Americans resident abroad. We have not investigated to see what percentage of that 9.35 percent are Americans. We are perfectly willing to find a formula. The operating companies are quite clearly controlled by the existing Radio Act. The property is in the United States. If there were an emergency tomorrow the Government could take over the property. There is no reason to create an upheaval in an international corporation of this sort. Its branches and its services extend throughout the world and invite retaliation and reprisals in foreign countries.

Senator LONERGAN. I only suggested that, I hope in a helpful way.

Mr. BEHN. I quite agree with you.

Senator LONERGAN. And, of course, having in mind that it would take time to communicate with the stockholders. That was merely a suggestion.

Mr. BEHN. Yes; and I merely answer your question. And one of the present difficulties of that situation, you can almost imagine a group buying the stock and then the claim being made that more than 20 percent has passed into foreign hands, and all licenses would be, ipso facto, canceled. It would be confiscation of property.

Senator DIETERICH. Mr. Chairman, I still cannot reconcile myself to this particular procedure, that we should pass a law and fix the control or the regulation and then create a commission to carry out what we do with the advice of the President to create the commission and transfer the power to them and let them make a study of it and report what they think should be done in the matter of regulation—I still cannot reconcile that with what we are attempting to do. I think we are going ahead here and doing something that should be transferred to this commission.

Senator WHITE. Mr. Chairman, are you going on this afternoon?

The CHAIRMAN. No; tomorrow morning.

Senator WHITE. I have an appointment which I must keep, if you will excuse me.

Mr. BEHN. I would like, with your permission, to place in the record a letter addressed to Secretary Roper at his request.

The CHAIRMAN. It will be printed at this point in the record. We thank you very much, Mr. Behn.

(The letter referred to follows:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION,
January 18, 1934.

Hon. DANIEL C. ROPER,
Secretary of Commerce, Washington, D.C.

DEAR SIR: Following up my visit of January 9, and in keeping with your suggestion, I am submitting to you a memorandum stating my views on the communications question which has been studied by your committee and is now before the President and the respective committees of Congress. As suggested by you, I am also sending copies of the memorandum to Senator Dill and to Congressman Rayburn.

My interest, as you will realize, is in the telegraph field, or, rather, the field of record communications, whether such communications are transmitted by wire, cable, or radio. I am not speaking for the other telegraph or radio companies, or for the telephone companies, though telephone (or voice communications) is referred to to the extent necessary to treat of record communications. As you are aware, telephone companies are already permitted to merge, with the approval of the Interstate Commerce Commission, if in the public interest. (Sec. 5, par. 9, Interstate Commerce Act.)

I believe that permissive legislation in form similar to that which the telephone companies now enjoy, or in other adequate form, is urgently needed to eliminate illogical and wasteful competition in the domestic telegraph field and in the field of foreign record communications, and thereby place the American interests in a position to equality with foreign enterprises.

Such permissive authority may be included as a part of general legislation providing for the organization of a separate regulatory commission of the expansion of the powers and duties of an existing regulatory body; or, if this will require more time than is available before the closing of the present session of Congress. a simple amendment or addition to section 5, paragraph 9 of the Interstate Commerce Act may be adopted permitting such consolidation, in the same manner as telephone companies are now permitted to consolidate, upon a finding after a hearing by the Interstate Commerce Commission, or other regulatory commission which may be vested with authority to regulate all communications services, that the consolidation is in the public interest; and the enactment of such legislation would not in any way preclude the formulation and adoption of more comprehensive legislation at such time as Congress may be ready to take such a step.

I want to thank you and Dr. Splawn for the courteous attention and time you gave me, and to place myself at your order for any information you may require.

Respectfully yours,

SOSTHENES BEHN.

[Colonel Behn's memorandum of Jan. 19, 1934, to accompany letter to Hon. Daniel C. Roper; copies to Senator Dill and Congressman Rayburn.]

MEMORANDUM ON TELEGRAPH FACILITIES AND SERVICES BY WIRE, CABLE, AND RADIO

This memorandum covers generally and briefly the telegraph or record communication services within the United States and to foreign countries.

DOMESTIC TELEGRAPH SERVICES

At the present time there is duplication in the wire facilities and main and branch offices of the Western Union and Postal Telegraph in the principal cities and towns of the country.

Mackay Radio, associated with Postal Telegraph, has radio-telegraph stations at Seattle, Portland, San Francisco, Los Angeles, Chicago, New Orleans, and

New York, with additional stations about to be constructed in Kansas City and Atlanta, and renders a domestic radio-telegraph service between those cities and, by transfer, to all points reached by Postal Telegraph.

Radio Corporation also operates a domestic point-to-point radio service between San Francisco and New York and has announced addition point-to-point stations for domestic operation.

In addition, American Telephone & Telegraph Co. operates a printer-telegraph system with a total of about 3,000 printers, connecting important telegraph users in the principal cities and towns of the United States. Western Union and Postal Telegraph have approximately 12,000 telegraph printers in customers' offices (Postal about 5,300 and Western Union about 6,500). In printer installation and service there is duplication to a large extent among the three companies.

The duplication of such installations is admittedly wasteful and uneconomical for a public service which is subject to Government regulation of rates and services. In the opinion of many, in which I share, the telegraph printer exchange or telegraph printer service will become the backbone of the telegraph service and it is unthinkable that a customer will have to have two or three telegraph printers in his office in order to communicate with subscribers of the three different companies. The customer will not pay rent for such printers, and the companies cannot afford to install them free of charge, so that the cost of this duplication adds to the already high cost of rendering a telegraph service under existing competitive conditions.

Only by the consolidation of these various facilities and services can a lower rate schedule and the extension of the services be obtained; and with adequate regulation of the same the public has everything to gain.

Should legislation be enacted to permit consolidation, the companies will undoubtedly see the advantage to them of consolidating their services with the approval of the regulatory commission and subject to adequate regulation of rates and services, as otherwise they are faced with increasing wasteful competition between themselves and with the Telephone Co.'s telegraph printer exchange, in addition to the competition from air mail and from the purely telephone services of the Telephone Co.

Through consolidation, savings running into many millions can be promptly made, and such savings would be doubled after the absorption of excess employees, which should be accomplished within 3 years through normal turnover and expansion of the service. With the unification of services through consolidation and the resultant savings in cost of operation, such savings can be reflected in lower rates to the general user of the telegraph.

Only one other country—Canada—has duplication of competition in its telegraph service, and steps have been taken to consolidate the Canadian services. It is expected that the present Parliament will promptly pass the necessary legislation.

FOREIGN SERVICES

Connecting this country with Europe across the Atlantic there are the cables of Western Union and Commercial Cables; also those of the French Cable Co., and the radio services of Radio Corporation of America and Mackay Radio. In addition, the British Cable and Radio Merger gives service between Great Britain and the United States via Canada.

TO THE WEST INDIES, CENTRAL AND SOUTH AMERICA

The Western Union has cables to Cuba, and a cable from Miami to Barbados, British West Indies, where it connects with the South American cable of the British Cable and Radio Merger. All America Cables, associated with Commercial Cables, Postal Telegraph, and Mackay Radio, through the International Telephone & Telegraph Corporation, operates cables to the West Indies, Central and South America, going down the west coast to Valparaiso, Chile. then overland to Buenos Aires, and then up the east coast to Rio de Janeiro. Radio Corporation renders service to the West Indies and South America, connecting in South America with stations in which they generally own a minority interest. Mackay Radio also renders radio service to South America connecting with wholly owned associated company stations. In addition, Tropical Radio, associated with United Fruit Co., operates radio services to Central America and other adjacent countries and islands.

On the Pacific the Commercial Pacific Cable extends to Hawaii, Philippines, and China and serves Japan by connection with the Japanese cable at Bonin

Island. Radio Corporation of America operates radio services to those Territories and countries and other far eastern points. Mackay Radio also operates radio services to Hawaii, Philippines, and China and expects to establish service with Japan at an early date. Communications between America and the Far East are also sent via the Atlantic cable and European routes to the Far East, as well as by cable and radio from Canada.

With this general picture of the cable and radio services to our noncontiguous Territories and foreign countries, it can readily be seen that the American companies competing among themselves are at a disadvantage vis-à-vis the consolidated foreign communications companies and foreign government services. The best example of these is the Imperial & International Communications, Ltd. (the British cable and radio merger), which was organized to take over and operate the cables and radiotelegraph services of Great Britain, with her dominions and colonies and their cable and radiotelegraph services to foreign countries. All other principal countries, Germany excepted, with national cable enterprises have permitted the merging of the interests of the national cable and radiotelegraph companies. In the case of Germany, the Government owns the radiotelegraph service and, in effect, subsidizes the German Cable Co. in the form of traffic and cash guaranties.

Apart from the desirability of securing the economies to be made through the consolidation of the cable companies and radio companies, it appears essential and to our best national interest for the protection and development of our foreign trade and national defense that the American services be permitted to consolidate, without exclusion from our shores, however, of foreign cables, such as the cables of the French Cable Co., as the American companies enjoy landing and operation privileges in France, Great Britain, and other countries.

It is essential that any legislation permitting consolidation of the communication services between the United States and foreign countries should not be limited to a permission to consolidate cable services on the one hand and radio services on the other. Both cable and radio are necessary in order to give adequate foreign communication services.

Cables cannot adequately compete with radio when it is necessary to relay cable messages through connecting services to points of destination not directly reached by the cables themselves, and taking into consideration the experience in other countries and the example furnished by the action taken in those countries, it is inconceivable that an existing cable company would acquire duplicating cables if it must face the competition of radio services protected by exclusive rights.

While it is true that radio may adequately substitute certain existing cable routes, cables have a strategic value which should be conserved. Cables may be cut, but the "jamming" of radio is apt to be more troublesome than the cutting of cables, depending, of course, on the control of the sea and neutrality of the termini.

The consolidation of telegraph communication services between the United States and foreign countries will not entirely eliminate competition, for any consolidated American company will compete with services operated by foreign companies. The French Cable Co. lands directly in the United States and the British merger provides cable service with the United States via Canada. The rights of both must be respected, since the American companies enjoy landing privileges and rights of operation in both countries.

Regulation of cable and radio services to foreign countries is practical, even though it is not or cannot be as complete and final as in the case of domestic service. As the rates cover service in both directions and the American services are apt to compete with foreign services over the same or adjoining routes, and as most governments reserve the right to approve or disapprove rates because of competing services, taxes, etc., the American Regulatory Commission would nevertheless be able to bring pressure through the consolidated company or directly with foreign administrations to obtain the adoption of reasonable rates and regulations, and in the final analysis it might be a case of companies of legitimate conflicting interests; but I firmly believe that the effectiveness of the supervision and approval of rates and services of the consolidated company will not be much, if any, lessened thereby.

With the above outline of services, both domestic and foreign, and the broad principles covered, it is my view that the best and most practical set-up would be the consolidation into one company of all domestic telegraph or record communication services, including wire- and radio-telegraph services and tele-

graph-printer services, and all record communication services to noncontiguous territories and foreign countries should be consolidated into another company. Any legislation which is enacted should permit of such consolidations upon approval by the regulatory commission of the terms and conditions of the proposed consolidations and the capital structure of the consolidated companies.

It is, therefore, submitted that the necessary legislation should take either of the following two forms:

(A) An amendment to section 5, paragraph 9, of the Interstate Commerce Act which would empower the Interstate Commerce Commission to approve of the merger of wire, cable, and radio companies and services, if in the public interest, in the same manner and form that telephone companies are now permitted to merge. This amendment would place in the Interstate Commerce Commission the authority for regulation of cable and radio services in addition to telegraph and telephone services, which authority is now vested in the Commission.

(B) Appropriate legislation establishing a Federal communications commission which would succeeding the Federal Radio Commission and of the Interstate Commerce Commission insofar as they relate to telegraph and telephone services. The Federal communications commission would, in addition, be vested with the authority to approve of the consolidation of wire, cable and radio telegraph services.

STATEMENT OF F. B. MacKINNON, PRESIDENT UNITED STATES INDEPENDENT TELEPHONE ASSOCIATION, CHICAGO, ILL.

Mr. MacKINNON. Mr. Chairman and gentlemen, my name is F. B. MacKinnon, president of the United States Independent Telephone Association, 19 South La Salle Street, Chicago, Ill.

Senator LONERGAN. Do you describe your company in that statement?

Mr. MacKINNON. Yes, I do. Answering your question directly, Senator Lonergan, there are in the United States over 6,000 Independent Telephone Companies, which are not owned, controlled or operated by the American Telephone and Telegraph Co., or any of its subsidiaries. These 6,000 companies are known as the "Independent group," that is, they are independent of the Bell group. They operate the only telephone exchanges in over 14,000 communities and serve in normal times four and one half million telephones. They own hundreds of thousands of miles of toll lines; they connect with the toll lines of the Bell group, either through connection with their own toll lines or directly with the Bell toll lines at their exchange. Outside of cities of over 50,000 population, the Independent group serves approximately as many subscribers as the Bell group. In considering the telephone situation, therefore, it is necessary that the committee have in mind this widepread service rendered by these 6,000 Independent companies and remember that they furnish the facilities for calls originating and terminating in 14,000 of the 20,000 communities in the United States.

The United States Independent Telephone Association, which I represent, is the national organization of these Independent companies. There are, in addition, 30 State associations, membership in these State associations automatically entitling the company to membership in the national association. The national association was organized in Detroit in 1897 and has functioned continuously since that time, for the last 18 years under the name of the United States Independent Telephone Association.

The companies of this Independent group have an investment in their plants of $600,000,000 and in normal times have annual operat-

ing revenues of $125,000,000. Due to the depression of the last 4 years, the group has lost 1,000,000 telephones and its gross revenue has dropped to approximately $100,000,000. In order that you may have a more detailed picture of this group, I desire to submit herewith a schedule showing the number of independent telephone companies in each of the States:

Alabama	91	Nevada	11
Arizona	5	New Hampshire	31
Arkansas	83	New Jersey	5
California	90	New Mexico	13
Colorado	57	New York	222
Connecticut	4	North Carolina	90
Florida	26	North Dakota	254
Georgia	93	Ohio	270
Idaho	33	Oklahoma	224
Illinois	384	Oregon	110
Indiana	352	Pennsylvania	239
Iowa	466	Rhode Island	1
Kansas	390	South Carolina	65
Kentucky	96	South Dakota	201
Louisiana	18	Tennessee	115
Maine	84	Texas	389
Maryland	4	Utah	17
Massachusetts	5	Vermont	34
Michigan	147	Virginia	130
Minnesota	302	Washington	102
Mississippi	8	West Virginia	85
Missouri	300	Wisconsin	536
Montana	57	Wyoming	42
Nebraska	160		

I might call attention to the fact, as instances showing the extent of this spread, that there are companies in California, Washington, and Oregon—over 100 in the State of Washington alone. There are 390 in the State of Kansas, 384 in the State of Illinois. In the State of Illinois, outside of Chicago, there are more independent telephones than there are Bell.

The great development is in the Mississippi Valley between the Alleghenies and the Rockies, and yet it is spread over the country clear up into the State of Maine.

The independent group is also composed of a number of large manufacturing companies who, from the beginning of the industry, have supplied the independent companies with their equipment and in whose laboratories their engineers have constantly devised improvements in telephone equipment, and to whom must be given credit for many of the developments in telephony that are in use by both independent and Bell companies.

Senator HATFIELD. Is that an independent company or is it owned by the Independent Telephones?

Mr. MACKINNON. No; it is a separate company. Among these manufacturing companies are the Kellogg Switchboard & Supply Co., of Chicago, and the Stromberg-Carlson Telephone Manufacturing Co., of Rochester, N.Y., makers of manual equipment, and the Automatic Electric Co., of Chicago, and the North Electric Co., of Galion, Ohio, makers of automatic equipment. In addition, there are smaller organizations building specialties needed by the operating companies. This manufacturing division is essential to the independent group. The competition between the manufacturers for the independent business has been a great incentive to develop-

ment, and the competition of these factories and independent engineers with the engineers and factories of the Bell group has been one of the reasons for the great growth and development of the telephone industry. It is necessary, therefore, that in considering this problem, the regulations of the operating companies, your committee should have in mind this great manufacturing division and should have also in mind that the 6,000 operating companies are individually owned and are not owned by the factories, nor are the factories owned by the operating companies.

From this brief statement of the Independent group your committee will realize that the Independent companies have a vital interest in any legislation that may be proposed that will affect the telephone industry.

The CHAIRMAN. May I ask you a question there? If I understand it, these Independent companies are not interrelated financially?

Mr. MACKINNON. Yes, sir.

The CHAIRMAN. They are interrelated?

Mr. MACKINNON. They are not interrelated.

The CHAIRMAN. But this "Independent telephone group", as you call it, is simply an association of independent owners?

Mr. MACKINNON. Yes; a voluntary association.

Senator WHITE. In how many States do you have Independent companies?

Mr. MACKINNON. In practically all of them. I would say in all but perhaps three or four. In some of the mountain States the Independent group is practically eliminated, and in a few of the Eastern States, but in practically all of the States we have representation.

Senator WHITE. Most of them serve very limited areas, do they not?

Mr. MCKINNON. They vary. We have large exchanges, such as Rochester, N.Y., which is an independently owned and operated company.

Senator WHITE. That is in competition with another company?

Mr. MACKINNON. There is practically no competition between the exchange companies in the telephone business. We have a competitive exchange in Philadelphia, which is practically the only competitive situation left.

Senator WHITE. So there are not many places where you have two telephone companies?

Mr. MACKINNON. No; that is practically the only one. There are, scattered through the country, a few cases where there are organized what we call "mutual companies", small farm companies operating their own exchange.

Senator LONERGAN. Has experience proven that there is not a field for two competing companies?

Mr. MACKINNON. Experience has proven that one or the other must die, and with the coming in of regulation, which came in in 1910, as I shall mention later on, this competitive feature, which was one of the reasons for the organization of two exchanges, passed out of the picture.

Senator LONERGAN. So you look to the telephone as a sort of a natural monopoly?

Mr. MACKINNON. A natural monopoly in the locality. Although we still think that there is a potential competition desirable for a basis of comparison. There is a chance for different ownership and operation.

The CHAIRMAN. Are most of your companies engaged in intrastate business, within the State?

Mr. MACKINNON. Most of them; yes. Our great difficulty in presenting an opinion on a bill of this kind is that we have companies, small, as you know, out in your State, and we also have larger ones, as I have just mentioned, in Rochester and down in Tampa, Fla, and scattered throughout the country——

The CHAIRMAN (interposing). I was wondering if you knew how many of your companies would actually be affected in the way of interstate business?

Mr. MACKINNON. I can answer that, although this is not a definite dividing line, because there are companies that are interested in this interstate business that are very small. We have 242 companies that are now reporting to the Interstate Commerce Commission, and there are other companies that are doing an interstate business that do not report.

As I stated to this committee in 1930, when the Couzens bill was under consideration, the first provision giving the Interstate Commerce Commission jurisdiction over telephones was enacted into law and became a part of the Interstate Commerce Commission Act in 1910 at the request of the independent companies through this national association. Immediately after the insertion in the Interstate Commerce Commission Act of the provision relating to telephone companies, laws were passed in a number of States providing for the organization of State regulatory commissions and since then one State after the other has followed with similar legislation until now there are only three States—Delaware, Iowa, and Texas—that do not have a State commission having some control over telephone companies. In 16 of the States this control or jurisdiction covers practically every part of the field of regulation as to rates, charges, practices, and so forth. We, therefore, have been in very close contact with the State commissions and, by reason of our contacts, have learned their difficulties due to overlapping of Federal and State authority. The majority of our companies are and have been in favor of regulation.

As the chairman said yesterday, 98 percent of the calls are intrastate. We submit that whoever regulates 98 percent of the calls must necessarily regulate the other 2 percent. The State commissions regulate the 98 percent and their rules and practices must follow into the 2 percent. This should be borne in mind by your committee in its delegation of authority to a Federal commission—that that commission can do but little in the regulation of rates. This question, the dividing line between regulation by Federal authority and regulation by State authority is the one that naturally is uppermost in our minds.

Diverting just a moment and emphasizing that, Mr. Chairman, from time to time I notice the question arises as to why the Interstate Commerce Commission has not been a little more active. One reason is that very fact which I mentioned, that the regulation is by the State commission. The complaint of a telephone rate goes to the

State commission rather than to the Interstate Commission Commission, and consequently there have been but few formal complaints filed with the Interstate Commerce Commission, and therefore but little activity on their part.

The CHAIRMAN. But there is a great deal of data and a good many facts that cannot be gotten by State commissions because they are confined to their States, data that is important in an organization such as a telephone monopoly.

Mr. MACKINNON. Yes, sir. Were it feasible for Congress to do so, we would advocate that a section be written in the bill which would say that the jurisdiction over a telephone company whose physical property lies wholly within a State shall be subject only to the jurisdiction of that State. But the problem of the dividing line between interstate business and intrastate business would not be solved by such an enactment. We are anxious for a real solution of this problem; where to make the separation between interstate and intrastate; how to give the Federal Commission and the State commissions definite working territory in which neither will interfere with the other. We would like some arrangement by which there would be no overlapping of jurisdiction.

This has been, as we see it, one of the chief difficulties in the exercise of the jurisdiction of the Interstate Commerce Commission over some of the telephone properties. We were in hopes that when a communication bill was submitted it would contain a solution. We do not think this bill as presented does. There is still left that undecided question as to when a company is engaged in interstate business.

We have experienced this difficulty in connection with the application for accounting systems and the fixing of depreciation rates. Many of our smaller companies in the rural communities are not concerned particularly in accounting, nor in rate cases. Almost any evening the village fathers who gather at their regular rendezvous can calculate how much is the revenue of the "telephone man", as he is called, and how much are his expenses. They know the wages of the lineman and each of the operators. Such a condition exists until the municipality where the companies are operating reaches such a size that this intimate knowledge of the owner of the plant and his employees does not exist and when that point is reached the company must go into accounting; must keep records to be able to prove its expenses, its revenues, and its investment. And right then the manager of the company realizes that his accounting system must be uniform with that of other companies similarly situated. In the larger centers, this necessity for uniformity increases on account of the need for making the same statement to bankers in connection with financing operations. The telephone companies of the independent group need uniformity in their accounting practices. This uniformity of accounting they have been securing through the Interstate Commerce Commission. They might secure it equally as well through the proper organization of the State commission.

The present bill allows the State commissions to prescribe such accounts as they think best, but at the same time allows the Federal commission to prescribe such accounts as it thinks best. This is one of the overlapping features of which I am speaking. This is not

cured in the present bill, nor are any of the other questions of interstate and intrastate jurisdiction.

Senator HATFIELD. In other words, your attitude is the same as that taken by the president of the Bell Co. respecting accounting?

Mr. MACKINNON. Yes; in a way. We do think there is a way of getting at uniformity, either through the Interstate Commerce Commission or through some arrangement with the State commissions.

In other parts of the bill new regulatory provisions are proposed which to us do not seem practical. We have gone over the bill carefully and have reached the conclusion, without regard to the fact that that conclusion may have been reached by others, that no new regulatory provisions should be enacted into law at this time. We think that if a communications commission be provided which will utilize only the present existing Interstate Commerce Commission law as it applies to telephone companies and that commission proceed to hold conferences with the State commissions where the State commissions, instead of sitting to one side waiting for something to be apportioned to them, shall sit up at the table and decide where the dividing line shall be; and if to such conferences or hearings representatives of the industry are called, through these hearings and investigations there should be formulated a procedure that will produce a practical working method of State and Federal regulation with clearly defined lines as to territory and in connection with some matters, joint control.

It had been our intention to discuss individually the various sections in the bill that to our minds would be impractical to apply to our companies. But these sections have been discussed so thoroughly by Mr. Gifford that we do not think we should take the committee's time by reviewing them again.

The CHAIRMAN. If you have that written out you may insert it as part of your remarks.

Mr. MACKINNON. I will be very glad to do that. I do have it written out.

The CHAIRMAN. Very well.

Mr. MACKINNON. We agree with Mr. Gifford's objections to the injection of these new regulations without further consideration, and especially to his objection to any provision that turns over to a regulatory body the management of our companies. Not only cannot some of the new requirements be applied to our companies from the very nature of the companies, but this question of intrastate and interstate overlapping will present itself in connection with every one of them.

Before concluding, however, I want to stress one particular section to which our attention has been called by many of our companies, and that is the section which provides that no interstate line or circuit shall be constructed or extended, or operated, until the consent of the Federal Commission has been obtained. We have hundreds of companies operating along the borders of States whose lines, both exchange and local toll, run across a State line. We have companies such as those that operate in Bristol, Tenn., and Texarkana, Tex., where the main street of the town is the State line and where the subscribers are located in two States. For these companies, such a procedure as suggested would be absolutely impractical.

Could the growth of our 6,000 companies have taken place had the companies been obliged to obtain permission from a Federal authority before extending their lines or financing or purchasing equipment? Surely, anyone who is familiar with this development will agree that only by the freedom of individual action and with the least of regulation could this development have taken place.

We ask, as I have said, that provisions which change the present Federal control be eliminated from the bill and the subjects of these provisions be made the matter of careful joint investigation by Federal and State commissions.

There is one other matter which I feel we should mention. On yesterday, Mr. Sarnoff, of the Radio Corporation, submitted brief remarks in which he stated that his corporation is opposed to the bill in its present form, and introduced, without reading, the arguments submitted by him before the War College last year, in favor of monopolies in communications. Unfortunately, he did not discuss these proposals before the committee, a majority of the members of which may not have realized that his argument was an argument for monopoly.

The Independent group cannot let such statements remain in the record without objecting. Mr. Sarnoff's proposals are in effect that the Independent telephone companies should be turned over to the Bell, as well as the use of voice radio, and that record communication by wire, radio, or cable should be turned over to some other corporation as a monopoly. We submit that the two groups in the telephone industry under separate ownerships have been and are essential to the public service, and we submit that radio, in which some of our manufacturing companies are deeply interested, and in which every one of our owners of property as an individual is interested, should not be hindered in its development by any such proposed monopoly. There are constant changes in the telephone art, but there are hourly changes in the radio art, and the appeal for the development in the use of radio should remain unhindered.

Mr. Sarnoff, in his summarization for the War Department, said:

> The three points in an American communications policy, as I conceive it, should be:
>
> 1. Maintenance of voice communication under a single organization, conducting its telephone service with wires, radio, or cables, as conditions may dictate.
>
> 2. Unification of internal and external communications of record under a single company conducting telegraph service with wires, radio, or cables, as conditions may dictate.
>
> 3. Establishment of a single governmental agency empowered to regulate American communications in the public interest; its authority to extend over voice, record, and mass communications irrespective of the mediums employed, whether they be cable, wire, or radio.
>
> Such arrangement would eliminate duplication and overlapping. It would join in one unified company all phases of record communication, and leave, as at present, in a single company all phases of voice communication.

The CHAIRMAN. We did not have Mr. Sarnoff read his argument, and I think you might just insert that, because we have agreed not to take up those questions.

Mr. MACKINNON. That is all I had on that, and I simply read that, Mr. Chairman, to see what point he was objecting to, as his argument is long and extended.

The CHAIRMAN. Yes; I understand he put that in the record.

Mr. MACKINNON. We had not intended to discuss this particular matter, but the insertion in the record of Mr. Sarnoff's arguments for monopolies make it necessary that we should state our position, which is that we believe the "White Act" should stand and the reiteration of that act in this bill should be commended.

The CHAIRMAN. Are there any questions?

We will now hear Mr. Murphy on behalf of the cable and radio users' protective committee.

STATEMENT OF G. M.-P. MURPHY, NEW YORK CITY, ON BEHALF OF CABLE AND RADIO USERS' PROTECTIVE COMMITTEE

Mr. MURPHY. Mr. Chairman and gentlemen, I appear before you in my capacity as chairman of a committee appointed to act for over 50 banks, banking houses, stock exchange and commodity, and import and export houses in certain matters relating exclusively to the international cable and radio services. While the businesses which our committee represents are important users of domestic wire communications, in traffic volume they constitute one of the largest groups of users of international cables and radio, and particularly is this true of messages requiring fast transmission.

I have come to urge on behalf of this group that the Congress promptly pass an adequate bill providing for the regulation of the cable and radio-telegraph services which American citizens must use in the transaction of their international affairs.

I wish to make it quite clear that my argument deals only with international cable and radio-telegraph services. Insofar as telephone communications are affected by this bill, I have no requests to make. The telephone company has been, as far as I know, invariably reasonable with its customers and has tried to aid rather than to hamper them in the development of their legitimate business.

I am personally opposed to any unnecessary governmental regulation of private enterprise. In spite of this fact, and although many of the directors and officers of the companies engaged in the international cable and radio telegraph business are friends of mine, I have reluctantly but definitely come to the conclusion that the methods of these companies in dealing with their customers have become so arrogant and unreasonable that the only hope of fair treatment for those whom I represent lies in effective Government regulation of the nature to which other utilities in interstate commerce are already generally subject.

As to the details of the bill now under consideration by your committee, I am not qualified to speak, nor shall I address myself to any of its specific terms, but I venture to bring to your attention certain matters which I believe clearly indicate the necessity of including in it the control which I advocate.

The R.C.A. Communications, Inc., Commercial Cable Co., Western Union Telegraph Co., and French Telegraph Cable Co., as a consequence of the cable and radio facilities which they control and of their arrangements with foreign governments and with other communications companies throughout the world, have an absolute monopoly on all cable and radio telegraph business which can be carried on across the North Atlantic by the people of this country. From this monopoly there is no escape. If an American citizen

does any international business involving the use of the cable or radio to Europe, he can deal only with some one of these concerns. No matter how the American user of these services may be oppressed, he must take his choice between doing business on the terms laid down for him or doing no business at all. He has no recourse to his Government and apparently no recourse to any court of the United States.

On the 14th of last December the communications companies I have named and other American companies delivered to the users of their various overseas services two circulars announcing certain changes in rates and services to take effect on January 1, 1934. Among these changes were a two thirds increase in the rates for night letters, which are widely and generally used by business concerns and individuals throughout the country, the abolition of the preferred service which has been in existence for many years, and the inauguration in its place of a new urgent service which drastically increased the rates on fast messages across the North Atlantic, these increases running from 60 percent to over 100 percent. There had been no previous notice of these increases, so that time was not allowed before the effective date even for letters to be exchanged between American business men and their foreign branches and correspondents, the very existence of which in numerous instances is seriously endangered by the new rates.

As promptly as possible after the notices were received a number of users of trans-Atlantic cables and radio met and that meeting resulted ultimately in the appointment of the committee of which I am now chairman. Through this committee negotiations were patiently carried on over a period of approximately 6 weeks in an endeavor to reach some reasonable compromise with the companies. Our committee earnestly desired to avoid a fight. We were willing to recommend to those whom we represented terms of settlement which, while unreasonable from our standpoint, appeared to be preferable to the risks we would run in engaging in open conflict with these great corporations, aided by their skilled and experienced legal and technical staffs.

These negotiations produced no satisfactory results. It was developed, however, first, that these rates were the outcome of an agreement between the companies and were not, as they tried repeatedly to misrepresent in the circulars referred to and elsewhere, the necessary result of a conference of the International Telegraph Union held at Madrid in 1932.

Senator HATFIELD. These new rates were an increase over the old rates?

Mr. MURPHY. Yes.

Senator HATFIELD. Materially?

Mr. MURPHY. Materially; yes, sir.

The CHAIRMAN. Specifically, they were practically doubled?

Mr. MURPHY. Practically doubled, depending on the length of message. And night letters were increased 66⅔ percent.

Second, that the companies had had to obtain the consent of the British post office before these rates could be imposed; and, third, that they were delaying and proposed to still further artificially delay their ordinary service to concerns whose business was depend-

ent on prompt communications, so that the users requiring even reasonably fast service would be forced to use and pay for the new high-priced urgent service.

Not being able to deal on a reasonable basis with the communications companies, we requested our counsel to explore the possibilities of finding relief through governmental agencies. Certain powers in this situation lie legally within the State Department. Under the typical cable landing licenses granted by our Government, it is distinctly provided that rates shall be just and reasonable: that copies of all tariffs shall be filed with the Department of State; and that any agreement which the companies may make within any other cable company or with any foreign government, either for the purpose of regulating rates or for any other purpose, shall be subject to the approval of the State Department; that information concerning it shall be transmitted to the Secretary of State immediately after execution; and that the Department have 30 days after receipt of such information within which to signify its disapproval of the agreement.

The CHAIRMAN. Let me ask you there, to what countries does this apply—this increase?

Mr. MURPHY. It applies on the trans-Atlantic service, and would therefore affect any trans-Atlantic communications.

The CHAIRMAN. That is on the North Atlantic?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Does it include the I. T. & T.? Are they in this combination?

Mr. MURPHY. Yes; they are in it to the extent that they control the commercial cable companies.

The CHAIRMAN. Then, these companies by agreement practically doubled the rates on those messages that are to be delivered promptly?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. And the radio-communications services raised their rates exactly as the cable companies did?

Mr. MURPHY. Exactly.

The CHAIRMAN. And there is no law now by which they can be reached; except, of course, the Radio Commission, when these licenses run out, could give these licenses to somebody else who would give the public the decent rates they were receiving before?

Mr. MURPHY. That is exactly so, Senator, and I will explain the attempt that we have made to find some governmental agency where relief could be had.

Senator HATFIELD. How about regulation on the other side?

Mr. MURPHY. There is regulation on the other side. These companies work out their arrangements with the foreign governments or with the British Post Office particularly, and with such other foreign governments where they operate.

Senator HATFIELD. Was advantage given to European or Asiatic over the American?

Mr. MURPHY. I do not think there is any advantage.

The CHAIRMAN. They divide the rate 50–50?

Mr. MURPHY. They divide the rate 50–50.

The CHAIRMAN. But this is a case where the radio, which forced the reduction some years ago 25 percent, has now joined with the cable company in raising rates on everybody.

Senator LONERGAN. What reason did they give you for the increased rate?

Mr. MURPHY. Their claim was that they had been losing money at the old rate.

The CHAIRMAN. Do they not justify it on this treaty at Madrid?

Mr. MURPHY. They claim that that gives them an excuse. Perhaps it does give them an excuse for the increase in rates.

The CHAIRMAN. Then we had better not ratify that treaty.

Mr. MURPHY. We have laid our complaint in that regard before the Committee on Foreign Relations.

The CHAIRMAN. I think that is very proper, too.

Mr. MURPHY. We learned that, in spite of this clause, all of the cable and radio companies which I have named, after completing their arrangements in secret with the British Post Office and such other foreign agencies as they found necessary, proceeded with peculiar carelessness or insolence to ignore our own Government and, in spite of the specific provisions of their cable-landing licenses, to put their new rates in effect without proper notice to our State Department of these agreements, while only one company filed the required schedule of rates. These facts are admitted by our State Department, but the officials of that department advise us that the legal remedies which are available to them are distinctly limited.

We thus find that there is serious question as to the ability of the State Department under existing legislation to protect our interests. We are advised by our counsel that we can probably find no relief in the courts. We are faced with the opinion of Commissioner Eastman, of the Interstate Commerce Commission, in discussing the powers of the Commission over rates for international communications, that "the only part of that transmission that we have regulation over, as I understand it, is the part which takes place in the United States." We consequently find ourselves apparently without any defense against the unreasonable and destructive attitude of this extraordinary monopoly.

Under the present laws, so far as we can learn, the cable and radio telegraph group I have named can engage in mutually satisfactory agreements between themselves and foreign interests, and those American citizens who are dependent on this service are absolutely at their mercy and have nowhere to go for relief. This appears to be true, even where such agreements, as in the present case, are effectively in restraint of trade. In other words, we have the spectacle of a monopolistic group of companies, almost wholly American, having to obtain the consent of the British Government to outrageously increased rates which it is charging to American citizens, while the American Government, itself suffering from some of the new rates and conditions, is not only ignored in the matter but finds itself substantially powerless to take any action in the circumstances.

I, therefore, venture to urge that the Congress of this session pass legislation which will result in the establishment of a tribunal with adequate powers to control the matter of rates and services in international communications, including specifically such powers as may

be necessary to deal with the complicated international aspects of the problem.

I respectfully request that action be taken at this session of Congress because of the heavy, and, I believe, unjust, burdens which the users of the services I have described must bear until legal relief can be secured. From my conversation with the representatives of these international telegraph communications companies I am satisfied that we cannot expect from them as a group neither fairness nor that intelligent consideration of the necessities of their customers which wise and enlightened—even though selfish—corporations extend to those from whose business they profit.

Although it is my information that the State Department has already transmitted to the chairman of your committee a copy of our letter of February 16 embodying our complaint and a copy of the Department's answer by date of March 9, I am attaching such copies hereto as part of my statement and trust that they will go into the records of the hearing and will be given careful consideration by your honorable committee.

The CHAIRMAN. They will be printed in the hearing. I intended to print them as part of your remarks.

Mr. MURPHY. Also, Senator, may I enclose the statement to the Committee on Foreign Affairs made in behalf of the cable and radio users' protective committee?

The CHAIRMAN. That will be printed also. There are also some other letters here on this same subject from the Western Union and Postal Telegraph Co., and the file of the Secretary of State that I will have inserted at this point in the record.

We thank you very much, Mr. Murphy.

(The papers referred to follow:)

STATEMENT TO COMMITTEE ON FOREIGN RELATIONS OF THE UNITED STATES SENATE BY C. O. PANCAKE, OF NEW YORK, ON BEHALF OF CABLE AND RADIO USERS' PROTECTIVE COMMITTEE

On behalf of a large and important group of users of cable and radio service I wish to invite the attention of the Senate Committee on Foreign Relations to the serious effect which the ratification of the Madrid Treaty will have on American users of overseas radio and cable service and to American foreign business generally, unless ratification is accompanied by such clarification as will effectively eliminate and thereafter prevent such harmful action as that already taken under the monopolistic agreement entered into by the North Atlantic companies, with the regulations of the Madrid convention as their pretext. These companies by their concerted action, but under cover of the convention, have substantially doubled the rates for fast messages and increased the rates for night letters by two thirds. Furthermore, in order to force their customers to use the new double rate for fast messages, they have artificially delayed the transmission of normal-rate messages. If action so completely repugnant to public policy can successfully be taken under cover of this treaty, or its accompanying regulations, we respectfully submit that the treaty should not be ratified without full and proper investigation of the facts herein set forth.

In support of our contention that the American companies justify the action by the decisions taken at Madrid, we refer to two bulletins dated December 1 1933 (but not delivered until Dec. 14), signed by nine communication companies, all but one of which (French Telegraph Cable Co.) are American. One of these bulletins begins as follows:

"In accordance with the amendments to the international telegraph and cable regulations adopted by the Madrid Conference the following new rules

in international communications will be effective as of January 1, 1934." (Copies presented herewith.)

Similar bulletins were issued by the Canadian companies operating across the North Atlantic and by the Imperial and International Communications, Ltd. (the British monopoly), which handles the British end of the Radio Corporation of America and Canadian Marconi traffic.

While nothing is said in these bulletins as to the artificial slowing down of normal rate traffic and the existence of a collusive agreement to this effect would probably be denied by the companies, there is ample evidence on this point. The intentions of the companies in this regard were more or less frankly stated by their officers before the regulations went into effect and analysis of traffic during 1933 as compared with 1934 shows conclusively that the speed of normal service has been materially slowed up and that those users who require really fast service must now pay the new double urgent rate. This point, furthermore, has been repeatedly discussed in meetings held in New York between members of our committee and executives of the companies, the latter contending, as a matter of fact, that a still greater slowing up was necessary.

Further in support of our original contention, I quote from a letter addressed to our committee and signed by Mr. David Sarnoff, president of R.C.A. communications:

"I have your letter of December 22 * * * in which protest is made regarding the possible effect in consequence of the application of the International Telegraph Regulations imposed upon all communication agencies by the new Madrid convention rules which become effective January 1, 1934."

We have similar letters from all the cable companies to the same effect. These are at the disposal of your honorable committee if desired.

The second of the two bulletins mentioned above is short and reads as follows:

"The new international regulations adopted by the telegraph administrations of the world, which become effective January 1, 1934, reduce the rate for urgent telegrams from triple to double the normal rate. The American communication companies are now prepared to offer urgent or priority service at double rates to clients requiring extremely rapid communication service. Such messages require the addition of the paid word 'urgent', and will be transmitted with the utmost expedition."

To those not fully familiar with the situation this circular would appear to have announced a decrease in rates, and many persons were so misled. The facts of the matter, however, are that, although an urgent rate had been embodied in the telegraph convention since 1875, it has never been applied to the North Atlantic, where a regional arrangement has long existed. Under this regional arrangement the cable companies have for many years, until abolished on January 1, offered a "preferred" class of service, for which they charged 25 percent more than the normal rate. The Radio Corporation, however, never established the preferred classification, but until the first of this year gave a corresponding service at the normal rate.

Mr. R. B. White, president of the Western Union Telegraph Co., in a letter to our committee in which he outlined the competitive situation that has arisen and the improper discrimination as between customers that the companies had been making, all as a result of the above conditions, then says:

"This was a situation that obviously cried for correction, and an opportunity occurred when the Madrid Conference paid belated attention to the pleas of the American companies for a reasonable rate on priority messages and reduced the rate for urgent from triple to doube the ordinary rate."

In other words, to correct an improper and admittedly unsatisfactory situation of their own making, these companies are using the Madrid Conference as a cloak to increase the rates on priority messages from a rate of 25 percent above the normal rate to 100 percent above the normal rate, in addition to which they charge for the extra word "urgent", not charged for under the old preferred rate. In the case of Radio Corporation customers this increase is even greater.

We submit that the proceedings of the Madrid Conference clearly indicate that however unfortunate the results of its action may have been so far as to American cable users, the intention of the Conference was not to increase rates. The reduction for the urgent rate from triple to double the ordinary rate was made because urgent messages had practically disappeared from the communication routes of the world and it was thought that the reduction in rates would

stimulate the production of urgent traffic. I quote from the minutes of the Madrid Conference while this proposal was under discussion:

"Great Britain draws attention to one particular aspect of the question. In the cables between Great Britain and the United States of America there are no urgent telegrams, but only a special preferred service for which a tariff supplement of 25 percent is charged. If great Britain accepts the reduction in rates for the urgent telegrams it does not want this used as a pretense later on to increase the special tariff applied on cables on the North Atlantic."

The debate on the minimum word count at Madrid, a proposal designed to produce somewhat the same financial result as the imposition of the double urgent rate, proves conclusively that the Convention sought to prevent any rate increase. Such important nations as Great Britain, Germany, Holland, and Japan spoke against the proposal and for the same reason, that it would increase rates and decrease traffic. The proposal was defeated.

Subsequently the British Government has apparently reversed itself in this matter and has given its permission to the companies to apply the new rates. I quote from a letter written by Mr. F. J. Brown, Director for the International Telegraph Companies Association, to Mr. Owen Jones, British Commissioner of International Chamber of Commerce, who is secretary of a protest committee organized in London:

"The companies accordingly decided, with the consent of the British Post Office, to substitute the urgent rates for these special rates. Such substitutions, it will be seen, if not actually dictated by the Madrid regulations, was the direct and logical result of those regulations."

From this it will be noted, as your committee may be aware, but as is not generally appreciated, that the American companies operating to Great Britain may not increase their rates without the consent of the British Post Office. Similar consent from our State Department would seem to be required under the terms of the American cable landing licenses issued under the terms of the Kellogg Act, which provides that "rates shall be just and reasonable", and that "the company shall not consolidate, amalgamate, or combine or enter into any agreement with any other cable or communication company, or any foreign government either for the purpose of regulating rates or for any other purpose within 30 days after due notice of intention to do so has been given to the Department of State. And the Department of State shall have 30 days next after receipt thereof within which to signify its disapproval of the agreement." The State Department was apparently never notified of this increase.

In other words, we have the spectacle of a monopolistic group of American companies having to obtain the permission of the British Government to an outrageous increase in the rates to American and other users while they ignore our own Government in the matter and depend for their justification on the action of an international convention. The only opportunity for our Government to express its opinion with reference to this convention is in connection with ratification of the pending treaty.

The question may well be asked, and is, in fact, suggested by the statements of Messrs. White and Brown, just quoted, as to whether the contentious of the companies are correct in this matter, or whether they are deliberately using the Madrid Convention as an improper pretext for imposing rates not actually required by the convention and which they could not otherwise justify. As a matter of fact, the opinion of the users whom I represent is that the Madrid Convention is being used merely as a pretext. The companies, on the other hand, take the opposite position, with the result that their customers face a condition not only unfair and burdensome but which, if not corrected, will be actually destructive of sound established businesses built upon the basis of former rates.

We must call attention, furthermore, to the fact that these companies are in all probability advised by eminent counsel and it is doubtful if they would have taken the risk inherent in what otherwise could only be interpreted as collusive action in restraint of trade if they had not been advised that the Madrid Convention gave them some color, at least, of justification.

In connection with the above question, the convention which the United States delegates to Madrid signed specifically states in article 2, page 3, that: "The provisions of the present convention shall bind the contracting governments only with respect to the service governed by the regulations to which these governments are parties." In his report to the Secretary of State the chairman of the American delegation to Madrid emphasizes this point as follows: "As your Government signed only the convention and the general radio

regulations, the Government of the United States will have obligations only with respect to radio and not with respect to telegraphy or telephony. Thus, while the radio and telegraph conventions have been combined, the United States continues to be bound only with respect to radio. In other words, there is no fundamental change from the position of the United States as it existed prior to the convening of the Madrid conference.

It is important that your honorable committee should take into account the facts as above set forth in their practical effect on the American users of North Atlantic communication service. It matters little whether these new and destructive rates are the necessary consequence of the Madrid Convention, or whether the circumstances surrounding this convention merely enable the companies to use it successfully as a cloak under which to impose new rates at will. In either event the users are entitled to such protection as can be afforded.

It is, therefore, respectfully suggested that until a determination can be had as to the rights of the companies to impose such increased rates and artificially to slow up ordinary traffic your committee might well consider the advisability of postponing the ratification of the Madrid Treaty.

DEPARTMENT OF STATE,
Washington, March 9, 1934.

MY DEAR SENATOR DILL: In connection with the consideration which the Senate Committee on Interstate Commerce will give to S. 2910, introduced by you last month, I am enclosing copies of a letter from Mr. Jouett Shouse regarding the North Atlantic communication service, the Department's reply thereto, and letters from the Department to the Western Union Telegraph Co., the Postal Telegraph-Cable Co., and the French Telegraph Cable Co.

As your committee will hold hearings on this general subject in the near future, the Department believes you should have the information contained in the attached correspondence. The Department understands that the Cable and Radio Users' Protective Committee, in whose behalf the letter from Mr. Shouse was written, is prepared to appear before your committee in support of its statements.

A similar letter is being sent to Representative Rayburn.

Sincerely yours,

CORDELL HULL.

The Honorable CLARENCE C. DILL,
United States Senate.

NATIONAL PRESS BUILDING,
Washington, D.C., February 16, 1934.

The Honorable CORDELL HULL,
Secretary of State, Washington, D.C.

DEAR MR. SECRETARY: On December 14, 1933, the users of cable service received a circular dated December 1, 1933, and signed by eight American communications companies, announcing the inauguration of a double urgent rate to telegrams on the North Atlantic, which is roughly a 100 percent increase to the users of fast service.

The companies attempted to justify their action by the decisions of the Madrid telegraph conference of 1932, although the urgent rate has been embodied in the convention since 1875, but has never been applied to North Atlantic traffic where a regional arrangement has always existed. Under this regional arrangement some companies accepted fast messages at the normal rate, others accepted them at the preferred rate which was 25 percent more than the normal rate.

The Madrid conference reduced the urgent rate from triple to double the normal rate because urgent business had practically disappeared from the communication routes of the world, and it was thought this reduction would stimulate the production of urgent traffic.

During the debate on this change in the urgent service the British and Canadian delegations pointed out that a regional arrangement existed on the Nort Atlantic which should not be distributed because of the harmful effect it would be certain to have on the business of Great Britain with Canada and the United States. The Convention decided that it was without jurisdiction on regional arrangements. It was understood that the British

Post Office and the American State Department would have jurisdiction should the cable companies operating in that territory attempt to apply an urgent rate.

That there has never been an urgent rate on the North Atlantic is due to the great volume of business and the abundance of facilities for its transmission. During the past 10 years facilities have increased enormously due to the invention of the perm-alloy loaded cable, one of which will carry all of the traffic now handled by 18 cables in operation at the present time, and by the improvement in radio service to a point where it is as fast as and cheaper to operate than a submarine cable. The beam system of radio, put into service in Canada in recent years and now operating commercially across the North Atlantic, is much less costly in construction than the long-wave radio, and operates to an enormous speed.

All this would seem to dictate an infinitely cheaper communication service in this region where facilities exist for handling many times the total traffic available.

The landing license for submarine cables, which the President of the United States has the authority to issue or revoke in the event of breach or nonfulfillment of its conditions, contains several clauses pertinent to this situation, one clause stating:

"that the rates to be charged for messages over the cable * * * shall be just as reasonable * * *."

In view of the many facilities it would seem that the present 100 percent increase is not just and reasonable.

Another clause in the landing license reads:

"That without the consent of the Department of State the licensee shall not lease, transfer, assign, or sell the cable nor consolidate, amalgamate, or combine with any other party or parties. If the licensee shall enter into any agreement with any other cable or communications company or any foreign government either for regulating rates or for any other purpose not covered by the preceding sentence, provision shall be made in any such agreement whereby it shall be subject to the approval of the Department of State and shall be transmitted to the Secretary of State immediately after execution, and the Department of State shall have 30 days next after the receipt thereof within which to signify its disapproval of the agreement."

To secure this rate increase the communication companies had to have at least the consent of the British Post Office; furthermore, the Imperial and International Communications, Ltd., which operates two cables across the North Atlantic, obviously must increase its rates to meet the increase of the American companies, or otherwise the American companies would lose business to it. The Canadian Marconi & Independent Co., British-owned, having facilities in abundance but little business because of exacting restrictions imposed by an interlocking agreement among all the companies operating across the North Atlantic, was forced to apply the double urgent rate along with the rest, although there is no possibility of its receiving urgent business for transmission under the present arrangement. All this would argue that the clause of the landing license, quoted above, has been violated because the American and British companies must have entered into an agreement to apply the urgent rate on the North Atlantic simultaneously.

The above quotation from the landing license provides that any agreement with any other cable or communication company or any foreign government, whether with reference to the regulation of rates or for any other purpose, must be subject to the approval of the Department of State. For the purpose of consideration by the Department the above clause further provides that such agreement shall be transmitted to the Secretary of State immediately after execution and the Department shall have 30 days within which to signify its disapproval.

If our information is correct, no such notice as that above cited has been given to the Department of State. It would seem, therefore, in view of the facts as set out and in view of the plain provisions of the landing license, that the communication companies have failed to comply with the necessary requirements and that the President, through the Department of State, has the power to revoke the licenses of such companies.

While the Department of State is primarily concerned with possible infringement of the landing license, yet there are other considerations entering into this general situation which it may be well here to set out.

The users of communication service in the United States, particularly those users of urgent service which include banks, commodity houses, stock-exchange firms, import and export firms; in fact, all business operating internationally, require a fast and efficient cable service. Such service has always been available and at normal rates. Many such businesses are now operating at a loss, and cable costs constitute one of the largest items of expenses. This unjust and unfair increase will at once curtail their operations, and no doubt many of them will be forced to abandon their operations in Great Britain and to certain points on the Continent of Europe.

The companies attempt to justify the recent increase on the basis of unsatisfactory income, particularly during the past 2 years. This situation is due to two principal causes, first, the depression, and, second, a highly unsatisfactory competitive condition as between the communications companies. The first cause, we hope, is in the way of working itself out naturally and would not of itself justify a discriminatory rate increase applying to only one class of customers as this increase does. The competitive situation, on the other hand, is largely a result of the fact that Radio Corporation has never had the preferred rate and has been giving the equivalent service at the ordinate rate; certain customers of the cable companies have been offered or have taken advantage of this situation to obtain preferred service at the ordinary rates, with the result that a chaotic situation has grown up in which certain customers of these companies are obtaining improper preferences over others. The companies as well as the customers desire to eliminate these conditions, but the companies have been unable to agree among themselves as to any reasonable way of doing this, and have as a consequence settled on the present arbitrary and discriminatory action. In the process they are not merely charging higher rates for urgent service but are artificially and arbitrarily delaying all classes of messages, a practice which is tending to destroy the efficiency of their organizations, and is throwing away all the benefits of the technical progress made in recent years, and is certainly indefensible on either moral or economic grounds except that it is the easiest way for the companies to solve a problem that is essentially their own.

Since these new and exorbitant rates went into effect as of January 1, 1934, the companies having control of communications over the North Atlantic have attempted to force the users of their service to employ the urgent rate rather than the ordinary rate. With that in view here has been intentional delay in the transmission and delivery of messages sent by the ordinary rate. This is easily susceptible of proof by a comparison between the average time required for the transmission and delivery of ordinary messages for 6 weeks prior to January 1, with the average time so employed for 6 weeks subsequent to January 1. Naturally the question arises whether this may not be considered collusion in restraint of trade.

Following notice of the proposed imposition of the increased rates, users of North Atlantic communications service united in an organization known as "Cable & Radio Users' Protective Committee." Representatives of this committee have had numerous conferences with representatives of the communication companies but have been unable to arrive at a satisfactory adjustment of the matter. Therefore, this committee comes to the Department of State to seek at the hands of the executive branch of the Government protection from rates which are unfair, unjustified, and which, if continued, will result in impeding seriously the progress of business recovery. The committee believes that under the authority of the landing license the President, through the Department of State, has ample authority to deal with the situation and, indeed, is charged with the duty of protecting American users of North Atlantic communication facilities.

There are various precedents with which the Department of State is entirely familiar that arose during the administration of President Grant and a striking instance is the action taken by President Wilson in the matter of the cable to Barbados Island.

While it well may be that recourse can be had by the committee to other agencies of the Government, it seems obvious because of the power conferred through the landing license that the Department of State is the proper arm of the Government to offer the necessary protection and redress to American citizens in this instance. It is, therefore, respectfully urged that the Department shall immediately take the steps that seem proper to deal with the

situation. On behalf of the Cable & Radio Users' Protective Committee of New York we present this plea and petition.

We are, dear Mr. Secretary, with great respect,

Your most obedient servants,

SHOUSE, MORELOCK & SHRADER,
By JOUETT SHOUSE.

MARCH 9, 1934.

Mr. JOUETT SHOUSE,
National Press Building, Washington, D.C.

SIR: In further reply to your letter of February 16, 1934, relating to the communications service across the North Atlantic, I should like to call your attention to bills recently introduced in the Senate (S. 2910) and the House of Representatives (H.R. 8301) for the establishment of a Federal communications commission. These bills were introduced following a message from the President recommending the establishment of such a commission.

Both bills contemplate that the new commission shall have jurisdiction of rates and service such as those of which you complain. In view of the President's request for the establishment of the commission and of the pending hearings before the Senate and House committees on interstate commerce it is not thought necessary for the Department to go into a detailed discussion of the questions presented in your letter of February 16.

The action of the communication companies in putting a new service at increased rates into effect without prior consultation with or approval by the Government would appear strongly to support the need for the establishment of a commission such as that recommended by the President. The Department is communicating this view to certain communication companies. It is also sending a copy of your letter and of this reply, as well as the letter to the communication companies to the chairman of the Senate and House Committees on Interstate Commerce for their consideration in connection with the pending bills.

I am informed that the congressional committees are to hold hearings on these bills in the very near future, and I have no doubt that you will be given ample opportunity to present before the committees the views of your clients.

With respect to your statement that it was understood at the Madrid conference of 1932, that the "British Postoffice and the American State Department would have jurisdiction should the cable companies operating in" the North Atlantic region "attempt to apply an urkent rate", it may be said that the Department is not aware of any such understanding and that the American delegation to this conference was not a party thereto.

For the Secretary or State:

Very truly yours,

R. WALTON MOORE,
Assistant Secretary.

WESTERN UNION TELEGRAPH CO., MARCH 9, 1934.
New York, N.Y.

SIR: The Department has been informed by the Cable and Radio Users' Protective Committee, New York City, that the communication companies, including Western Union, operating across the North Atlantic, instituted on January 1, 1934, an urgent service at double the normal rates. The Department's information thus obtained is that the institution of such a service was probably pursuant to an agreement entered into by your company with foreign communication companies and one or more foreign governments. It is also charged that the communication companies operating across the North Atlantic have intentionally delayed the transmission of ordinary messages in order to force the use of the urgent service at double rates.

If this information is correct, the action complained of, involving as it would a sharp increase in rates and a slowing up of service, is obviously of great importance to users of communication service in the United States. As the cable landing licenses under which you operate impose certain duties upon you in the performance of which this Department is interested and which apparently have been ignored, the Department is referring the matter to the Chairmen of the Senate and House Committees on Interstate Commerce for consideration in

connection with the bills recently introduced to establish a Federal communications commission, as it may be regarded by those committees as an illustration of the importance of prompt enactment of legislation giving a regulatory body effective jurisdiction.

For the Secretary of State:

Very truly yours,

R. WALTON MOORE,
Assistant Secretary.

MARCH 9, 1934.

FRENCH TELEGRAPH CABLE CO.,
New York, N.Y.

SIRS: The Department has been informed by the Cable and Radio Users' Protective Committee, New York City, that the communication companies, including the French Telegraph Cable Co., operating across the North Atlantic, instituted on January 1, 1934, an urgent service at double the normal rates. The Department's information thus obtained is that the institution of such a service was probably pursuant to an agreement entered into by your company with foreign communication companies operating across the North Atlantic have intentionally delayed the transmission of ordinary messages in order to force the use of the urgent service at double rates.

If this information is correct, the action complained of, involving as it would a sharp increase in rates and a slowing up of service, is obviously of great importance to users of communication service in the United States. As the cable-landing licenses under which you operate impose certain duties upon you in the performance of which this Department is interested, and which apparently have been ignored, the Department is referring the matter to the Chairmen of the Senate and House Committees on Interstate Commerce for consideration in connection with the bills recently introduced to establish a Federal communications commission, as it may be regarded by those committees as an illustration of the importance of prompt enactment of legislation giving a regulatory body effective jurisdiction.

For the Secretary of State:

Very truly yours,

R. WALTON MOORE,
Assistant Secretary.

The CHAIRMAN. We will now hear Mr. Clardy, representing the National Association of Railroad and Utilities Commissioners.

STATEMENT OF K. F. CLARDY, CHAIRMAN LEGISLATIVE COMMITTEE OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

Mr. CLARDY. Mr. Chairman and members of the committee, the purpose of the National Association of Railroad and Utilities Commissioners in appearing at this time is to voice its approval, in a general way at least, of the bill now before the committee. As the chairman has well said this morning, we are not wedded to any particular language in any particular section of the bill, and there undoubtedly will be some changes made by the committee. The prime reason and purpose for our interest in the bill is because we believe that, as has been expressed by both those in opposition and in favor of the bill, the regulation, particularly of the telephone, is predominantly and primarily a State problem. We have approached this bill from the angle of seeing to it that, because of its local character, the State regulatory bodies are well protected by the express provisions of the language, and are not ousted from their jurisdiction.

Somebody has well said that about 98 percent of the business is intrastate in character. This morning another witness stated that

there were, approximately, 6,000 independent telephone companies in his organization. I perhaps should state further, in order to demonstrate that it is primarily a State problem, that, in addition to those 6,000, there are thousands of other small telephone companies, purely local in character, farmer companies and companies of that type. As a matter of fact, in our own State there are approximately 1,400 telephone companies in addition to the Bell System.

I think that, to use language that the President has used many times, this bill is intended to and will perhaps accomplish, when it is perhaps rephrased in certain sections, a rounded scheme of regulation. The State commissions believe that since it is primarily a State problem, the small percent that is interstate in character only should be regulated by the Federal Government, and that in the enactment of this measure great care should be taken to see to it that the Congress does not destroy the present regulation now in effect by the States by taking away from the States any of the powers they now exercise.

The CHAIRMAN. You heard Mr. Gifford yesterday complain of some two or three sections of new matter giving the right to the commission to delegate to the States certain rights of control?

Mr. CLARDY. Yes.

The CHAIRMAN. What do you have to say about those sections?

Mr. CLARDY. If the interpretation that Mr. Gifford gives to the language is possible or permissible, perhaps some slight changes in some parts should be made in the bill; but in those sections which have to do with the preservation to the States of their rights, I believe he is mistaken. The State commissions have worked out that language rather carefully; and without referring to any of it specifically, we feel that it preserves to the States only the rights that they should possess.

I might say further that I do not believe even this committee, certainly not the State commissions, would want this bill to accomplish the things that Mr. Gifford criticizes in the other directions, with regard to management of the companies, because, speaking as one who has had something to do with the regulation of utilities, I think, of course, that it will be futile, impossible, to go into management details. If those provisions should be interpreted as Mr. Gifford interpreted them nobody would be in favor of them. We have confidence that this committee will guard against that.

The CHAIRMAN. I am sure that was not intentional, and I doubt very much if his interpretation was correct. But I wanted to bring out this other idea: The reason why the State representatives of the State commissions wanted this language in addition to the language of the Interstate Commerce Act—and that has been hopped on, talked about a great deal here, that we have added some language—is that the interpretation placed upon the language of the Interstate Commerce Act in connection with railroads has gone so far that the State commissions fear that this commission, using the same language—that if the same language is used in the law they might override and interfere with State regulation.

Mr. CLARDY. You are precisely right, Senator; and in elaboration of that may I say this: That if the interpretation of the President's request to the Congress that has been given by preceding witnesses is correct, and if nothing should be trarsferred to the new commission

except the powers now placed in the hands of the Interstate Commerce Commission, there should be, in addition, restrictive language that will protect the States, and for this reason: I believe that even the communication companies would object to the exercise by the I.C.C. of the present powers conferred upon it, because if they were exercised to the fullest extent the State commissions would be entirely ousted from their jurisdiction. I speak now, of course, of the Shreveport decision in the railroad situation, which has enabled the I.C.C. to regulate all intrastate freight rates in the rail field. Provisions have been put in here to prevent that sort of interpretation, at least in the beginning of the operation of the Commission. That was our purpose. We are not wedded to any particular language, if an improvement can be suggested, that will preserve to us the power to control 98 percent of the business, we will yield to any better suggestion.

However, as to the other parts of the bill that have been criticized, there may be some ground for the apprehensions of Mr. Gifford and the others as expressed, but we have a great deal of confidence that this committee will see to it that those interpretations are not possible by any necessary change of language.

Our only purpose in appearing here is to urge upon the committee the desirability of seeing to it that the States are protected and that we are not ousted from our jurisdiction. We fear that regulation would fail, should that be done.

The CHAIRMAN. Are there any questions? If not, we will now hear Mr. McDonald, of the Association of Railroad and Utilities Commissioners.

STATEMENT OF ANDREW R. McDONALD, FIRST VICE PRESIDENT AND CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

Mr. McDONALD. Mr. Chairman and gentlemen, my name is Andrew R. McDonald, member of the Public Service Commission of the State of Wisconsin, first vice president of the National Association of Railroad and Public Utilities Commissioners, and chairman of its executive committee. This association is made up of the regulatory commissions of 47 States and our insular possessions.

The chairman has stated several times that the time is short. I have a prepared statement, and if I may be permitted to leave that, instead of reading it, I will be glad to do so, without making any further statement.

The CHAIRMAN. It will be printed in the record at this point.

(The statement of Mr. McDonald is as follows:)

The constitution of our association provides that the executive committee shall represent the association between conventions. In accordance with that authority I appear here in support of this bill. Our association also has a committee on legislation to represent the association in favor of or opposition to legislation at Washington. The legislative and executive committees have discussed this matter and have decided that the chairmen of both committees should appear and urge passage of the bill.

We favor this legislation because it represents, in our judgment, a legitimate exercise of national control in those matters of communications which it is appropriate for the Federal Government, and may be difficult for the States to reach.

This bill reflects the normal and proper relationship which should exist between the Federal Government and the State governments, namely, the Federal communications commission in its sphere of interstate commerce and the various State utility commissions in their respective realms of intrastate business.

We endorse the principle of this bill, because it specifically reserves to the State Governments their rightful powers over matters of purely State concern, such as so-called exchange or local rates of telephone companies.

In railroad cases, State regulation has become practically a dead letter, due to the Shreveport doctrine which announced that intrastate rates would be set aside where they constituted a discrimination against interstate commerce.

Because of the pronounced difference in the facts, the Shreveport doctrine has no application to the communications' service. Over 99 percent of telephone calls are local and never cross State lines, if the experience of my home State of Wisconsin may be taken as a guide. In the the Illinois Bell Telephone case it was developed that only six tenths of 1 percent of total originating calls in the city of Chicago were destined for interstate points.

It is inconceivable that the power of the States in 99 percent of the cases should be abrogated because of theoretical discrimination against 1 percent. On the other hand, 86 percent of the tons of revenue freight carried by class 1 railroads in Wisconsin in 1932 were interstate traffic.

Despite the fact that the telephone business is fundamentally local in character, there exists a substantial need, in our judgment, for the use of Federal power over those factors which are primarily Nation-wide in their operation and effect.

For instance, the American Telephone & Telgraph Co., said to be one of the largest corporations in the world, conducts the Bell system of telephone service throughout the United States. We submit that there is room for invoking the authority of the Federal Government in such matters as the rates of the so-called "long lines department" of the A. T. & T. Co., for interstate long-distance service; the furnishing of materials and supplies by the A. T. & T.'s affiliated manufacturing corporation, namely, the Western Electric Co.; the rendering of so-called "license" or "management" services by telephone holding companies, among them the American Telephone & Telegraph Co.

In our opinion, a Federal agency with appropriate powers and jurisdiction can be helpful to State regulatory bodies in investigating, finding, and reporting the facts as to the operations of the American Telephone & Telegraph Co., so analyzed as to give the State commissions adequate information to make the necessary findings in connection with local exchange and intrastate toll rates.

Also, if a Federal agency were empowered to investigate and determine the facts relating to the Western Electric Co. and report those facts to the State commissions, the latter would be materially aided.

I do not refer to the A. T. & T. and Western Electric cases as exclusive instances, but only as examples of the purpose and end which this bill evidently is designed to accomplish.

We believe, therefore, that the communications bill now proposed will be of material assistance to the States in supplementing State jurisdiction, and thereby obtaining a comprehensive and effective regulation of the communications utilities in the interests of the Nation as a whole.

At the forty-fourth annual convention of the National Association of Railroad and Utilities Commissioners a resolution was introduced by Hon. Hugh White, president of the Public Service Commission of Alabama, was referred to the executive committee for consideration, and upon favorable report to the association was unanimously adopted, as follows:

"Whereas the collapse of large utility holding and investment companies has aroused public interest in the problem of their supervision and control; and

"Whereas the relations between holding companies and their affiliates and operating utilities have in many cases been inimical to the public interest and have led to public demand for Federal regulation of such holding companies; and

"Whereas this association is not convinced that general Federal regulation of relations between utilities and their affiliated companies is necessary or desirable, but recognizes that State regulation may be greatly helped if the powers of the Federal Government can be utilized in determining facts as to relationships and business arrangements between utilities and affiliated interests: Now, therefore, be it

"*Resolved*, That this association deems it desirable and necessary that the facts as to the corporate and business relationships between holding com-

panies or their affiliated interests and affiliated public utilities as to matters affecting the reasonableness of rates and charges made to the utilities for services or commodities or other purposes by a holding company or other affiliated interest be made available to the regulatory bodies of the several States, and that the executive committee and the committee on legislation be directed to support appropriate legislation to obtain these results."

Believing that this bill is in line with the declaration contained in this resolution, we desire to recommend the enactment of this bill.

The CHAIRMAN. The meeting will now be adjourned until 10:30 tomorrow morning, when Captain Hooper and Father Hearn will be heard, and if there are any other witnesses who want to be heard on the bill I wish you would give your names to the clerk, Mr. Stephan, so that we may know about it.

(Whereupon, at 12:10 p.m., the committee adjourned until 10:30 a.m., Thursday, Mar. 15, 1934.)

45735—34——11

FEDERAL COMMUNICATIONS COMMISSION

THURSDAY, MARCH 15, 1934

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to adjournment, Hon. Clarence C. Dill (chairman) presiding.

The CHAIRMAN. The committee will come to order. I have received a letter from Mr. Ivan Johnson, of the Radio News Service of America, proposing an amendment to this bill, and giving his reasons. It is an amendment to require that radio news may be sent over communication press services, the same as news for publication in newspapers. It seems to me this is a matter that should be handled by regulation, but I will put it in the record at this time so that it will be available to the committee.

(The matter referred to follows:)

RADIO NEWS SERVICE OF AMERICA,
New York City, March 14, 1934.

United States Senator CLARENCE C. DILL,
Senate Office Building, Washington, D.C.

DEAR SENATOR DILL: Public demand for news over the broadcasting station has so increased within recent months that short-wave facilities for the transmission of news to the broadcasters should be made available. At the present time, the Fixed Public Press Services, which would serve this purpose as a beginning, are restricted by the rulings of the Federal Radio Commisison for the exclusive use of newspapers. Rule 232 of the rules and regulations of the Federal Radio Commission, in particular, provides for the transmission of press material "intended for publication by press agencies and newspapers" only, and to the complete exclusion of any radio news service or broadcasting station.

Believing that this rule fails to operate in the public interest, this organization has filed a request with the Radio Commission to so modify the rule as to permit the transmission of news to the broadcasting station. The application is scheduled for a hearing before the Radio Commission on Friday, March 16, at 10:30 a.m.

Should the Federal Radio Commission modify the rule, as requested, further legislation would be unnecessary, since the entire object will have been accomplished for the time being. It may be, however, that some future Radio Commission would make another rule just as unfair and discriminatory as the present one. In view of possible unfavorable action by the present Radio Commission, and possible future changes in their flexible rules, we herewith submit a suggestion for an amendment to your radio communications bill.

The enclosed proposal would definitely prevent any monopoly of the Fixed Public Press Services as it establishes mutual and equal rights of both newspapers, and radio broadcasting stations to the use of short-wave facilities.

Favorable action by the Federal Radio Commission on the request for modification of rule 232 is very desirable at the present time since there are two or three hundred radio broadcasting stations in the United States who have little, or no news at all, to present to their audiences today. This is a very

unfortunate situation in a country supposed to be fair and enlightened, in fact it amounts to downright stupidity, and it is imperative that the progressive minds get together and bring about a change.

Very truly yours,

IVAN JOHNSON,
Radio News Service of America.

Section 314 (b). Radio-communication facilities for the transmission of news dispatches and comments, advertising, and other matters relating to or intended for publication or broadcasting by news agencies, broadcasting stations, or newspapers shall be equally available, without discrimination, to newspapers and broadcasting stations, and it shall be unlawful for any person to discriminate in receiving or transmitting such matter, or to create in any manner a monopoly of the facilities for public press radio transmission.

(c) All radio communication licensees in the fixed public service are hereby required to accept for prompt transmission at reasonable rates all bona fide news dispatches and comments intended for broadcasting to the public via public address system and/or authorized broadcasting stations, or for publication in newspapers and it shall be unlawful for any such person to refuse or fail to accept such matter.

We will now hear Captain Hooper of the Navy.

STATEMENT OF CAPT. S. C. HOOPER, UNITED STATES NAVY, DIRECTOR OF NAVAL COMMUNICATIONS

Captain HOOPER. Mr. Chairman and gentlemen, the Navy Department is acutely aware of the potentialities of our communication systems as a factor in the defense of our country. At the same time, it is cognizant of the fact that under ordinary peacetime conditions the majority of our people take little thought of the organization and control of these agencies as they may affect the requirements of national security. It is with satisfaction, therefore, that the Navy Department notes the provisions of the bill are in harmony with these requirements. Centralization of control is considered to be a great stride in the right direction. Moreover, unless our communication systems in time of peace are adequate, efficient, and free from foreign influence they cannot be expected to function properly under the greater strain of war. The Navy Department believes that this bill will prove of great value in establishing and maintaining communication systems of this type and is heartily in accord with its provisions.

The Navy Department is of the opinion that one of the primary duties of the Communication Commission should be to formulate a national communication policy which should be presented to Congress at the time of making its special report on February 1, 1934, in order that such policy may be definitely adopted or rejected by Congress. To this end it is suggested that in section 4, par. (k), page 11, line 15, after the word "recommending" the words "a national communications policy, including" be inserted.

In view of the fundamental soundness of the bill and the valuable benefits to the public which its enactment should ensure, the Navy Department desires to raise no controversial question or put forth any objection which would obstruct its passage. There are, however, three sections of the act which the Navy Department would like to see strengthened, in order to more fully protect the interests of national defense and prevent any expansion of foreign influence in our communication systems.

The Navy Department has formulated amendments which I believe will accomplish both purposes without in any way detracting from the purpose of the bill, changing the present set-up of our communication companies or the organization or duties of the proposed Commission. They are in the nature of precautionary measures.

Section 1 relates the purposes of the act. It expresses or should express the broad policy by which the Commission is to be guided in its decisions. One of the most potent factors which will operate either for or against our success in any future war is our vast system of internal and external wire, cable, telephone, and radio communications over which this Commission is now being placed in control. While the demands of national defense in time of peace affect our communications lightly, nevertheless, a firm foundation must be built within our communication companies on which our war-time communication structure may be placed swiftly and safely. The transfer of our commercial organizations from a peace to war basis cannot be accomplished in a month or even a year, unless the groundwork is carefully laid. The Communications Act of 1934 should recognize this fact and, to afford the members a complete statement of the general purpose of the act by which, in general, their actions are to be guided, I suggest that in line 4, page 2, after the comma after the word "charges" the words "for the purpose of safeguarding these services and facilities in order that they may be utilized to best advantage in the interest of common defense,".

Section 4 (j) as written provides that every note and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. Many matters will be considered by the Commission which concern national defense. The Navy is interested in many questions which involve the set-up of our communications, the manufacture and development of new material, inventions peculiarly adaptable for use in naval communications, the perfection of war-time communication plans, and the training of Reserve communication personnel, some of the details of which must not be made public and which are of necessity intimately related to questions under the jurisdiction of the Commission. In many cases it will be necessary for the Navy Department to divulge information to the members of the Commission which, in the public interests, must be kept secret. For these reasons it is recommended that in the last sentence of section 4 (j) the period be deleted and the following words be inserted after the word "interested": "except that the Commission is authorized to withhold publication of records or proceedings containing secret information when such publication would be prejudicial to the requirements of national defense."

The CHAIRMAN. Do you not think, Captain, you had better put "secret information affecting the national defense?"

Captain HOOPER. Yes, sir.

The CHAIRMAN. If that is your purpose, if the purpose is only to affect matters of national defense.

Captain HOOPER. Yes, sir. I wish to bring to the attention of the committee two sections of the bill which the Navy Department considers to be of extreme value. The first is section 303 (g), relative to the development of radio in the public interest. Such de-

velopment will thereby react directly on the efficiency of our fleet, which must depend almost entirely on radio communication for the coordination of its units afloat, in the air, or under water. The possibilities of radio as a public servant both in peace and in war are tremendous and as yet undeveloped. We must see to it that they are developed. The second is section 606 relative to the war emergency powers of the president. Control of communications by the Government is a vital necessity in war or emergency, and without it our success is endangered. Section 606 wisely provides for such control and is considered by the Navy Department to be an essential part of the bill.

It is understood that there will be further opportunity to improve the language of this act next year, after the recommendations of the proposed Federal Communications Commission have been received by Congress. At that time the Navy Department will have opportunity to press for additional changes which are literally in line with the recommendations of the joint board.

The Radio Act of 1927 prohibits the holding of a radio-station license by any company, corporation, or association of which any director is an alien.

Senator KEAN. Captain Hooper, along this line, the President would at once take over all communications in the United States if we declared war, would he not?

Captain HOOPER. I don't believe he would take them all over, sir. He would exercise that power as he thought it necessary.

Senator KEAN. Well, in regard to the national defense, have you made a list of all the telegraphers in the United States and ascertained what nation they belong to?

Captain HOOPER. No, sir.

Senator KEAN. Have you taken any steps toward that?

Captain HOOPER. The Navy Department has the data about a good deal of the radio and radio operators.

Senator KEAN. Have they got the radio operators?

Captain HOOPER. Yes, sir; we have a reserve of approximately 5,000, enrolled from amateurs and commercial companies.

Senator KEAN. Has the Navy Department checked up on all the people using, either licensed or unlicensed, using the radio short-wave length?

Captain HOOPER. No, sir.

Senator KEAN. Why not?

Captain HOOPER. We do it as rapidly as we can.

Senator KEAN. Yes, sir; but I mean to say, before you ask us for a lot of amendments to this bill, do you not think you might do some work too?

Captain HOOPER. We are working all the time.

Senator KEAN. I know, but I mean to say it seems to me that that is so much in the interest of what you are trying to maintain here, that you ought to come with clean hands before us and say "we have checked up all these things and we know about all these private concerns." There must be radios in use today which have no authority at all.

Captain HOOPER. We are doing that as fast as we can, with the limited force we have. We have complete war plans——

Senator KEAN (interposing). I mean to say, you come here and ask us to do a lot to the big companies, but how about all these little companies? What are you doing about them?

Captain HOOPER. We have accurate, up-to-date plans of all of that, sir.

Senator KEAN. You have accurate, up-to-date plans of every radio in the United States?

Captain HOOPER. Every one that we want to take over.

Senator KEAN. No; that is not what I am talking about. I am talking about the unofficial ones that could be used.

Captain HOOPER. They are to be closed. They are to be closed in time of war.

Senator KEAN. They may be closed in time of war, but in the meantime how are you going to close them if you do not know where they are?

Captain HOOPER. Well, the Commission keeps track of all of them. Every one has to be licensed.

Senator KEAN. I am not asking what the Commission is doing; I am asking what the Navy is doing?

Captain HOOPER. We do not have that responsibility in the United States. The Army has that responsibility in the United States. We have the responsibility of keeping track and sealing and closing the stations.

Senator KEAN. Do you get a report from the Army as to who has them?

Captain HOOPER. No, sir.

Senator KEAN. Then you do not know. You do not know what the Army is doing, do you?

Captain HOOPER. Well, that is their affair.

Senator KEAN. That may be their affair, but you are talking about the interests of the Navy in this thing; now, what are you doing about it?

Captain HOOPER. We have made a plan.

Senator KEAN. You have made a plan to take over the big companies?

Captain HOOPER. To take over certain ones.

Senator KEAN. You have made a plan to take over the big companies that everybody knows about?

Captain HOOPER. Yes, sir.

Senator KEAN. I am talking about the little companies which would do the damage, because they would be the people that would be secretly organized and have the secret wave length. They would do the damage, and the big companies would be official companies that anybody could walk in and see. You do not have to tell me what ones they are because everybody knows them. They are published in the newspapers and everywhere else.

Captain HOOPER. Yes, sir.

Senator KEAN. Now, what I want to know is what you are doing to protect the country against the man that might be a traitor to this country.

Captain HOOPER. We have divided the responsibility between ourselves and the War Department, as to which part of the field each one of us will cover in closing the stations.

Senator KEAN. But do they keep you informed of the ones that they are looking after?

Captain HOOPER. They have an area to cover, and we would not expect them to keep us informed about their area, any more than they would expect to keep us informed.

Senator KEAN. Why not? You are both working for the defense of the United States, are you not?

Captain HOOPER. We do not think the two Departments should have to check each other up on that.

Senator KEAN. Why not?

Captain HOOPER. Well, we assume that they will do their job if we do ours.

Senator KEAN. That is only an assumption, is it not?

Captain HOOPER. We have no control over them. The best we can do is to close those that we do not need and that the public does not need and supervise the operation of the others.

The CHAIRMAN. In time of war the President will give orders to close all stations, and naturally they would have to look to the bootleggers, just like they do now, and there is no way to guard against some of them setting up.

Senator KEAN. But what I am getting at is, they have to have a continual service looking after those people, so that they would know where they existed now, and he is coming here and telling us what we ought to do in the law, and I am telling him what he ought to do as representing the Navy.

Captain HOOPER. I think you will find that we are doing a good deal of that. We have records of that.

Senator KEAN. I do not see that you give us much information about it.

Captain HOOPER. Well, I can give you the information.

Senator LONG. What good would that do us if you did? We would not know anything about it.

Senator KEAN. I am not so sure of that. The chairman is an expert on this thing.

Captain HOOPER. Item 4 of section 310a of S. 2910 permits the holding of such license by an operating corporation of which no more than one fifth of the directors are aliens. This provision will slacken U.S. control of the radio-telegraph system of the United States and will permit foreign influence to gain a stronger foothold within it. To remedy this it is suggested that items (4) and (5) of section 310 be renumbered as items (5) and (6), respectively, and that item (4) be inserted after item (3) to read as follows:

(4) Any company, corporation, or association of which any officer or director is an alien or of which more than one fifth of the capital stock may be owned or voted by aliens, their agents or their representatives or by a foreign government or agent or representative thereof, or by any corporation organized under the laws of a foreign country;

Item 4, line 9, as written at present, delete the word "operating" and the comma following it. The purpose of the two amendments above is to preserve the status quo as regards foreign participation in the directorship of our operating companies. It will entail no change in the directorates of any of our operating companies as they now are organized in accordance with the provisions of section 12 of the Radio Act of 1927. The purpose of the amendments, as

I have said before, is merely to prevent the weakening of the terms of that section, thereby opening the way for considerably more foreign influence to enter our communication system.

Now, I will go ahead and discuss that, but before doing that, some of the Senators yesterday asked information concerning the method of control of the other naval powers, and I have that information here today.

Senator HATFIELD. The foreign naval powers?

Captain HOOPER. Yes, sir. The British have a holding company called "Cable Wireless, Ltd," and under that is the operating company "British Imperial International Communications." The holding company of the British is all British directorate. Less than 25 percent of the stock is in foreign control. The board includes representatives of the Government. It controls rates, news service, set-up of stations, distribution of traffic.

Senator HATFIELD. Fixes governmental rates, does it?

Captain HOOPER. Yes, sir; it controls them.

The CHAIRMAN. Of course, the British company is under Governmen control?

Captain HOOPER. Yes, sir.

Senator LONG. Mr. Chairman, just a moment. This bill we are considering, S. 2910, I thought combined the Interstate Commerce Commission with this commission?

The CHAIRMAN. Only those parts of the Interstate Commerce Act that refer to telephone and telegraph.

Senator LONG. It does not bother the railroads?

The CHAIRMAN. No; not at all.

Captain HOOPER. All of these British companies are strictly under British control. The holding company permits 25 percent foreign stock, but no foreign stock in the operating company.

In France the cable company is supervised and subsidized by the Government and all operating personnel of radio companies must be French nationals or territorials. All directorates of cable and radio companies are French.

Japanese cables are Government owned. The Japanese Wireless Telegraph Co. is a private company with the Government owning one tenth of the stock. All Japanese directorates with Government representatives on the board. All operating personnel, central office equipment, which has actual control of transmission and reception, is carried on by the Government, the post office department mainly. Radio broadcasting is owned and operated to a large extent by the Government.

Now, with regard to the discussion of the paragraph about foreign owned stock in American citizens directorate, due to the lessons of the World War in radio, the Navy Department, under Secretary Daniels, recommended Government ownership of all radio. Congress did not approve this, but in lieu thereof enacted legislation requiring private ownership and operation, with positive assurance that the radio would be owned by United States citizens, and that the directors and officers of radio companies would all be United States citizens. Also, that four fifths of the stock would be in the hands of United States citizens. Now we find that the International Telephone & Telegraph has circumvented the intent of the law by operating as a holding company, with subsidiaries, among which

their radio subsidiary actively complies with the law. I fail to see how this can be proper because if a holding company owns the subsidiary it dominates every act of the subsidiary.

Now, we are not suggesting return to Government ownership of radio at this time. We still bear in mind the difficulties we had during the war, and we visualize that these will become much more serious in future wars due to the increased use of radio mil in military problems during war. All we ask as a substitute for Government ownership is words which legally mean what the ownership of radio was intended to mean so that our own companies will meet the requirements of national defense, so that they can be in our reserve, drill in peace for war, and can shift promptly from peace to war status in war. Congress is insistent that the War and Navy be efficient in all respects, yet how can we be efficient if such an important arm of the services is not prepared in the highest degree?

The CHAIRMAN. Your theory is, the theory of the Navy Department, yourself as their representative, is that in peace times, you must work up certain methods of communication, particularly by radio?

Captain HOOPER. Yes, sir.

The CHAIRMAN. And that you want to be sure that the men in control of these radio companies, who know what you are doing, are Americans?

Captain HOOPER. Yes, sir.

The CHAIRMAN. And that there are no foreign officers or foreign officials who would know of your secret matters?

Captain HOOPER. Yes, sir.

Senator LONG. What is the use of going into all that testimony about the reasons, Mr. Chairman, for not having foreign participation?

The CHAIRMAN. Senator Long, yesterday you were not here, when we had some very vigorous opposition to this bill.

Senator LONG. Who is opposing it?

The CHAIRMAN. Mr. Behn, president of the International Telephone & Telegraph Co.

Senator LONG. I do not think that would amount to anything. I do not see how we would think of letting them have foreign interests holding interlocking control of these corporations. I do not know how the rest of the members feel about it, but it looks to me that that is too plain to talk about.

Captain HOOPER. That was in the original act.

The CHAIRMAN. The original law covered this, and then the holding company was resorted to.

Senator LONG. They subverted the law?

Captain HOOPER. They adopted the substitute of the holding company.

Senator HATFIELD. May I ask, Mr. Chairman, who this gentlemen represents?

The CHAIRMAN. This is Captain Hooper, director of naval communications of the Navy Department.

Captain HOOPER. Both Republican and Democratic Secretaries of Navy have appeared before Congress on this very subject. Actually, President Roosevelt, during his term as Assistant Secretary of the Navy, had a great deal to do with the efforts of the Navy to divorce

private radio absolutely from foreign control and influence. It is only my task to endeavor to state the policies and reasons therefor.

Realizing the vital importance of the communication systems of the United States to the national defense, the Army and Navy Joint Board has recently made a study of the subject and has reached conclusions which are embodied in the following letter and from which I shall quote. I may add that both the Secretary of War and the Secretary of the Navy have approved these conclusions. Quoting from the report of the joint board:

THE JOINT BOARD,
Washington, January 19, 1934.

J.B. no. 319 (serial no. 522).
To: The Secretary of the Navy.
Subject: American commercial systems in their relation to national defense.
Reference: (*a*) Joint Board No. 319 (serial no. 516) of July 13, 1933, Joint Effectiveness of Army and Navy Communications Systems.

1. Having under consideration by reference from the Navy Department proposals of the Director of Naval Communications for increasing the joint effectiveness of Army and Navy Communications Systems. the Joint Board on July 13, 1933 (reference (*a*)), recommended the appointment of Army and Navy committees to make a special study of each proposal for its consideration action. The Joint Board itself has given careful study to the question of American commercial systems in their relation to national defense and, having reached the conclusions given below, recommends that committee N, originally charged with the study of this subject, be discharged.

2. The Joint Board is of the opinion that the communication system of the Nation is of vital importance to the national defense and its freedom from foreign influence is essential. The Joint Board, therefore, recommends approval of the following general principles as a guide to the Army and Navy on the subject "American Commercial Systems in their relation to the National Defense." The Army and Navy will be governed by these principles in all communication questions which are of a commercial nature affecting the national defense.

(*a*) All commerial communication facilities in the United States and its possessions (except terminals of cables connected with foreign countries) should be owned (except as modified by subparagraph (*c*), below) and operated exclusively by citizens of the United States and its possessions.

(*b*) The directors of all United States communications companies, including holding companies and excluding foreign subsidiaries or subsidiary holding companies operating wholly in the foreign field, should be citizens of the United States or its possession.

(*c*) No more than one fifth of the capital stock of any United States communication company, including holding companies, should be owned by aliens or their representatives, and foreign-owned stock should not be entitled to voting privileges.

(*d*) With respect to (*a*), (*b*), and (*c*) above, insofar as cables, all termini of which are not in United States territory, are concerned, the laws and treaties governing their ownership and operation should stand in general as at present. Proposed changes in laws and treaties not relating to the matters covered in (*a*), (*b*), and (*c*) above, should be examined in accordance with the principle stated in (*m*) below.

(*e*) The merger of foreign-controlled communication services or facilities with American communication services or facilities, including holding companies, if such merger violate principles (*a*), (*b*), and (*c*), should be prohibited

(*f*) The development and expansion of any phase of the communication art, either in the domestic or international field, should be allowed to proceed naturally insofar as the inherent limitations of the art permit. This natural development should be subject to the restrictions imposed by the needs of national defense, including the needs outlined in the succeeding paragraph and by those imposed by the Federal Radio Commission or such communication-control agency as may be set up in its place, whose actions are necessarily based on existing conditions in the radio field and the state of development of the radio art at the time.

(*g*) Provision should be made for the permanent assignment of those radio frequencies and other communication facilities required for national defense and other authorized Government agencies.

(*h*) Communications in certain strategic areas must be operated by the Army and Navy. It is essential that each service have its own self-contained, self-operated communications with its units, wherever located, subject to the joint-command principles set forth in "Joint Action of the Army and the Navy."

(*i*) The United States Government should operate certain public-communication facilities such as radio aids to navigation for ships and aircraft and the transmission of weather, time, and hydrographic reports.

(*j*) The commercial communications system should be capable of being quickly and effectually placed under such Government control as will meet the needs of national defense upon the outbreak of hostilities.

(*k*) It is desirable that operating personnel of the commercial communication companies be trained in Army and Navy communication procedure in peace time. To this end the Army and Navy should each accomplish such training as is practicable in its respective field.

(*l*) It is desirable that operating personnel of the commercial-communication companies be commissioned or enlisted in the Army and Navy Reserve. To this end the Army and Navy should each enroll such reserve personnel as existing circumstances dictate in its respective field.

(*m*) In case of a proposed merger of communication companies, the Army and Navy should reserve judgment on such merger until they have had an opportunity to study the effect of such merger on national defense.

(*n*) To safeguard the interests of national defense in all communication matters and to assure that the above principles are carried out, the Secretaries of War and of the Navy should have representatives present, in full discussions of proposals before any Federal body set up for the purpose of regulating communications, to present those features which may affect the national defense. In all cases, due consideration should be given the requirements of national defense as stated by the Secretaries of War and of the Navy and in case a decision is made by such Federal regulatory body adverse to such requirements as stated by one or both Secretaries of War and of the Navy, final decision in the matter should rest with the President.

(*o*) The Army and Navy personnel who are technical experts in communications should be available to the civil agencies of the Government when and as required. To this end the advice of such experts should be governed by the principles laid down above, but otherwise they should be free to express their individual views in their own particular field.

That is the end of the quotations from the Army and Navy Joint Board.

For many years the Navy Department has been concerned with the question of foreign influence within the communication systems of the United States. On March 22, 1932, the Secretary of the Navy addressed a letter to the chairman of the Senate Interstate Commerce Committee upon this subject, which, as it summarizes the opinions of the Navy Department, I shall quote.

The CHAIRMAN. Can you not print that? I think it is about the same as what you have read.

Captain HOOPER. Yes, sir; I can.

The CHAIRMAN. I think it will save time.

(The matter referred to follows:)

EXTRACT FROM LETTER FROM THE SECRETARY OF THE NAVY TO THE CHAIRMAN INTERSTATE COMMERCE COMMITTEE, DATED MARCH 22, 1932

If it were possible to create an absolutely neutral and unbiased world-wide international communication organiation, such an organization might prove an excellent and prosperous one, despite the fact that it would stifle competition and development in the several phases of communications and would provide no safeguard of the public's interests. The creation of an international

communication company that will serve all nations with the same degree of impartiality can never be possible until after the day that nationalism and national trade rivalries have ceased to exist.

For over three quarters of a century, all of the great powers of the world, except the United States, have realized the immense importance and advantages of nationally controlled communications in the development of their national commerce and their national policies. To gain the advantages that accrued from the control of communications, the great nations built up their own world-wide systems of submarine cables, and American commerce suffered from being left at the mercy of these foreign-owned communications systems. With the advent of radio, the same foreign nations that controlled the cables of the world set about and were in a fair way to obtain world-wide control of radio. But the lessons that the United States had learned from the foreign dominance of the cables and the dangers from espionage and propaganda disseminated through foreign-owned radio stations in the United States prior to and during the war brought about the passage of the Radio Act of 1927, which was intended to preclude any foreign dominance in American radio, the only field for international communications that was not already dominated by foreign interests.

The great nations of the world fully realize the tremendous importance, both to commerce and national defense, of owning and controlling their own radio systems. Great Britain, France, Germany, Russia, and Japan have all built up radio systems controlled either by the government itself or by strictly national corporations, and these countries will never consent to the injection of international influence in their communication organizations.

Considering from a strictly national defense point of view the question of international ownership or dominance of American radio companies, a few of the more salient objections should be emphasized. In the event of war between other nations, nationally owned companies would be expected to scrupulously guard against committing an unneutral act, whereas an international company would not only lack the same incentive, but might even find it advantageous to perform unneutral service. Such stations might easily be employed in espionage work and in the dissemination of subversive propaganda.

It is not sufficient that the military forces have authority to assume control of radio stations in war. A certain amount of liaison between radio company executives and Department officials responsible for Government communications is required in peace time. Familiarity on the part of commercial executives of American radio companies with communication operating methods, plans, and developments of the military departments of the Government is certainly to the best interests of the Nation. Some of these matters are of a very secret nature. For the Navy Department to initiate and carry out this important contact with commercial companies, the divulging of confidential plans to directors is necessary. This is obviously impossible with even one foreigner on the board.

International companies must have agreements between their subsidiaries and the parent companies for a free exchange of information. Foreign personnel are transferred from one subsidiary to another so as to obtain intimate knowledge of the methods and equipment employed by other branches. It is impossible for a military service to work in close cooperation with or disclose its new developments to an organization which has foreign affiliations of this nature and employs foreign personnel.

With these points in mind—commercial and national defense—and realizing the foreign dominance in cables, it must be apparent that no truly international communication system is possible. Nations will not agree to the relinquishing of their leadership in any branch of the field when such factors may affect adversely their commerce or national defense. National ownership or control of communication systems will continue to exist and no other practical plan for the great nations can be forseen at the present time. Until world conditions are changed, this Department will look with apprehension upon any legislation which permits communication companies in this country to be subject to foreign influence. Such companies must of necessity include international companies.

Captain HOOPER. I might add that the Secretary of the Navy took so much interest in the subject that he appeared here in person and argued the case.

The CHAIRMAN. Yes; last year.

Senator HATFIELD. Was that due to some information that had gotten out and into the possession of Europeans or something of that kind?

Captain HOOPER. It was due to our experience in the war and the plans we have for use in the future, which we felt we should not divulge to any company or drill with the company unless we were assured of their nationalistic character and the character of their personnel.

That the communication facilities of a nation are vital to the nation's welfare is universally recognized. A natural corollary of that truth is that the communication facilities of a nation must be controlled and operated exclusively by citizens of that nation, and entirely free from foreign influence.

Particularly is this important with regard to radio, which occupies a status different from that of any other rapid communication service. Rapid communication over systems other than radio are subject to easy physical control, censorship, and interruption. Such is not true of radio.

The Navy is vitally interested in establishing an American commercial radio communication system entirely free from foreign influence from considerations of national defense only. Particular considerations which dictate this stand are summarized below. More detailed information is of a secret nature.

Radio is the sole means of communication with our mobile forces, and with allied and neutral vessels and aircraft in time of war. It is the nerve system by which movements of the fleet are controlled both in peace and war. The Merchant Marine, also, will come under the jurisdiction of the Navy in time of hostilities or impending hostilities, so that means of controlling its movements and operations must likewise be under naval jurisdiction.

Senator LONG. Mr. Chairman, are we not just going over and over the same thing here?

The CHAIRMAN. Yes; I think you had better pass on to some other phase. You can print that if you desire, but I want to get some other people on the stand to be heard, if possible.

Captain HOOPER. While the radio communication system operated by the Navy in peace time is sufficient for peace-time needs, it would be inadequate in time of war and would have to be augmented by the facilities of commercial radio companies. These additional facilities, like those normally operated by the Navy, must be able to pass from peace to war status at a moment's notice.

For efficient operation in war there must be training and indoctrination in peace. Such training and indoctrination must involve the disclosure of military secrets, such as:

(*a*) Certain features of war plans.

(*b*) Secret calls and secret operating procedure.

(*c*) Secret codes and ciphers, with instructions for their use, and methods for maintaining their security, and preserving their secrecy.

(*d*) Secret instructions for providing proper frequencies, changing frequency channel in war under conditions as they arise for military reasons.

(*e*) Secret instructions for radio deception of the enemy.

(*f*) Means of obtaining security against espionage, and of effecting counterespionage against the enemy.

(*g*) Certain secrets of equipment.

Such secrets may not be divulged to any company, or to individuals of any company regarding which the least doubt can be entertained as to the citizenship, patriotism, and loyalty of any of its officers or personnel.

It is believed that the time will come when all nations, not under the domination of more powerful ones, will insist that their communication facilities be owned and operated by their own nationals, as have already all the major powers except the United States. However, there are at present many countries which for financial or other reasons do not wish to establish modern communication facilities for themselves, but are willing and anxious to have them established by foreign interests. In view of this fact, it is believed that no law or policy of our Government should at this time prevent American interests from competing with those of other nations in this fertile international field, provided that any American concern engaged in such international business own or operate no radio facilities within the United States or its possessions.

On the other hand, all great nations today insist on 100-percent control of their radio communications, as radio is so vital to the commerce, the international relations and the national defense, that the communications of such nations are considered by them to be sacred. In time, this will be the case with all nations. Even now, the great naval powers will not permit foreigners to own radio stations within their borders or possessions, and, in time, other nations will expect the golden rule to be applied on this subject. Section 12 of the original radio act was enacted by Congress when the lessons of the war were fresh in its mind. It is sound. Had it been realized then that the law could have been circumvented by means of setting up holding companies, precautions would have been taken in framing the act to forestall such action.

The CHAIRMAN. Now, Captain Hooper, we have gone all over that. Let us just print that in the record. I do not see any necessity of going over it further.

Captain HOOPER. Very well, sir.

The CHAIRMAN. Have you any other parts of the bill that you want to discuss?

Captain HOOPER. I was going to mention briefly——

Senator LONG (interposing). You are sure wearing us out on this subject. [Laughter.]

Captain HOOPER. Well, if you are satisfied, then I do not need to present it.

Senator LONG. I was satisfied before, but I believe I am against it now. [Laughter.]

Captain HOOPER. I was going to show that the international companies from their own statement have an international objective. As stated by Colonel Behn, chairman of the board of directors of the International Telephone & Telegraph Co.:

> The International Corporation both in spirit and policy is truly international. * * * In confirmation of this spirit and policy, our headquarters and field staff are open to all without preference or prejudice. Several of our senior officials and a very large majority of our junior officials are of nationalities other than American. (International System News, June–July 1931, p. 8.)

And as was stated in the annual report of the International Telephone & Telegraph Corporation for 1928:

> One of the gratifying results of the acquisition of the United River Plate Telephone Co., Ltd., was the increase in the list of British stockholders of the International Telephone and Telegraph Corporation. * * * It is expected that * * * there will be over 1,300 new British holders of the stock of your corporation.

The International Telephone & Telegraph Co. has gone on with its policy regardless. Now they naturally attempt to obtain a law which will recognize and perpetuate their position.

Every new foreign subsidiary which the I. T. & T. acquires will bring in its quota of foreign officials and influence. As its foreign holdings increase, so will the relative importance of its United States holdings decrease, and it would only be wise for the I. T. & T. to listen to the representations of foreigners to a greater degree, perhaps to the extent of adding other foreign officers to their directorate, as its foreign subsidiaries grow.

Senator HATFIELD. Are you reading a quotation now?

Captain HOOPER. No, sir; this is my own.

Senator LONG. You are on the same verge, though?

Captain HOOPER. There is nothing in the law to prevent I. T. T. from doing this now, in their interpretation of the law.

Furthermore, it is not always the province of the directors to formulate policies. The executives whom they employ often have a greater hand in this than the directorate. Their executives are being paid for getting business for their companies. The manner in which it is done may often be unknown to the directors. Considerations of international policy of which the minor executives may know little or nothing will not influence them in their efforts to increase the business of that part of the system for which he is responsible. The control of the directorate over the minor executives will be slight and sympathetic if he turns in a good balance sheet at the end of the year. The foreign official of I. T. & T. is certainly not going to be able to increase his business by bucking the interests and desires of his own government officials. He must cater to them. These interests may be the same as those of the United States, but in many cases, with the intense internationalism and trade rivalry which exists today, they will not.

As long as the International Telephone & Telegraph kept within the wire telegraph and cable field of communications, we did not complain because the radio is the important part to keep on a nationalistic basis. But they were forced into the radio field by the competition of R.C.A., and it is in this field we ask remedy in the law.

If any director of a communication company or a holding company is a foreigner, he has a right of access to any information which the president of the company may have. If he wishes such information for his own reasons, that information must be furnished.

If a large percentage of stock of one of our companies becomes owned by foreigners, they can gradually exercise a powerful interest in the affairs of the company.

We are not objecting to foreign holdings by I. T. & T. We are only asking that their directors and officers remain United States citizens and that the control of the company be insured permanently in the United States, through the large majority of stock ownership.

Bulletin "Via R.C.A.", dated 1934, states:

The charter of the Radio Corporation of America requires that its directors and officers shall be American citizens. It requires that at least 80 percent of its outstanding stock, entitled to vote, shall at all times be in the hands of loyal citizens of the United States. The company is free from foreign influence, control, or domination.

The president of the Western Union in his statement of March 13, stated—

Communications are an essential arm of commerce, indispensible from a standpoint of national defense, and a service upon which the public is generally dependent.

The CHAIRMAN. I think that covers it, unless there is some other subject.

Captain HOOPER. No, sir; that is the gist of it.

The CHAIRMAN. Are there any questions that any members wish to ask Captain Hooper? If not, we thank you very much, Captain, and if you want the matter printed that you have not read, it will be printed.

Now, I think Mr. Willever, of the Western Union, wants to be heard in answer to some statements made here yesterday by Colonel Murphy.

STATEMENT OF J. C. WILLEVER, FIRST VICE PRESIDENT OF THE WESTERN UNION TELEGRAPH CO.

Mr. WILLEVER. Mr. Chairman and gentlemen, I appear on behalf of and at the request of all America Cables, the Commercial Cable Co., the French Telegraph Cable Co., the Mackay Radio & Telegraph Co., R.C.A Communications, Inc., and the Western Union Telegraph Co., which are the principal companies engaged in the United States in the conduct of overseas written communication service.

Certain charges have been made before this committee by a self-styled Cable and Radio Users Protective Committee. The communications companies for which I am now appearing, wish to offer the following statement of facts for the information of your committee, and in rebuttal of the misleading and erroneous statements made by Mr. Murphy yesterday.

We wish to make the point that Mr. Murphy represents a very small but vociferous number of stockbrokers, arbitraters, and dealers in foreign exchanges, who are here concerned solely in the perpetuation of the grossly discriminatory service secured by them to the detriment of the public at large, who, under the laws of this country, are entitled to equal service with them at the same rates. Mr. Murphy represents, according to his own statement, 51 concerns located in the financial district of New York City. These 51 compare with 27,000 regular cable and radio users in New York City alone. Cable and radio overseas messages are, by international telegraph regulations, divided into four general classes, namely:

1. "Urgent" messages, requiring priority of handling.
2. "Ordinary or full-rate" messages, which constitute the standard service.

3. "Deferred" messages, which are plain language messages at half ordinary rates and subject to deferment up to 24 hours in favor of higher-paid traffic, and

4. "Night letters", which, as the name indicates, are for delivery the next day and are handled at one third ordinary rates.

Until the Madrid Conference of 1932, messages classed as urgent were supposed to be charged for at triple rates, in order to justify the preferential handling which they were given. The American communication companies deemed this triple charge too high and would have none of it because of this fact. In consequence, this service was seldom used.

The concerns which Mr. Murphy represents are engaged in international speculative transactions in stocks, commodities, and international exchange, and they require for their particular purposes not merely priority service but most extraordinary handling throughout and almost instantaneous flashing between sending and addressee in order to beat market changes.

Because no other rate was provided except the excessive triple rate, the American communication companies in responding to the demand for this extraordinary service, provided at the ordinary rate the best possible service with ordinary facilities. This "best" was not good enough, and the small group of users represented by Mr. Murphy, took advantage of the keen competition between the British, French, and American companies and of the great need of these companies for revenue at any price, to coerce the communication companies into the installation of special and expensive private wires, telephones, and teletypewriter equipment, solely for the purpose of handling this limited but exacting class of traffic.

Senator COUZENS. Has that been eliminated by the Madrid conference?

Mr. WILLEVER. No, sir; they demanded the adoption of one special short cut after another, until now messages are passed between stockbrokers in New York City and stockbrokers in London, Paris, and Amsterdam in less than a minute. Speculative purchase or sale orders are given, executed abroad, and the results of the deal telegraphed back in 2 minutes or even less.

There is no communication service which approximates this performance anywhere in the world, and the exaction of it at the ordinary rates through the stress of cut-throat competition constitutes as clear a case of racketeering as any other.

There is no element of public interest supporting the complaint voiced by Mr. Murphy, and the communication companies were very glad when the substitution of double for triple rates for priority service made by the Madrid conference offered the opportunity to require that those who demanded a priority service should pay the specified rates for such service.

Senator COUZENS. So that the cutthroat feature was eliminated by the Madrid Conference?

Mr. WILLEVER. No; the cut-throat feature of competition is still very great, but we are now charging the prescribed urgent rate, which has been brought down to double the rate for extraordinary handling.

Senator COUZENS. That is the result of the Madrid Conference?

Mr. WILLEVER. That is the result of the Madrid Conference.

Senator COUZENS. So that in effect the Madrid conference has stopped this cut-throat rate cutting?

Mr. WILLEVER. That is true. I did not understand your question, Senator. The companies Mr. Murphy represents complain that some of their messages take as long as 5 minutes from their offices in the United States to their correspondents' offices abroad. Most American business men would find little to complain of in such a service.

Since this service is international and highly competitive and is participated in by the nationals of other countries, notably Great Britain, France, and Holland, correction of the abuses and discontinuance of discrimination against the great bulk of cable and radio users—which discrimination had long been a matter of deep concern to American communication companies—obviously could not be brought about without the concurrence of all communication agencies involved. It is only in this sense that there was any discussion with foreign companies, and there is absolutely no basis for Mr. Murphy's statement that the consent of the British Post Office had to be secured. No foreign government has ever attempted to fix charges applicable in the United States. American companies can do business in foreign countries only under licenses issued by the governments of such countries and they, of course, do fix the charges made there.

Specifically, therefore, the American companies have not increased rates charged to the general public for regular or standard service, but have merely applied a proper classification to these urgent arbitrage messages, charging the specified rate for urgent service.

The CHAIRMAN. Do I understand that the establishment of this special rate, this double rate that you have, does not affect not only the rate but the service that the ordinary public is doing, ordinary public business over the cables?

Mr. WILLEVER. Yes; it does, naturally.

The CHAIRMAN. I mean as compared to what it was previous to the establishment of this rate?

Mr. WILLEVER. The conditions are the same, so far as service is concerned.

The CHAIRMAN. The only difference is that you are getting a little more money for this special kind of business that you were before?

Mr. WILLEVER. That is true.

The CHAIRMAN. For instance, if I send a cablegram to a man or a woman in London just as I would before you started the double rates, would there be more delay in this delayed service than there was before?

Mr. WILLEVER. No; I should say there would be less. Because of the necessity for paying double rates on message requiring priority handling, there are fewer of them.

The CHAIRMAN. But you were doing the priority handling as a matter of courtesy to these people whom you now charge double rates.

Mr. WILLEVER. I would not say as a matter of courtesy. I would say it was competition.

Senator COUZENS. Competition?

Mr. WILLEVER. Yes, sir.

The CHAIRMAN. That puts a somewhat different light on it from what we had here yesterday.

Mr. WILLEVER. Precisely. That is the purpose of this statement. There is no basis for Mr. Murphy's intimation that messages paid for at the ordinary rate are held up in order to compel the use of the more expensive preferential service. When the special facilities installed for the terminal handling of urgent messages are used for the filing of ordinary rate messages, such messages should not take the short-cuts to the cable or radio circuits which have been provided for urgent messages.

The burden of Mr. Murphy's complaint is that the ordinary rate messages of those he represents are no longer accorded the privilege of those short-cuts.

In conclusion, I wish to point out that the International Telegraph Convention, signed by the American delegation at Madrid, reads as follows:

> The contracting governments recognize the right of the public to correspond by means of the international service of public correspondence. The service, charges, and safeguards shall be the same for all senders, without any priority or preference whatsoever not provided for by the convention or the regulations.

This provision of the Madrid convention is completely in accord with the declaration of public policy contained in the Interstate Commerce Act.

The CHAIRMAN. Did the amount of urgent business of this kind increase as a result of the change in price of gold?

Mr. WILLEVER. Yes; there has been, of course, considerable speculation in foreign exchange ever since the exchanges of the world got out of balance.

The CHAIRMAN. I asked that question because somebody told me since the hearing yesterday that gold speculation had forced a lot of this extra business on the cable and radio companies, and that in self-defense they found it almost necessary to put on this rate, and I wondered if that is true.

Mr. WILLEVER. No; I do not think that had anything to do with it. The amount of this business fluctuates absolutely with the activity in speculative transactions, whether in stocks, in commodities, or exchanges.

Senator COUZENS. In other words, the chairman would not want any impediment on the "new deal." [Laughter.]

The CHAIRMAN. I was trying to find out whether this gold speculation had added to this business. Are there any questions by any of the Senators?

Thank you very much, Mr. Willever, for your statement. We will now hear Mr. Leasure, of the Chamber of Commerce of the United States.

STATEMENT OF CHESTER LEASURE, REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. LEASURE. Mr. Chairman and gentlemen, I will detain you just a moment, on behalf of Mr. Henry I. Harriman, president of the organization, to present a brief statement and a special statement of the chamber's committee on transportation and communication. I desire to present that now, Mr. Chairman, for the record.

(The statement referred to follows:)

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, March 15, 1934.

To the SENATE COMMITTEE ON INTERSTATE COMMERCE:

On behalf of the board of directors of the Chamber of Commerce of the United States, I submit for your consideration a resolution adopted by the board at its meeting on March 2, 1934, after considering the bill before your committee, S. 2910, and the House measure, H.R. 8301.

The Board's resolution states:

"The powers which would be entrusted to the proposed Federal Communications Commission, while largely to be transferred from the Interstate Commerce Commission and the Federal Radio Commission, would nevertheless be substantially expanded in ways not required by the public interest and likely to interfere with continued efficiency of communication services. A Communications Commission of seven members would be unnecessarily large and expensive, while the proposed requirement in the bill that the Commission be organized in three specialized divisions to deal with broadcasting, telephone, and telegraph, respectively, would be inefficient and would tend to promote the development of unnecessary regulation. The recommendation in the President's special message to Congress would limit the legislation at the present session to transfer of existing powers from other commissions to a new Communications Commission which would have the duty of recommending permanent legislation for later enactment. This procedure is desirable in the interest of adequate consideration of the important questions involved."

The accompanying report of the Chambers Transportation and Communication Department Committee, which I also desire to submit for the record, sets forth more fully the reasons for the conclusions stated in the Board's resolution.

H. I. HARRIMAN, *President.*

REGULATION OF ELECTRICAL COMMUNICATIONS

Consolidation of the Federal authority over interstate and foreign communication by wire or radio, and extension of this regulation, are provided for in the Rayburn bill (H.R. 8301) which has just been introduced in Congress. The Dill bill (S. 2910) also just introduced, is identical with the Rayburn bill except that the former includes, in addition, a revision of the Radio Act of 1927.

Legislation on the general subject of these bills has been urged by the President as part of the administration program but the bills go beyond his recommendation. That recommendation was for legislation at this session of Congress transferring to a new Communications Commission the powers over communications now vested in existing commissions and assigning to the new Commission the duty of investigating the communications situation and recommend permanent legislation for later enactment.

The Rayburn bill would transfer to the new Federal Communications Commission the powers over the telephone, telegraph, and cable business now possessed by the Interstate Commerce Commission and those over radio now in the hands of the Federal Radio Commission. It would also substantially add to these existing powers and create a system of increased regulation for the communications business closely paralleling the existing system of railroad regulation. This added regulation would even extend to matters of such detail as issuance of certificates of public convenience and necessity for every extension interstate of telegraph or telephone circuits, with a requirement that notice be published for 3 consecutive weeks and opportunity be given for hearing thereon.

This Commission would consist of 7 members ultimately to be appointed for 7-year terms, the term of 1 commissioner expiring each year. The bill would require creation of 3 divisions of the Commission of 2 commissioners each to deal respectively with (1) radio broadcasting, (2) telephone communication and (3) telegraph communication by wire, cable, or radio. The chairman of the Commission would be a member of all three divisions. In certain specified matters, as well as any others not falling within the jurisdiction of a single division, the whole commission would act.

The regulatory provisions apparently contemplate very complete regulation of rates and service with power to the Commission to suspend rates, hold hearings, prescribe just and reasonable charges, enforce payment of awards

of damages, control interlocking directorates, prepare valuations of property, approve of extensions of lines or circuits, prescribe the records to be kept, require reports (including as a new feature the salaries and bonuses of all officers), and conduct inquiries into the management of all concerns under their jurisdiction. The bill attempts to preserve State regulation of intrastate business. Provision is made for cooperation with State commissions and use of joint boards in certain cases.

With regard to radio broadcasting the Rayburn bill would have the effect of transferring work from the existing Federal Radio Commission to the new Commission and reducing the number of commissioners assigned specially to broadcasting work from 5 to 2. The Dill bill would make a similiar transfer of jurisdiction and would also amend the existing radio law. With respect to telephone and telegraph matters a notable change under both bills would be to specialize 4 new commissioners in these fields, 2 in each. While certain matters would come before the full Commission, only the chairman would participate in handling major questions in all three branches—broadcasting, telephone, and telegraph. Such an inflexible organization, divided into permanent and largely independent divisions, appears to present serious objections.

It is significant that, while the law has made ample provision for complaints ot the Interstate Commerce Commission on telephone and telegraph matters, the Commission has had occasion to pass upon practically no cases of this character. Its work on telephone and telegraph questions has been almost entirely in passing on mergers and the regulation of accounting practices, including depreciation. On the other hand, the Federal Radio Commission, because of the nature of the problems before it, has in the past been a very active body, although since many of the major problems of radio have been settled, the volume of matters coming before the Commission has become distinctly less.

The general position of the Chamber of Commerce of the United States is strongly opposed to establishment of unnecessary regulation over businesses, particularly in cases where there is no showing of a substantial public need for the regulation. The disadvantages of the present excessive regulation of the railroads, particularly the hampering effects upon management, have been very generally recognized. The chamber's membership in referendum 62 specifically advocated that railroad regulation be reduced to that which is necessary to assure fair rates and public safety. The Rayburn and Dill bills would extend over the telephone and telegraph business features of regulation similar in many respects to those which have been found undesirable with respect to railroads.

The danger of such a result from these bills, if enacted, would lie not only in the increased regulatory powers but also particularly in the proposed special zed divisions of the new commission and the inevitable tendency that there would be for these divisions to compete with each other in regulatory activit.es. Actually as shown by tlfe Interstate Commerce Commission's experience, the need for such activities in respect to interstate telephone and telegraph business is a min'mum. It does not appear sufficient to justify separate divisions or bureaus to handle these fields.

There is also serious doubt as to whether seven commissioners are really needed for the Communications Commission. It is believed three, or at most five would be ample. Flexibility would call for having all the Commission's powers entrusted to the full commission with authority to create divisions as may be necessary.

Past expressions of the chamber's membership support the general principles indicated in the foregoing analysis.

The CHAIRMAN. Are there any questions? If not, we thank you very much.

Mr. Benton, I think you want to make a short statement?

STATEMENT OF JOHN E. BENTON, GENERAL SOLICITOR, NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

Mr. BENTON. Mr. Chairman, I have a brief statement.

The CHAIRMAN. It goes to what phase of the bill?

Mr. BENTON. It goes to an explanation of the reasons for some variations from the exact provisions of such sections of the Inter-

state Commerce Act as give to the Interstate Commerce Commission power over telephone and telegraph companies.

The CHAIRMAN. They are those provisions particularly mentioned by Mr. Gifford that were talked about yesterday, also by representatives of the State commissions?

Mr. BENTON. Yes, Mr. Chairman. If I may, I would like to present this.

The CHAIRMAN. It will be printed.

Senator LONG. What do you provide, Mr. Benton, relative to the authority of State commissions? They retain their control over exchange rates, exchange services, and toll services within the limits of the State.

Mr. BENTON. Yes, Senator.

The CHAIRMAN. I may say, Senator Long, that at the request of the State commission representatives, we wrote in certain provisions that are not in the Interstate Commerce Act, to protect the State commissions against being overridden by this Commission, as the Interstate Commerce Commission has overridden some of the railroad State commissions.

Senator LONG. We do not want to give them what they call the right to slip in on the ground of intrastate discriminations against interstate business.

The CHAIRMAN. Protection against the Shreveport decision.

Senator LONG. Yes.

The CHAIRMAN. Are there any other questions? If not, we thank you very much, Mr. Benton.

Senator LONG. Were you not formerly our counsel down in Louisiana?

Mr. BENTON. Senator, when you were chairman of the Public Service Commission of Louisiana I had the honor to be your counsel.

Senator LONG. I thought I remembered you.

(Matter referred to above follows:)

My name is John E. Benton. I am general solicitor of the National Association of Railroad and Utilities Commissioners. My office is in the Otis Building, Washington, D.C. I appear at the direction of the executive and legislative committees of the association. The interest of the State commissions in this bill arises from the desire on their part to avoid any development which will operate to break down State regulation.

This bill proposed to create a communications commission which will exercise jurisdiction over communications companies. Nobody has appeared to oppose the creation of the new commission. The entire opposition has been based upon the fact that those who framed the bill did not simply lift out of existing statutes the sections which give the Interstate Commerce Commission and other departments their existing powers with respect to communications companies and put them into this act without any change whatsoever. It has been said that the President recommended the creation of a new commission and a transfer of the present authority of the Interstate Commerce Commission and other departments, and great emphasis has been laid on that point.

Chairman Dill suggested that the President used the word "transfer" in no such literal sense. We think that is evident from his message and from the undisputed circumstance that the President had before him this bill, which had been drawn at his request when he sent the message.

We venture to suggest, however, that the exact phraseology of the President's message is not of tremendous moment. The responsibility of framing and passing legislation rests with the Congress. The President properly recommends, but the Congress legislates and only to the extent and in the manner that it deems consistent with the public interest, in the light of all the knowledge which it has when it acts. We wish to point out certain reasons why, regardless of what the President said in his message, Congress will, as we

believe, conclude that there ought not to be a transfer to the new commission of the exact powers which the Interstate Commerce Commission now possesses over telephone companies.

The Couzens communications commission bill, S. 6, in the Seventy-first Congress, proposed to transfer to the proposed commission the exact power of the Interstate Commerce Commission over telephone and telegraph companies. Thirty-seven State commissions took separate action by resolution or otherwise in opposition to that bill; and the National Association of Railroad and Utilities Commissioners, in convention, unanimously adopted a resolution of protest; and upon the hearing before this committee, State commission representatives took 110 pages of printed hearing to show to the committee that the bill would substantially destroy State regulation.

Briefly, we showed that within 18 months after the Transportation Act of 1920 was enacted, empowering the Interstate Commerce Commission to prescribe intrastate railroad rates, the Commission had made 24 State-wide orders covering railroad rates, which in many great States, like Illinois, Kansas, Nebraska, and Texas, covered every intrastate passenger and freight rate, completely destroying State power while those orders continued in effect.

Since then experience has demonstrated that a State commission order fixing rates, made after the most careful investigation and extended hearing, can be swept aside by an Interstate Commerce Commission order recommended by an examiner after a few hours hearing in Washington. The Interstate Commerce Commission has exactly the same power over telephone rates as over railroad rates, but it has been inactive as to telephone companies. Its time and attention has been given to railroad regulation. This bill proposes to create a new commission which will be an active commission.

Unless the Congress wants to destroy State regulation over telephone companies, it cannot merely transfer the existing power of the Interstate Commerce Commission to a new Commission. It must describe the field within which the new Commission shal exercise its jurisdiction. The time to do that is when the new Commission is created. The proper limitation of the Federal Commission's rate-making power is perfectly evident. There is no dispute about it. The Federal Government is the only Government that can regulate interstate toll rates. The Federal Government should accordingly have full and effective powers of regulation as to those.

On the other hand, exchange service is local. There is no reason why people having complaints about their exchange service or rates should be compelled to carry their complaints to Washington. Such service is subject to State regulation. Even though it passes over State lines, by reason of its local character, the State where the service is delivered may regulate. This the United States Supreme Court held very clearly in the *Pennsylvania Gas Co. case.*

Referring to this case, our association in its resolution against the passage of Senate bill 6 asked Congress to leave the field of regulation of exchange service wholly unoccupied, so that State regulation might not be interfered with or impeded. I will present that resolution for the record as follows:

"*Resolved*, That this association is unalterably opposed to United States Senate bill no. 6, and its amendments, or to any enlargement of Federal authority by the creation of new agencies or the enlargement of the authority of present agencies whereby the regulatory authority of the State commissions would be interfered with in a field where they are now adequately functioning.

"*Resolved*, That whereas under the principle established by the decision of the United States Supreme Court in *Pennsylvania Gas Co.* v. *Public Service Commission* (252 U.S. 23), State authorities, in the absence of Federal legislation, retain power to regulate local service of utilities which operate across State lines, including the rates for such service, this association asks Congress not to interfere with the continued exercise of that power as to any class of public utilities by legislation vesting power to regulate such service and rates in any Federal tribunal."

With respect to rates, this bill will define the field within which the Federal Commission shall exercise its powers. As to rates, that is necessary, as we have said, unless the Congress wishes to make effective State regulation of telephone rates impossible.

President Gifford, the other day, criticized especially the provisions of section 220 of this bill which relate to depreciation and to accounts. Those provisions are in the bill, I understand, by reason of representations which were made by State Commission representatives.

Ever since Congress in 1920 empowered the Interstate Commerce Commission to prescribe rates of depreciation, the State commissions have believed that it would work to their embarrassment and do the public injury. The only reason that this has not yet happened is because there is not yet in effect a depreciation order under the 1920 act. There is an incomplete order outstanding, the effective date of which has been postponed from year to year for several years. It is a well-recognized fact, which the Interstate Commerce Commission found and stated in its first telephone depreciation report written by Commissioner Eastman, that the rates of depreciation of telephone properties vary according to local conditions, so that no uniform rate for the different classes of telephone property can be prescribed for the entire country.

It has been the practice of the telephone companies to accrue very generous percentages of depreciation. I think President Gifford said it amounts on the average for the Bell companies to about 4 percent of the entire property each year. As the Bell companies handle depreciation, this forms a book reserve. It goes into property, and the Bell system has been largely built up out of these reserves which have been provided by the ratepayers. When the commissions came to fix rates in any State, however, the telephone people say, just as President Gifford said to Senator Kean, "The amount of our accrued depreciation reserve has nothing to do with the value of our property."

They contend that the value of their property does not go down as the amount of their depreciation reserve goes up; and that there is really no relation whatever between the two.

It is not possible to determine the proper depreciation rates for any telephone company without a very careful investigation; and as a matter of fact, the Interstate Commerce Commission has not attempted to prescribe rates for a single telephone company. It has gone no further than to order all telephone companies to file their rates of depreciation with the State commissions for their study and recommendations to the Interstate Commission thereon.

I wish to put into this record what I said on this subject at the hearing before this committee in February 1930, which was as follows:

"Mr. BENTON. Now, as to depreciation. This bill provides that the new commission shall fix the rates of depreciation for each class of property for every company subject to its jurisdiction.

"This has been the duty of the Interstate Commerce Commission ever since the enactment of the Transportation Act in 1920, both as to railroads and as to all companies subject to its jurisdiction.

"That Commission has been engaged in the task, taking evidence and hearing arguments, but it has not yet fixed the rate of depreciation upon any single class of property for any single railroad or utility. This proves the immensity of the task and the difficulty of its performance.

"If this shall pass, the task will be transferred to a new commission; and that commission will require to be shown by evidence and arguments what rates of depreciation should be prescribed. It will be a new commission, less familiar than was the Interstate Commerce Commission with matters of regulation. When will it complete a task which the Interstate Commerce Commission has in no part completed at the end of 10 years?

* * * * * * *

"The State commissions believe that it is not in the public interest that this provision, providing for the Federal Commission to fix these rates of depreciation, should be in the law at all. They think that it is a dangerous thing to have a Federal commission, no matter what commission, fixing rates of depreciation for 60,000 companies by guesswork. And yet any commission which does prescribe depreciation rates for 60,000 companies must do so largely by guesswork, or largely upon estimates and recommendations of somebody else, as I will show to you by language from the Interstate Commerce Commission itself.

"It is dangerous, because if they are fixed wrong, then to the extent of 5 or 6 or 7 or 8 percent, or 3 or 4, or whatever the percentage fixed may be of the value of the company's property the State commission's hands are tied. And if it is fixed too high the excess is lost to the public.

"In an opinion handed down by Mr. Justice Butler in *Board of Public Utility Commissioners of New Jersey* v. *New York Telephone Co.* (271 U.S. 23), it was established that if the company sets aside more reserve for depreciation in any year than is needed for that year, the excess becomes its property, and no commission can compel it afterward to expend such excess to cover depre-

ciation occurring in later years. The New Jersey commission attempted that, and the Federal court enjoined their rates because they were trying to make the company use the depreciation fund it held for depreciation accruing in later years.

* * * * * * *

"The CHAIRMAN. In that connection, I understand, your contention is that each of the 48 States should be permitted to fix their own depreciation at all times.

"Mr. BENTON. Yes; my position is that in every rate case any commission, be it Federal or State, should give consideration to the value of property and give consideration to how much should be allowed in the way of a fair rate of return and how much should be set aside for depreciation, as new questions to be determined upon the evidence of the particular case at the time of the determination of the case.

"Let me say that this contention is not anything new with our association. As far back as 1923, at Miami, Fla., the national association passed resolutions asking Congress to take out of the law this provision about depreciation, and it has repeated that resolution from time to time since then.

"The Interstate Commerce Commission itself has found and reported that this matter of fixing depreciation is one which ought to be left to the State commissions, and it has gone as far as it can to leave the fixing of such rates to the State commissions.

"I want to quote just what the Interstate Commerce Commission said in its report, made by Mr. Commissioner Eastman, in the *Telephone Depreciation case*, reported in 118 I.C.C. 372.

"The CHAIRMAN. What date?

"Mr. BENTON. I cannot give you the date excepting from recollection. I think it was 1926. He said:

"'All parties to this proceeding concede that uniform rates of depreciation cannot be established for all telephone companies. There is entire agreement that rates of depreciation for the same classes of property differ materially, depending upon the conditions under which the particular company operates, and that if we are to prescribe rates of depreciation, as the statute contemplates, a careful study must be made of the situation of each individual company. Nor, so far as we are aware, has any exception been taken to the assertion of the committee representing the National Association of Railway and Utilities Commissioners that the great bulk of telephone business consists of intrastate local community service; that the interstate service is largely toll service; and that it constitutes an insignificant fraction of the total business. These being the facts, and disregarding for the moment the proper interpretation of the law we are called upon to administer, it is obvious that the determination of rates of depreciation for the various classes of telephone property is a task which could more appropriately, conveniently, and economically be carried on by the State commissions than by us.'

"Further in the same report he said——

"The CHAIRMAN. Before you read that. Was that concurred in by the whole commission?

"Mr. BENTON. Yes; I think there was no dissent from it. Further he said:

"'Upon one proposition all parties are agreed, and that is that the service lives of the same kind of property vary widely in different companies. It is impossible to lay down any general rule which will apply in the case of all companies, or even in the case of a particular class of companies, owing to the different conditions which surround the use of the property in each individual case. * * *

"'There seems, indeed, to be no way in which prospective service life for the future can safely be estimated through an automatic or mechanical process. The estimate must needs be made by combining the results of actual past experience with the best available engineering advice as to the probabilities of the future.

"'Under such circumstances and in view of the great diversity of conditions existing among the various companies, the best that can be done is to require each company, in the first instance, to make an estimate of the prospective service lives of the various classes of property and consequent depreciation percentages for each of its primary accounts of depreciable property in the manner above prescribed, and submit the result, accompanied by a detailed exposition of the facts of record and the engineering advice upon which the estimate has been based. In some instances these percentages will, of course, be composites. * * *

"'In the case of telephone companies * * * a modification of this plan which can be employed with advantage under the unusual circumstances existing. As we there pointed out, the great bulk of telephone business is of strictly local concern, and the State commissions are much better informed and equipped than we are to pass upon the condition surrounding this local service. * * * In the present instance aid from the State commissions is not only desirable, because of the essentially local character of most of the telephone service, but also because of the substantial relief which it will afford us in the burden of determining prospective service lives and depreciation percentages for the large number of telephone companies operating in this country.

"'We are, therefore, of the opinion that in all cases where State commissions have authority intrastate over telephone companies, the prospective service lives and depreciation percentages estimated in the first instance by such companies, with the accompanying expositions of the reasons therefor, should be transmitted to the appropriate State commission or commissions instead of to this commission, and that our temporary order prescribing depreciation percentages should be based upon the recommendations of such commissions. Further proceedings, with a view to modification of the temporary order'—

"The plan, Senator, is that they will take these estimates and make their temporary order and then any company can come in and ask to have the order voided. [Continues reading:]

"'Further proceedings, with a view to modifications of the temporary orders, should be conducted for us by the State commissions.'

"Now, that report never became effective, because after it was promulgated the telephone companies asked to have it reopened, and it was reopened for further consideration, and the Commission's final report has not yet been issued.

"The CHAIRMAN. Why did the telephone companies ask to have it reopened?

"Mr. BENTON. I think they did not like the method of computing the depreciation, and there doubtless were other reasons, but that in the main was their objection, as I remember.

"The purposes aimed at by the Interstate Commerce Commission in its provision for inviting State commission aid was praiseworthy. It recognized the fact that the depreciation rates of telephone companies ought to be fixed by the State authorities, and it seeks to procure their action.

"The difficulty, however, is this: State commission appropriations are limited. Their forces of experts are limited. They cannot suddenly made the necessary investigations for all the telephone companies within their respective States at a single time, and in a brief period, such as any order of the commission will necessarily allow. The order which I have spoken of allowed 4 months. The State commissions can, if they are allowed to, make investigations in their own time, and—taking the companies one by one, in rate cases, as such cases arise—reach just determinations. But this plan of the Interstate Commerce Commission to procure State commission action in 4 months' time or in any other brief period, as to all of the companies within the jurisdiction of these commissions, is one which simply cannot be carried out. It has taken the Interstate Commerce Commission 10 years to lay down the applicable rules, and it is not reasonable, however much we may admire the purpose behind this suggestion, to ask the State commissions suddenly to go out and bring in recommendations for all these companies, when the commission has said that it requires a detailed investigation for every one of the companies separately.

"Now, furthermore, we may this, that if this is a matter which ought to be left to the State commissions, as the Interstate Commerce Commission has said, there is no reason why the State commissions should not be permitted to take care of it in their own way in such manner that they can use their forces to the best advantage and proceed within their appropriations—when they can proceed advisedly and well—instead of having the values for these telephone companies fixed by rigid orders of the Interstate Commerce Commission.

"That is all I care to say about depreciation."

What the State commissions fear is that the Federal Commission will fix depreciation rates which will not be in accord with the facts in a given case; and that when the rates fixed by the Federal Commission are too high, the telephone company will contend in court

that the State commission has no right to consider the depreciation matter at all, because the rate has been fixed by an order of a Federal commission, under a Federal statute. As far back as 1923 the State commissions in convention adopted a resolution, which is as follows:

Be it resolved by this association, That the committee on State and Federal legislation be instructed to take such action as may be required to secure the amendment of the Interstate Commerce Act so that the jurisdiction to fix the depreciation charges by telephone companies shall clearly rest with the various State commissions, as it did prior to the enactment of the Transportation Act of 1920.

Similar resolutions have been several times since adopted.

Upon the basis of what the Federal Commission found and stated in the Eastman report, which we have put into the record, we say it is obvious that the States ought not to be bound in State rate cases by what the Interstate Commerce Commission may have prescribed as to depreciation rates for purposes of Federal accounting.

As to accounts, the provisions, criticized by Mr. Gifford so vigorously, were put into the act at our suggestion to enable little telephone companies, cooperative lines, and farmer lines, of which there are thousands, as has been stated, either to be relieved in whole or in part from requirements which are necessary and proper for large companies but which would be unduly burdensome for little companies.

Mr. MacKinnon wants the small companies relieved from these burdensome requirements, but not just yet, not until the matter has been studied and the exemptions explicitly provided for by statute. It is not possible now and never will be possible to provide by statute a rule which will mark out exactly what companies ought to be relieved in whole and what companies in part and to what extent. That can best be determined for any particular State in a conference between the Federal Commission and the State commission. For such conferences, the bill provides. Whatever exemptions may be granted will be subject to the discretion of the Federal Commission. The State commissions believe that power to determine may safely be left with that Commission.

The CHAIRMAN. We will now hear Rev. Father Harney, representing the Missionary Society of St. Paul the Apostle.

STATEMENT OF REV. FATHER JOHN B. HARNEY, NEW YORK CITY, SUPERIOR OF THE MISSIONARY SOCIETY OF ST. PAUL THE APOSTLE

Father HARNEY. Mr. Chairman and gentlemen, my name is John B. Harney, 415 West 59th Street, New York City, the superior of the Missionary Society of St. Paul the Apostle, or Paulist Fathers.

Senator HATFIELD. In what capacity, Father, do you serve this organization?

Father HARNEY. As the superior. That is in the community itself equivalent to the President as regards the United States.

Senator LONG. This is a church, is it?

Father HARNEY. No; it is a religious organization of Catholic priests.

Senator LONG. You are in the Catholic Church?

Father HARNEY. Yes, sir.

Mr. Chairman and gentlemen of the committee, I come before you as the representative of the Missionary Society of St. Paul the Apostle, a domestic corporation of the State of New York, owners of Radio Station WLWL to register our approval of the Senate bill 2910, particularly as regards its special provisions relating to radio, and to submit for your consideration an amendment thereto, designed to forestall the possibility of a monopolistic control of radio communication facilities, and to secure permanently for responsible religious, educational, cultural, social service, and other human welfare agencies of a nonprofit-making type such an assignment of radio facilities as is in keeping with their high character and unselfish aims: such also as will give them all a chance to be decently self-supporting and free from the overlordship of mere commercialists whose dominant purpose is to accumulate wealth even at the cost of human decay.

The amendment that I suggest reads as follows, to be added to section 301, page 40 of the bill under consideration.

Section 301 (a): To eliminate monopoly and to insure equality of opportunity and consideration for education, religious, agricultural, labor, cooperative, and similar nonprofit making associations, seeking the opportunity of adding to the cultural, and scientific knowledge of those who listen in on radio broadcasts, all existing licenses issued by the Federal Radio Commission, and, any and all rights of any nature contained therein, are declared null and void 90 days following the effective date of this act, anything contained in this act to the contrary notwithstanding.

Section 301 (b): The communications commission, herein created, shall, prior to 90 days following the effective date of this act, reallocate all frequencies, wave lengths, power, and time assignments within its jurisdiction among the citizens of the five zones herein referred to.

Section 301 (c): The commission shall reserve and allocate only to educational, religious, agricultural, labor, cooperative, and similar nonprofit-making associations one fourth of all the radio broadcasting facilities, within its jurisdiction, excepting those facilities issued to ships and to the use of the United States Government departments or agencies. The facilities reserved for and/or allocated to educational, religious, agricultural, labor, cooperative, and similar nonprofit-making associations shall be equally desirable as those assigned to profit-making persons, firms, or corporations. In the distribution of radio facilities, to the associations referred to in this section, the commission shall reserve for and allocate to such associations such radio broadcasting facilities as will reasonably make possible the operation of such stations on a self-sustaining basis.

Senator COUZENS. If I undertand it, then, Father, you are willing to assign three quarters of it to capital?

Father HARNEY. To commercial undertakings.

I might add that in speaking for the Paulist Fathers I would like to put it on the record that if any of the holders of licenses under this act wish to give up their facilities, to cease operation, the license and all privileges connected with it shall revert to the communications commission, to be disposed of as they see fit; that it shall not

be the subject of barter or exchange but shall be reserved indefinitely, permanently, for associations that are carrying on this cultural work.

The CHAIRMAN. Is that all of the amendment?

Senator COUZENS. There is one feature in there that I am not quite clear about. You are willing to have these licensees charge you a rate which is self-supporting? Is that what I understand you to mean?

Father HARNEY. No; these licensees should be able to sell some of their time so as to obtain enough to live on; not to make a profit, but enough to support themselves, so they will not be dependent on charity all the while and will not have to be beggars.

Senator COUZENS. Do I understand that all of these agencies, labor, cooperative, religious and all, are to go on the air free or to pay a rate?

Father HARNEY. To have their own transmission facilities.

Senator COUZENS. But you do not want them—you want them exclusive stations, then?

Father HARNEY. To have stations allocated to these various organizations.

Senator LONG. In other words, they will erect their own facilities to do the work, but you just want a fourth of the air waves?

The CHAIRMAN. They want 25 percent of the radio facilities?

Senator COUZENS. You do not want any right in the law to go on a commercial station then out among the other three quarters of the stations?

Father HARNEY. To transfer this license?

Senator COUZENS. No; what I am asking is, you do not want any right written into the law to go on to any station that is a commercial station, among the other three quarters of the stations?

Father HARNEY. To sell or transfer the license?

Senator COUZENS. What I am asking you is, you do not want any right written into the law to go to any station that is a commercial station among the other three quarters of the stations?

Father HARNEY. No; not that they would be obliged to—let them have their time and sell it, and if we want to go on, demand pay, whatever seems to them adequate.

Senator HATFIELD. Do you direct the station, your organization?

Father HARNEY. We own, direct, and in every way control Station WOWL.

Senator HATFIELD. Have you been having difficulty?

Father HARNEY. Difficulties? From the beginning.

Senator LONG. What kind of difficulties?

Father HARNEY. Well, I have here, if the chairman and the committee will permit me to read it, a brief statement of those difficulties.

The CHAIRMAN. Well, I told the Father that I did not want him to go into the fight that he has had before the Radio Commission and present his side of that fight, or we would have to hear the other side, and I am anxious to avoid getting into the fights between radio stations in these hearings.

Senator LONG. Well, Mr. Chairman, I appreciate your view on that. I know that in the interest of time it is very vital, but if it is not too long and the Father will state just what has been the discrimination—is your statement very long?

Father HARNEY. If I am not interrupted I will certainly finish in less than 15 minutes.

The CHAIRMAN. The point is this: It is not the length of time, but the point is that if we hear one side of this fight we have got to hear the other side, and I want to avoid that. I want to ask some questions, though, about this amendment.

If I get it clearly, you want to divide 75 percent commercial and 25 percent for the institutions, for the use of such organizations as you have mentioned?

Father HARNEY. Yes.

The CHAIRMAN. Now, have you anything in your amendment that divides between educational, religious, labor, the 25 percent?

Father HARNEY. No.

The CHAIRMAN. You leave that to the Commission to determine?

Father HARNEY. I leave that to the Commission.

The CHAIRMAN. And yet you want them also to have the privilege to go on, commercial or use commercial programs sufficient to pay the expenses of operation?

Father HARNEY. Exactly.

The CHAIRMAN. I wanted to get that clear.

Senator LONG. Mr. Chairman, is it not pretty necessary to know just what have been the abuses under the old law, so that we may know whether we ought to enact this legislation or not? I brought up a case myself the other day.

The CHAIRMAN. That is just the trouble. Every Senator here has something to bring up.

Senator COUZENS. May I suggest, Senator, that we have the Commission tell us that in executive session, without getting into an open row here?

The CHAIRMAN. The reason I have taken this position is because I have had a dozen different people come to me and say: "We want to tell what is the matter with the Radio Commission in our station", and I have objected to that, because if we heard one side we would have to hear the other side, and I did not want to make this a trial court of the Commission.

Senator HATFIELD. However, it seems to me, Mr. Chairman, that the Father ought to have an opportunity to give some justification for this amendment.

The CHAIRMAN. I am perfectly willing that he should, but I just did not want him to go into the fights before the Commission.

Senator THOMPSON. May I suggest this, that the Father be permitted to put in his statement, file it with us and say nothing more about it; if the other side wants to file a statement, let them file it; if we want to read it we can read it and get rid of it.

The CHAIRMAN. I am willing to do that, but if the Father wants to discuss this matter of leasing time, I would be glad to hear it.

Senator HATFIELD. Justifying his position.

The CHAIRMAN. Yes.

Senator HATFIELD. I think that is very important.

Father HARNEY. To sustain my contention that there is need of such positive legislation as we advocate, I must go briefly into the story of WWL, the one radio station with whose vicissitudes I am fairly well acquainted. It will show clearly that our radio station, classed as religious, and not as educational, though it is education in

the highest and most helpful sense, has been the victim of discrimination in favor of purely commercial interests, of whom the one which happens to be now the beneficiary of that discrimination has made an outstanding feature of a program which in spots at least has not been conducive to public convenience, interest, or necessity, but has descended to low levels, and has even polluted the air.

The CHAIRMAN. Now, Father, that is a matter that I do not think we want to take the time of the committee with. If we go into that, the other people will want to reply to it, and it will only open up a fight.

Senator THOMPSON. Have you not got all you want in there when you file your statement, Father?

Father HARNEY. A brief? Absolutely no. I want to tell the whole story. It would require 300 pages instead of 7 or 8.

The CHAIRMAN. Well, Father, can you not tell us what, in general, are the reasons why you think that 25 percent of these services should be set aside? How did you arrive at 25 percent? That is one of the things I should like to hear.

Father HARNEY. Well, it seems to me that education should have—and by "education" I mean all the agencies that contribute to the development, mental development of the people of the United States—should have adequate opportunity to make use of the radio, especially in this country, which spends more money on its educational facilities than upon any other one of its undertakings. The proudest boast of America is the development of its educational system, and yet radio—radio is not at all within the use of these educational activities.

Senator COUZENS. Do you discriminate, Father, between education and proselyting?

Father HARNEY. When I speak of this I want to make the point that I do not understand why religious stations such as ours are classified apart from educational; for I say, and I can defend the assertion, that stations such as ours are educational in the very highest sense of the word.

Senator HATFIELD. How many such stations do you have in your zone, Father?

Father HARNEY. One.

Senator LONG. Mr. Chairman, if you are going to put that into the record, you are going to have to let the other people answer it.

The CHAIRMAN. I think we are getting from the Father now just what we want. We are getting his reasons for this.

Senator LONG. If that is so, it does not look very good. [Laughter.] I am one of these fellows that like to see the facts come out in public.

The CHAIRMAN. There are a lot of things——

Senator COUZENS (interposing). These are going to be put into the record?

Senator LONG. Well, you are going to hear the Radio Commission, then?

The CHAIRMAN. I would much rather get the information from Father Harney's general experience than to take up specific cases.

Senator HATFIELD. Is your station the only one in the zone in which you live?

Father HARNEY. The only one.

Senator LONG. Then that statement is going to be printed in the record?

Father HARNEY. Yes.

The CHAIRMAN. If the Father wants it printed, we will let the other people reply to it.

Father HARNEY. Certainly; I welcome thorough investigation of the whole situation. I can put it briefly, taking our own history, our own experiences, which I think are but typical, although I am not certain of that, because I have not gone into the affairs of any other radio station, and only incidentally have I heard of the affairs of another station of somewhat the same character as ours, WWL, I believe it is, of New Orleans. I feel that stations such as ours have been the object of discrimination in favor of purely commercial ventures which have put on the air programs that no decent man would allow.

The CHAIRMAN. In other words, you think that the element of public interest, the term "public interest", has been decided too much from the viewpoint of popularity of a certain kind instead of the real interests of educational information?

Father HARNEY. Absolutely.

Senator LONG. You are mistaken about WWL, Father. I happen to know that case. My information is that the Commission reported to give WWL that matter, and some grapevine information came that the Commission voted to sustain the examiner's report, by a divided Commission, in favor of WWL. Then information came that it was not the fault of the Commission, that higher authorities ordered the matter into some other channel to meet the necessities of the occasion.

The CHAIRMAN. Let us not put that in the record, because we will have to call the Radio Commission and I do not want to do that.

Senator LONG. I do not see why it would hurt. I think that it got to be such a matter of public knowledge—I happen to come from that country—that it would not hurt anything if it was brought out and fumigated a little. [Laughter.]

The CHAIRMAN. The trouble with this whole matter is that the minute you open up one station fight you have got more. That is why I am trying to keep these hearings down to this bill rather than to go into the fights before the Radio Commission; and since we are going to abolish the Commission I do not quite see where we will get any benefit from an attack on the membership.

Father HARNEY. I am not attacking the membership.

Senator LONG. Not the membership of the Commission, Mr. Chairman. Keeping the membership where they will not be susceptible to some politician coming in. That is a pretty good reason for that.

The CHAIRMAN. Let me ask you another question, Father. Did your station put on anything besides religious and educational programs?

Father HARNEY. Naturally and necessarily.

The CHAIRMAN. You sold time?

Father HARNEY. Very, very little. With 2 hours a day—I can put this—perhaps this much will be permitted: Station WLWL was licensed by the Department of Commerce in 1925 to operate at 5,000

watts on a 1,040 frequency with unlimited time. Today in what position do we find ourselves? We find ourselves reduced to the evening hours of 6 to 8 p.m. on week days, undesirable hours for the kind of work we want to do, because our audience is 75 or 90 percent made up of working people.

Senator COUZENS. Of course, that was accomplished by the influence of the National Broadcasting Co.?

Father HARNEY. Not the National Broadcasting Co., but it was—the apparent liking of the commission was commercial—"oh, yes; income, income. We will do everything we can for you. Religion, education—well, there is a difficulty there."

The CHAIRMAN. This time that was taken from you was given to commercial stations?

Father HARNEY. Absolutely.

The CHAIRMAN. What do you have on Sunday?

Father HARNEY. On Sunday we have 2 hours and a half. We have an hour and a quarter Sunday afternoon, in which we broadcast generally from the Knights of Columbus, and 1¼ hours in the evening, when we broadcast the services from our own church.

The CHAIRMAN. Were you using the full-time period in hours up until midnight each day in the old days?

Father HARNEY. In the old days not any more than any other company did.

The CHAIRMAN. Would you now be able to use full-time period if you had it?

Father HARNEY. We think we could.

Senator HATFIELD. You say your average is 2 hours?

Father HARNEY. We have 15½ hours a week, and the commercial station which shares that frequency with us has the balance of the time.

Senator LONG. How much is that?

Father HARNEY. It is something like 110½ hours, I believe.

Senator LONG. I think you got a good break.

Father HARNEY. We have?

Senator LONG. Yes.

Father HARNEY. We managed to get 15½ hours.

Senator LONG. They put ours out altogether down there. [Laughter.]

Father HARNEY. Well, we extend you our commiseration, but we do not want to be put in your position, and that is what we are confronted with.

Senator LONG. You will be in our position soon. You are growing to it.

Father HARNEY. If we do not get justice, and that, of course, we are not asking the committee to give to us, but we are hoping to get it some day from some communications commission.

The CHAIRMAN. I may say this, that in writing the radio law—and Senator White will bear me out in this—we avoided directing the Commission to assign particular radio facilities or any particular percentage of facilities to any particular service, believing that that was a matter that the Commission should determine on the basis of public interest, and I say that I think that was the reason that we did not do it.

Senator WHITE. The Senator remembers that one of the most difficult problems we had to deal with was whether there should be any preferences written into the law with respect to any particular character of service. At the time we were working on the legislation the agricultural land-grant colleges were very insistent that they should have a privileged status. There were various other groups that were just waiting to advance their claims if we gave any recognition to a prior right in anybody. We had to write it in very general terms, vesting discretion in authority in the Radio Commission to make the best distribution they could, or we had to undertake to make an allocation to services in the legislation, which would be rigid and which would be fruitful of interminable discussion here in the legislative body. It was hopeless to try to work it out in the legislation. I quite concur with what the chairman says.

Father HARNEY. May I ask if this information which I have obtained from publication is correct, that when the Radio Act of 1927 was drawn up and the Federal Radio Commission was created, the original draft contained a clause requesting—rather, ordering—the giving of preference to educational stations?

Senator WHITE. No; the original act——

Father HARNEY (interposing). And that one of the Senators said, "Oh, that is not at all necessary, because we can trust the Radio Commission to conserve the interests of these educational and other similar agencies."

Senator WHITE. I think I can answer as to what was in the original draft, and there was no preference given to any group in the law itself. At one time, in an earlier draft which I had presented in the House, I did have a direction that the regulatory body should establish priorities as to character of service, but even that was so controversial that it was eliminated from the final draft, and there was a very clear purpose to give no prior rights or preferential recognition to any group or to any service.

The CHAIRMAN. My memory is not clear whether the bill as finally passed by the Senate contained a preference for educational institutions, but I think it did.

Senator WHITE. You put it in in the Senate and we threw it out in conference.

The CHAIRMAN. That is one of the things on which I did yield to the Senator from Maine. [Laughter.]

Senator LONG. In the case of WLW they used the church to deprive a commercial station. They can use it either way. I do not see how writing it into the law is going to protect it. Is there a provision in this law which says these men cannot be removed for their fixed terms?

The CHAIRMAN. No.

Senator LONG. I am going to propose an amendment of that kind, that these members of this commission cannot be removed when they are appointed.

The CHAIRMAN. Are there any questions of Father Harney?

Father HARNEY. There is a part of this statement, Mr. Chairman, which does not deal with WLWL at all, a general matter.

The CHAIRMAN. I think that should be printed, Father.

Father HARNEY. In confirmation and proof of the contention that the Radio Commission——

Senator LONG (interposing). You are going to offer that for the record?

Father HARNEY. Yes; but I would like to read it.

Senator HATFIELD. Are you going to offer this entire document?

The CHAIRMAN. No; I think not.

Senator LONG. Then give it to me and I will read it on the floor of the Senate. Just leave it out here. I have got a case of my own and I want to have a little comfort. [Laughter.]

Father HARNEY. This will take me no more than a minute and a half.

The CHAIRMAN. All right, Father.

Father HARNEY. In confirmation and proof of my contention that the Radio Commission has consistently discriminated against educational agencies in the allotment of broadcasting facilities, though the development and extension of education is a deep-rooted policy of our people, I wish to submit a summary of a substantially complete and accurate statement of facts made in the January 18, 1934, issue of Education by Radio.

According to this report, there are in the United States 30 stations classified as educational. These stations have assigned to them a total of 817 hours and 40 minutes of broadcasting time each week. That is an average of close on 28 hours a week or 4 hours a day for each station.

Of these educational stations, 5 are on 5 of our 40 clear channels. Together they have 238 hours and 30 minutes of broadcasting time, an average per station of about 48 hours a week, or 6 hours, 45 minutes a day.

The 25 other educational stations which are not on clear channels have a grand total of 579 hours and 10 minutes of broadcasting time, an average for each station of about 23 hours a week, or 3⅓ hours a day.

That may seem to some a goodly allowance for educational institutions; in reality it is beggarly and outrageous. The total quota units of all assignments in the United States are 44.37. Of these educational institutions have but 9.61, less than 2½ percent. Think of that in a country whose proudest boast is its devotion to the cause of education.

The CHAIRMAN. Are there any other questions?

Senator COUZENS. In computing that, do you compute the hour that Father Coughlin has, for instance, Sunday afternoon, and all the stations?

Father HARNEY. No, sir.

Senator LONG. He pays $14,500 a week for it.

Senator COUZENS. I am not concerned about that; I am concerned with the fact that this is an educational hour distributed among all the educational stations which he is hooked up on.

Father HARNEY. Yes, sir; and this computation has nothing to do with educational programs paid or donated on the commercial chain.

Senator COUZENS. That is what I wanted to find out.

Senator LONG. Known as commercial broadcasts.

Senator COUZENS. No; but he buys commercial broadcast stations for educational purposes, so the station is, so far as the public is concerned, used for educational purposes.

The CHAIRMAN. Thank you very much, Father.

We will now hear Mr. Powers, representing the Commercial Telegraphers' Union.

STATEMENT OF FRANK B. POWERS, INTERNATIONAL PRESIDENT COMMERCIAL TELEGRAPHERS' UNION, CHICAGO, ILL.

Mr. POWERS. Mr. Chairman and gentlemen, I appear here as the international president of the Commercial Telegraphers' Union. I have a very brief statement.

Senator HATFIELD. Where do you live, Mr. Powers?

Mr. POWERS. Our headquarters is in Chicago. The employees of telegraph and radio-communication companies for whom this organization speaks are in full accord with the Communications Act of 1934.

Employees have long favored regulation and supervision of communications, in the same manner that railroads have been regulated and supervised by the Interstate Commerce Commission. We believe that if this act had been in force during the past decade much of the difficulties of the telegraph companies due to unfair competition and bad management would have been avoided.

To cite only one example, under this act the communications commission would have been able to prevent the telegraph companies from increasing their plant and equipment investment from $243,358,432 in 1917 to $465,639,421 in 1932.

Senator HATFIELD. Is that additional improvements?

Mr. POWERS. Plant and equipment investment, machines, and new investments.

This tremendous increase, 91.33 percent, represented for the most part the cost of switching from manual to automatic operation, for the total number of miles of wire in service only increased 23.63 percent, from 1,890,245 miles in 1917 to 2,336,976 in 1932.

While this wild spending spree was going on the number of messages handled decreased 19.76 percent, from 158,176,456 in 1917 to 126,915,907 in 1932.

Senator COUZENS. Where did you get those figures?

Mr. POWERS. From the Bureau of Statistics, Electrical Department, reports to the I.C.C.

Even in 1929 the number of messages handled, 209,525,741, an increase of 32.46 percent over 1917, shows that the vast expenditure of money for plant and equipment was an act of bad management, which undoubtedly would have been checked by a communications commission, had it then been in power, through the operation of section 215 of the act now under consideration.

If further evidence is needed of the exceedingly bad management which permitted the expenditure of millions of dollars for so-called "improved machinery", let me add that the cost per message in 1917 was 58½ cents as against 74⅓ cents in 1929. Despite wage cuts of from 25 to 60 percent, the cost per message in 1932 increased to 78.1 cents per message.

When machines were first brought into telegraph offices, they were placed on heavy trunk lines, where the superior speed of the machines and lower wages paid to the operators made costs lower. Later, however, machines were placed on wires with not sufficient

volume to overcome the advantage of speed and lower wage costs. The result was to increase the average cost per message.

In 1932, when volume had decreased considerably from 1929, the cost per message increased proportionately, for by that time nearly 90 percent of all telegrams were being handled by machines.

I think it relevant at this time to inform the committee of one reason why telegraph companies loaded themselves up so extensively with plant and equipment. The American Telephone & Telegraph Co. owns the company which manufactures automatic telegraph printers, formerly known as the "Morkrum-Kleinschmidt Co." The A. T. & T. purchased the Morkrum-Kleinschmidt Co. in 1930 through its subsidiary, the Western Electric.

The A. T. & T. has also been the parent company in control of the Western Union since 1912. It was easy, with that sort of a hook-up, for the A. T. & T. salesmen to sell the Western Union on the idea of more and more machines and increased plant.

Senator WHITE. Did I understand you to say the A. T. & T. controlled the Western Union?

Mr. POWERS. It is generally regard as the parent concern over the Western Union.

Senator WHITE. Well, you say it is "generally regarded." Just what do you mean by that? What knowledge do you have on that?

Mr. POWERS. Most of my knowledge is gained from reading magazines and newspapers; principally through the common banking connections. It is generally understood that the Western Union and the A. T. & T. are Kuhn-Loeb bank controlled.

Senator WHITE. You do not mean they control it through stock ownership?

Mr. POWERS. No.

Senator WHITE. But in an indirect way?

Mr. POWERS. Yes. When the Western Union began printerizing its service in a wholesale manner, the postal officials had to follow suit, or said they had to, in order to "meet competition."

It is still an unsettled question as to whether present-day automatic telegraphy is progress in the industry. The machines of a few years ago, which printed the telegram on a blank, have been replaced by the tape machine. Under the system gummed tape is pasted on the telegraph blank.

Years ago the telegraph companies delivered a complete punctuated and capitalized telegram to their customers. They were not telephoned, mind you. They were delivered. It is quite possible for the machines to transmit capitalized messages by the addition of another unit. The teletypesetter, which sets type by wire, is a 6-unit machine.

The telegram of today, unpunctuated and all caps, on tape which oft-times becomes loosened or falls off, can hardly be called an improvement. Usually, however, the customer is requested to accept the message over the telephone. In other words, he is the receiving operator, without pay.

The communications commission would have authority to inquire as to whether the public was getting its money's worth when it pays for the transmission and delivery of a telegram.

A. T. & T. competition: When the A. T. & T., through its subsidiary, the Western Union, oversold the telegraph companies on ma-

chines and equipment which goes with automatic telegraphy, the A. T. & T. decided to enter the telegraph business itself in direct competition with its best customers. The A. T. & T. installed teletypewriters in any business office which would accept them. The business man guaranteed to do $30 worth of business per month. He pays his own operator.

There has always been a question in our minds as to the right of the A. T. & T. to enter the telegraph business, under its charter. However, here is where the unfair competition comes in. The A. T. & T. with its monopoly in the telephone field, charges a rate of $9 for a 3-minute voice communication from New York to San Francisco, but it charges but $2.40 to its teletypewriter subscribers for a 3-minute record communication between the same points. The same wires and the same supervision can be used for either system. The only difference is that the capital investment for each telephone is about $300 and for each teletypewriter is about $1,000. This $1,000 estimate is based on the selling cost of machines, however, and not on the actual cost to the A. T. & T., which manufactures them through its subsidiary.

It is not likely that the proposed communications commission would permit of any such unfair competition on the part of the A. T. & T.

Some critics of the proposed communications act are contending that a censorship over the public's communications, particularly newspaper dispatches, would be established. I have failed to discover any provision in the proposed act which would give the commission the power to censor telegraphic communications except in time of war.

The only mention of censorship in the entire act is in section 326, which refers to the use of "obscene, indecent, or profane language by means of radio communication."

A distinguished Senator, Senator Schall, of Minnesota, stated in the Senate on March 6, that—

> I fear that Senate bill 2910, to provide for the regulation of interstate and foreign communication by wire or radio, is in harmony with the purpose to centralize authority for control of all press dispatches, all press associations, all transmission of news, and create another Federal bureau to place all interstate communication under the censorship and secrecy ban of a Federal autocracy.

I do not feel that the Senator's fears are grounded on anything which is in the proposed bill.

Senator COUZENS. You do not agree with that?

Mr. POWERS. No. Only in the event of war, as covered by section 606, could such a censorship be put into effect.

Nothing in this act would give the communications commission any more power of censorship over telegraphs and radio than the Interstate Commerce Commission and Federal Radio Commission now has.

The CHAIRMAN. And they do not have any.

Mr. POWERS. In the matter of rates, the telegraph companies have enjoyed the benefits of an increase of telegraph rates which was granted during the war. The purpose of the increase was to meet increased costs of materials and labor. Any benefits that labor might have secured during the war, which were very meager, have

been wiped away since 1930, but the rates remain where they were after the increase.

We believe that the Federal communications commission would have had something to say about why such a large portion of the increase in rates went into plant and equipment, and such a small portion into wages. And if this act is passed, we believe a careful study of rates will be undertaken, in the interests of the public as well as of the employees.

Another phase of telegraph management which the Federal communications commission, had it been in power, would probably have concerned itself about is the number of executives necessary for proper management, together with their salaries. A recent report by the Interstate Commerce Commission shows that the Western Union had 20 executives receiving an average of $21,349.45, an aggregate of $426,989.18, and the Mackay companies had 5 vice presidents receiving an average of $15,491, or an aggregate of $77,458.

The Postal, an affiliate of the Mackay companies, dismissed a number of highly paid executives just prior to this study, which was put out on December 19, 1933. It has been reported to me that a total saving of $400,000 per annum in salaries of executives was made by the shake-up in the Mackay which took place before December 19, 1933. The report adds that—

> This company also has officers who receive less than $10,000 per annum from it but whose aggregate salaries from the company and its affiliates are $10,000 or more.

When public-service institutions are claiming to be too poor to pay a better wage than $3 to $8 per week to messengers and $11 to $15 per week to skilled employees, and continue to charge the public the same rate that prevailed during good times, it would seem that an act such as is here proposed is badly needed.

One more reason why this act should be enacted into law is the need for control of indiscriminate radio broadcasting of market news, which formerly was telegraphed. The work of distributing commodity prices has been almost completely diverted from the telegraph companies, resulting in increased unemployment and no great advantage to the broadcasting concerns. The Government is deprived of its share of the taxes on the diverted telegrams.

We are informed that in small towns throughout the country a storekeeper, housewife, or elevator manager acts as receiving operator for the business interests who desire to receive regular quotations of commodities. For a monthly stipend as low as $5 these agents take regular quotations which formerly went by telegraph.

The CHAIRMAN. Thank you very much, Mr. Powers. I may say for the record, Mr. Powers was anxious to present the reasons why this bill should cover labor organizations of the commercial telegraphers, and I insisted that we could not take labor provisions into consideration in connection with this bill; but when the labor bill comes before us we will be glad to hear them.

Senator WHITE. Mr. Chairman, I have been asked to request that you put on the list of witnesses a Mr. Sidney Brookes.

The CHAIRMAN. Is he here?

Senator WHITE. I do not think he is here this morning.

The CHAIRMAN. I wanted to close the hearings today. Could he send in a statement that we could print in the record?

Senator WHITE. Did you want to close the hearings this morning?

The CHAIRMAN. Yes; I wanted to close them this morning. We have one more witness, who will only take 2 or 3 minutes. If he wants to put in a statement, he may do so.

Senator WHITE. I would not ask you to keep the hearings open.

The CHAIRMAN. What does he represent?

Senator WHITE. I do not know. I know he is engaged in research work.

The CHAIRMAN. I think that material could be printed in the record.

Senator WHITE. I think probably that will be satisfactory.

The CHAIRMAN. We will now hear Mr. Nockels, of the American Federation of Labor.

STATEMENT OF EDWARD N. NOCKELS, LEGISLATIVE REPRESENTATIVE AMERICAN FEDERATION OF LABOR, GLENVILLE, ILL.

Mr. NOCKELS. Mr. Chairman and gentlemen, my name is Edward N. Nockels, legislative representative of the American Federation of Labor. My address is 367 Woodlawn Avenue, Glennville, Ill., a suburb of Chicago. I will just read some extracts from resolutions unanimously adopted by the American Federation of Labor, and also a suggestion in reference to the bill.

(The resolution in full is as follows:)

RESOLUTION UNANIMOUSLY ADOPTED BY THE AMERICAN FEDERATION OF LABOR CONVENTION HELD AT WASHINGTON, D.C., OCTOBER 2 TO 13, 1933, INCLUSIVE

AMERICAN TELEGRAPH & TELEPHONE CO. MONOPOLY

Whereas the American Telephone & Telegraph Co. operates the long-distance communication service in interstate commerce; and

Whereas this company, through stock ownership and contractual relationships, has gained control over these subsidiaries throughout the Bell System, owning over 95 percent of all the local exchange properties in the United States used in the long-distance service; and

Whereas the officials of the American Telephone & Telegraph Co. testified under oath in the Chicago telephone litigation during the last year that its long-distance rates have been and are now established on the basis that they do not cover compensation by the user of such service for his use of the local-exchange properties of the local telephone companies in the Bell System; and

Whereas the same officials testified under oath also that by understanding with its subsidiary companies, the American Telephone & Telegraph Co. never has compensated its subsidiary companies for the use by it and by its long-distance customers of these local-exchange properties in its long-distance service; and

Whereas the same officials testified under oath also that by the same understanding the subsidiary companies of the Bell System always have so established the local-exchange service rates in every community in the United States that the local-service customers compensate such companies for the uses in the long-distance service of the American Telephone & Telegraph Co. of their local exchange properties, even though only a small percentage of such local-service customers ever use long-distance service and even though a large portion of the local-service customers never have, never will, and never desire to use such long-distance service; and

Whereas this practice of the American Telephone & Telegraph Co. burdens the laborer, the farmer, the widow, and orphan in every community of the United States using the local service for the benefit and unjust enrichment of the American Telephone & Telegraph Co.; and

Whereas during the period beginning with 1919 to 1933 the subsidiary companies of the Bell System have consistently claimed before State commissions and courts that the revenues for local-exchange service have been inadequate and confiscatory and on the basis of these claims have procured substantial increases in local exchange service rates in every community in the Bell System and have secured injunctions in Federal courts preventing reductions in such rates; and

Whereas during the same period the American Telephone & Telegraph Co. has made four substantial reductions in the long-distance rates and still earned on its investment in that service grossly unreasonable profits ranging from 15 percent to 30 percent each year; and

Whereas prior to 1933 neither the subsidiary companies nor the American Telephone & Telegraph Co. ever disclosed the facts regarding the understanding between them to have the local exchange customers and not the American Telephone & Telegraph Co.'s customers pay the expenses of the operations of the local properties in its long-distance service; and

Whereas this burden imposed on the local service rates by the American Telephone & Telegraph Co. has been largely responsible for the increase in local-exchange service rates since 1919, and has prevented the reduction in such rates in spite of the fact that during this period the subsidiary companies have reduced wages and discharged employees; and

Whereas the long-distance service and this understanding between the American Telephone & Telegraph Co. and its subsidiary companies are matters of interstate commerce over which the State legislatures, courts, and commissions have no jurisdiction, and over which Congress has jurisdicton; and

Whereas in addition to the long-distance communication service the American Telephone & Telegraph Co. also operates and makes use of the local-exchange properties of its subsidiaries for telegraph and radio-broadcasting services, without compensating the subsidiary companies therefor, and burdens the local exchange service rates therewith; and

Whereas the rates for long-distance message communication, for telegraph, and for radio broadcasting, have never in fact been investigated or regulated by the Interstate Commerce Commission to make such investigation and regulation; and

Whereas the continuation of the practices of the American Telephone & Telegraph Co. and of its subsidiaries discriminates primarily against the working people in favor of big business who use the long-distance and telegraph service and in favor of the American Telephone & Telegraph Co.; and

Whereas the American Telephone & Telegraph Co. has charged to its subsidiary companies and their local exchange subscribers over $50,000,000 since 1920 to cover its expenses of developing patents and inventions which have found their usefulness mostly in its own long-distance message communications, telegraph, and radio-broadcasting services, which have also been exploited through the Electrical Research Products Inc., its subsidiary, outside the telephone communication field in talking motion pictures covering 90 percent of that industry in the United States and abroad, and which have also been exploited through the Western Electric Co., its subsidiary, and by other licensed manufacturers outside the Bell System in the United States and Canada and abroad; and

Whereas the American Telephone and Telegraph Co. and its subsidiaries have received in royalties and special compensation over $50,000,000 for the use of such inventions outside the Bell System and will be entitled to additional royalties and compensation for many years hereafter; and

Whereas the American Telephone & Telegraph Co. has never accounted to its subsidiaries for any of these profits made by it, although they paid for all the expenses incurred to create these inventions from which the profits were derived; and

Whereas the operations of the American Telephone & Telegraph Co. covering the use of these inventions involves interstate and foreign commerce beyond the jurisdiction of the State legislatures, courts, and commissions, but within the jurisdiction of Congress; and

Whereas it is impossible, as a practical matter, for any single community or agency other than Congress to make a complete investigation of the affairs of the American Telephone & Telegraph Co. in its relation to its subsidiaries; and

Whereas the employees of the Bell System and the working class in every community in the United States, who are the principal sufferers from these

exploitations by the American Telephone & Telegraph Co. of its subsidiaries for its own unjust enrichment, have challenged public attention, resulting in a demand from all quarters for a Congressional investigation of the Bell System; be it

Resolved, That it is the consensus of opinion of the American Federation of Labor that the American Telephone & Telegraph Co. and associated companies be subjected to the closest public scrutiny by means of a congressional investigation of inclusive scope, and the necessary congressional legislation be enacted to prevent the abuses and impositions on the public by the operations of the American Telephone & Telegraph Co.; and be it further

Resolved, That the securing of such investigation by Congress and the passage of such legislation be made part of the major legislative program of the American Federation of Labor.

Then I have a suggestion to offer.

The CHAIRMAN. Mr. Gifford's strenuous opposition to some of the provisions of this bill has resulted in so much information being given me in the last few days as to what the subsidiaries are doing and as to the way the funds of the American Telephone & Telegraph Co. have been used that I am preparing a resolution to provide for an investigation of the American Telephone & Telegraph Co., either by this committee or a subcommittee. I am inclined to think that it will be a good thing for this country to have the full facts about this organization.

Mr. NOCKELS. Correct; and here is a suggestion we wish to offer:

The definition of exchange and toll services and section 221 (b) preclude the Federal regulation of charges for the use of local exchange facilities in long-distance service, although they are an integral part thereof and constitute interstate commerce. State commissions could only regulate such charges to the extent of making local subscribers absorb the expense thereof. The Bell System claimed in pending Chicago litigation that by custom local subscribers do absorb such expense in all communities, excepting New York. Should State commissions refuse to permit local subscribers to pay such charges, the result will be that charges for such use, constituting a large portion of the long-distance uses of facilities, will be beyond State or Federal regulation and will permit the carrier to make private arrangements covering such charge and by so doing destroy the effect of Federal regulation of the balance of the long-distance charge. This bill should be changed to provide that charges for interstate communication should be under Federal regulation, including the use of all facilities used therein. Such practice would correspond to the present railroad regulation. The proposed bill takes away from Federal regulation a large portion of the present power of Interstate Commerce Commission over the entire charge for interstate calls, as stated in *Smith* v. *Illinois Bell*, decided by the Supreme Court in 1930.

Senator HATFIELD. In other words, what you are discussing there is the facilities arrangement between the Bell and independent telephone companies. Is that right?

The CHAIRMAN. If there are no further questions, we thank you, Mr. Nockels.

Senator WHITE. Mr. Chairman, I would like the privilege of inserting in the record, if I can ever get it prepared, the amendment which I gave notice I would offer.

The CHAIRMAN. If you can get it prepared this week, because we would like to get the record printed. But this will close the hearing.

Senator WHITE. I will not ask that the record be held up.

The CHAIRMAN. I would like to get this matter in the hands of the printer this week, if we can.

I want to insert at this point the supplementary report of the Interstate Commerce Commission to which Commissioner McManamy referred. It contains many valuable suggestions for changes in the bill.

Also a letter from Mr. Luther C. Steward, of the National Federation of Federal Employees, requesting that inspectors be kept in the Civil Service.

(The report and letter referred to are as follows:)

INTERSTATE COMMERCE COMMISSION,
Washington, March 16, 1934.

Hon. C. C. DILL,
Chairman Committee on Interstate Commerce,
United States Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: The detailed study of S. 2910, creating the Federal Communications Commission, to which I referred in my statement before your committee, has now been completed, and I am authorized to make the following report in behalf of our legislative committee.

To a large extent the provisions of titles I, II, IV, V, and VI of the bill reflect adaptation of provisions of the Interstate Commerce Act to the subject matter of the bill. Provisions of a number of related acts also would be given application to communications, either by repeating or making reference to the provision of those acts. Particular attention has, therefore, been given to determining whether any of the changes in language made in such adaptation will weaken those provisions or make them in any way unworkable in respect of the carriers and services subject to the bill.

As shown later in detail, some changes in language will effect a change in the application or meaning of the present law. Modification of some of those changes undoubtedly will be necessary. On the other hand, it is by no means certain that some of the changes do not represent an underlying intent of your committee to bring about such different construction. The impossibility of determining that fact from the bill, and our desire to aid in every possible way in perfecting the details of the bill, suggest the advisability of calling all changes to your attention. There can then be no oversight, and no unintended consequences. We include also reference to a few minor typographical and clerical matters. For the sake of brevity the Interstate Commerce Act is referred to as the I.C. Act.

In determining the nature and effect of the changes, the scope of the bill as compared with the scope of the I.C. Act and related acts was first ascertained, and all similar provisions were carefully compared. This check discloses that of the acts administered by this Commission all provisions now applicable to communications are embraced in the bill, and that the bill also includes a number of provisions now applicable only to transportation. Transportation provisions of the I.C. Act which would thus be extended to communications are listed below:

Section of I.C. Act	Description of subject	Corresponding section of bill
1(4)	Duty to furnish transportation and establish through routes	201(a).
1(6)	Reasonable classifications, regulations, practices, etc., required	201(b).
1(18)-1(22)	Convenience and necessity certificates for construction or abandonment required.	214.
6	Filing and observance of schedules of charges	203.
15(7)	Investigation and suspension of proposed changes in charges	204.
20(a) (12)	Interlocking directorates	211.
23	Mandamus to compel movement of traffic	406.

Of the remaining provisions of the I.C. Act confined to transportation and not embraced by the bill, special mention should be made of sections 1 (9) and 15 (3), (4), (6), and (8). Section 1 (9) imposes upon rail lines the duty

to establish switch connections. There is no duty under the bill to establish physical connection between communication lines. Questions relating to such physical connections arose in *Okla.-Ark. Teleph. Co.* v. *Southwestern Bell Teleph. Co.* (183 I.C.C. 771). We merely mention the matter for your consideration and do not recommend that such a provision be included in the bill. The paragraphs of section 15 bear upon through routes and are considered in connection with section 201 of the bill.

Because the bill is so largely patterned after the I.C. Act, there should not be the same need for court test of its provisions as is usually true of new legislation. On the other hand, the mere fact that any unnecessary change has been made is apt to lead to a conclusion by the courts that a different construction of the new provision is intended. Mere rearrangement of existing provisions would not, of course, necessarily bring about that result, and, generally speaking, little attention has been given to the order in which the provisions are set forth in the bill. But where there is any departure from the language of the acts which could open the doors to a different construction, our recommendations have been influenced by the thought that such possibility should not be permitted, unless clearly intended. Detailed consideration follows the arrangement of the bill.

TITLE I. GENERAL PROVISIONS

In the I.C. Act the carriers, transportation and transmission, and territory to which it applies are stated in section 1 (1) and (2), except that reference to section 1 (3) containing definitions is necessary. Section 2 of the bill shows the persons, communications and transmission, and certain of the territory to which it applies. It is not as clear-cut and specific as the act. Not only is reference to the definitions in section 3 necessary in respect of the meaning of various terms, but reference to that section and to section 210, in an entirely different title of the bill, is necessary in respect of territorial application. Whatever may be said of sections 2 and 3 as to this feature, it is clearly more logical to include in the statement of the application of the bill the restriction in section 210 of its nonapplication to intrastate carriers and communication.

Section 3. The definition of "interstate" differs in an essential particular from the meaning of "interstate" under the I.C. Act. The act applies to transmission from any place in the United States through a foreign country to any other place in the United States. The bill also applies to such transmission but only when the points in the United States are not in the same State. Such transmission between points in the same State is not, of course, intrastate, and unless the bill be modified, would not be subject to either Federal or State regulation.

The I.C. Act applies to telegraph, telephone, and cable companies operating by wire or wireless and "transmission" includes the transmission of intelligence through the application of electrical energy or other use of electricity, whether by means of wire, cable, radio apparatus, or other wire or wireless conductors or appliances, and all instrumentalities and facilities for and services in connection with the receipt, forwarding, and delivery of messages, communications, or other intelligence so transmitted, collectively called messages. Under the bill, "communication" is the transmission of writing, signs, signatures, pictures, and sounds of all kind by aid of wire, cable, or other like connection or by radio, and, as does "transmission of energy by radio," includes all instrumentalities, facilities, and services incidental to such transmission. Nowhere in these provisions of the bill is the word "telephone" used nor is the word "services" defined. Perhaps the words "sounds of all kinds" sufficiently designates "telephones," and perhaps the word "services" is in itself sufficient to connote "receipt, forwarding, and delivery of massages" etc. It seems preferable, however, that matters of such importance should not be left to the necessity for construction, but should be as definitely stated in the bill as they are now in the act.

The word "messages" is used in several places in the bill, notably in section 201 repeating the provision of section 1 (5) of the I.C. Act for classification of messages. Either the word "messages" wherever used should be changed to "communication," or "messages" should be defined in this section.

The definition of "person" might include "firm"; and as the succeeding definition of "corporation" includes "joint-stock company" and "association", the last two can be omitted from the definition of "person." In this connection it is noted that under section 2 the bill applies to "persons" whereas the Inter-

state Commerce Act applies to "common carriers." The definition of "common carrier" in the bill includes "persons" but the definition of "person" does not include "common carrier." Both terms are used throughout the bill and care must be exercised to prevent any consequent confusion.

The limitation of "land station" to one "used for radio communication with mobile stations" seems questionable.

The word "charges" is defined in paragraph (b) of section 202. Paragraph (*a*) of that section prohibits discrimination and preference in charges but is by no means the only paragraph of the bill relating to charges. Inclusion of that definition in this section seems preferable.

Section 4: The numerous provisions relating to the organization and functions of the Commission are similar to sections 11, 14 (2), 14 (3), 17 (1) (in part), 18 (in part), 19 (in part), 20 (5) (in part), 20 (10) (in part), 21, and 24 of the Interstate Commerce Act. The remaining portions of sections 17 (1), 18, 19, and 20 are covered by other sections (220 and 409) of the bill.

Presumably paragraph (i) of the section is intended to cover the same ground as the following provision in section 17 (1) of the Interstate Commerce Act:

"The Commission may, from time to time, make or amend such general rules or orders as may be requiiste for the order and regulation of proceedings before it, or before any division of the Commission, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States."

This is the specific provision under which this Commission prescribes its rules of practice and the forms of pleadings before it. Paragraph (i) is more general in terms and may be sufficiently broad in scope to cover rules of practice and forms of pleading. Those matters are of such importance, however, that the question of the Commission's authority should not be left in doubt. The paragraph should be modified accordingly.

In paragraph (j) the words "or any division thereof" appearing in section 17 (1) of the Intersate Commerce Act have been omitted after the word "Commission" in line 26, sheet 10, and line 1, sheet 11. Despite the provisions of section 5 (c) of the bill, which is very largely the same as section 17 (4) of the Interstate Commerce Act, these words should be retained in paragraph (j). Their retention will not affect the length of the bill and will obviate any possibility of controversy.

In connection with paragraph (f) authorizing numerous appointments of personnel without regard to the civil-service laws or the Classification Act of 1923, it may not be amiss to point out that practically without exception positions in our organization are filed either by direct appointment from civil-service registers or by promotion of those within the ranks as training and experience enable assumption and satisfactory performance of higher-grade duties. Years ago, some of the higher-grade positions were filled without reference to civil-service laws, but we have since found that voluntary arrangements made with the Civil Service Commission for establishment of registers covering such positions have worked extremely well.

Section 5: In the last analysis this section must reflect the policy of Congress in respect of divisions of the Commission, rather than a close adherence to similar provisions in section 17 of the I.C. Act, but there are several features upon which comment may be helpful.

Authority for the creation of divisions within this Commission was first granted in 1917 pursuant to our specific recommendation. Unlike the bill, we were left free to establish such divisions as were found necessary. Several permanent divisions have been established to which the Commission has assigned administration of designated provisions of the I.C. Act. As occasion required, the number of divisions, the personnel, and the nature of the duties of each have been changed by the Commission, and from time to time special divisions have been created for the purpose of handling specifically assigned subjects. For example, the taking of testimony in some of the large rate cases has been before a specially constituted division. The volume of work in respect of telephone, telegraph, cable, and radio matters has not necessitated the creation of a division to handle those matters. Whether the volume of work in respect of any of these subjects, following the enactment of the bill, would require special divisions for each of the branches of communication seems highly conjectural. Moreover, specification of the divisions of the Communications Commission might well impose upon the entire body an irksome detailed burden of numerous minor duties in respect of other subjects which

could better be handled by a division, and might give to the divisions, instead of the Commission, the important task of formulating the policies and determining upon the construction of the bill in respect of major subjects.

This last contingency seems likely from the provisions of the bill. Paragraph (a) provides that the divisions shall exercise "the jurisdiction of the Commission" over radio, telephone, and telegraph matters. Paragraph (b) provides that the Commission shall have jurisdiction of all matters "which do not fall within the jurisdiction of a division." Provision is subsequently made in the bill for rehearings by the Commission of decisions of the divisions, but it would be the divisions and not the Commission which would have primary jurisdiction. In practice, this Commission has found it better to act itself on novel questions, laying down general principles for guidance of the divisions in deciding subsequent like matters.

The incongruity between paragraphs (a) and (b) is intensified by the provisions of paragraph (c), which is taken largely from section 17 (4) of the I.C. Act. Under paragraph (c), the divisions shall have as to any matter under their jurisdiction "all the jurisdiction and powers conferred by law upon the Commission." But as just pointed out the Commission has only a rehearing jurisdiction over radio, telephone, and telegraph matters. There is no provision in the bill similar to section 17 (5) of the I.C. Act that nothing in the section shall be deemed to divest the Commission of any of its powers.

We believe that there would be less trouble for the communications commission and less need for subsequent legislative action, if this section were modified so as to follow section 17 of the I.C. Act more closely. This would be especially true if it were decided that the volume of work requires a lesser number of commissioners than the seven proposed to be appointed. Indeed, creation of any divisions might then be entirely unnecessary at the present time. Of course, the specific provisions of the bill restricting the membership of the divisions could be retained, if desired. We express no opinion on that question, merely pointing out that such restrictions have never been considered in the creation or functioning of our divisions.

TITLE II—COMMON CARRIERS

SEC. 201. Paragraph (a) is an adaptation to communication companies of the provisions of section 1 (4) of the I.C. Act imposing upon transportation companies the duty to furnish transportation service and to establish through routes.

Under the act the charges applicable over the through routes must be "just and reasonable" and the facilities and the rules and regulations in respect of the operation of such routes must be "reasonable." These words have been omitted from the bill. Of course, under paragraph (b), all charges, regulations, etc., must be just and reasonable, and like requirement in (a) would seem to duplicate (b). But that is not true of facilities, which are not mentioned in (b). Furthermore, the act also contains the seemingly duplicative provisions, and that fact alone suggests the advisability of inserting the words here. There can then be no possibility of a different construction of the provision, and no ground for contention that a different construction is intended.

Read literally, the bill imposes no duty upon the carriers to establish through routes prior to determination and order by the Commission. The requirement reads: "in accordance with the orders of the Commission * * * in cases where the Commission * * * finds such action necessary or desirable in the public interest." The carrier's duty should be separate from the Commission's power to require observance of the duty or to prescribe the governing rule when the carrier fails to perform its duty. The power of the Commission in respect of through routes is found in section 15 (3) and (4) of the I.C. Act. That power is directly and specifically conferred. This paragraph is the only provision of the bill dealing with through routes and it confers power upon the communications commission only inferentially. That course is dangerous.

Concomitantly with the duty to establish through routes and through rates, section 1 (4) of the I.C. Act also requires the establishment of divisions of joint rates, and section 15 (6) gives this Commission power to fix such divisions. Probably similar provision should be made here.

Section 15 (8) of the I.C. Act also confers upon the shipper the right to route his traffic when there are two or more through routes and through rates between the same points in which the originating carrier participates. Whether a similar right should be conferred in connection with the through routes for communications might be considered.

Paragraph (b) of the bill is very similar to section 1 (5) of the I.C. Act requiring all charges to be just and reasonable, except that it embraces classifications, regulations, and practices, which are covered by section 1 (6) of the act, applicable only to transportation. The broadening of the bill in this respect is essential for effective administration.

The inclusion of the proviso relating to exchange of services requires some modification. Carriers subject to the I.C. Act are precluded from granting free transportation except as specifically provided, and may not accept anything other than money in the payment of their charges. The provision constituted an exception to those provisions. The bill should, and probably will, receive the same construction as the act insofar as payment of charges in money is concerned and the proviso would be sufficient to constitute an exception to that requirement. But under the bill, it would be repealed from the I.C. Act and the proviso as carried in the bill would be insufficient to offset the application of those prohibitions of the act to dealings between transportation and communication companies.

The situation can only be met by permitting the exchange of services notwithstanding the provisions of both the I.C. Act and the bill. As the bill is broader than the act for the reason that it authorizes exchange of services with any common carrier—air lines, water lines, and motor lines as well as rail lines—it is suggested that the proviso in the bill be changed to read somewhat as shown below and that the provision be not repealed from the I.C. Act:

"* * * *Provided further*, That in addition to the exchange of services and passes or franks permitted by the Interstate Commerce Act, a common carrier subject to this Act may contract with any common carrier not subject to the Interstate Commerce Act for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interests."

The reference to "passes or franks" in this suggested provision is based upon the following proviso of section 1 (7) of the I.C. Act which has not been included in the bill:

"* * * *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees, and their families of other common carriers subject to the provisions of this Act."

Section 202: There is here such an intermingling of the provisions of sections 2 and 3 (1) of the I.C. Act that it is futile to attempt any determination of the possible effect of the bill. The decisions of the Supreme Court are filled with statements that abolition of discrimination, whatever its form was the heart of the original act to regulate commerce. There are by no means as many findings under section 2 as under section 3 (1), but the issue of unjust discrimination under section 2 is frequently presented to this Commission in respect of transportation matters, and the section stands as a public protection. The length of the bill would not be appreciably affected if the provisions of the act were used almost verbatim, and we see no reason why that course should not be followed.

Section 203: The provisions of section 6 of the I.C. Act relating to the filing, use of, and observance of schedules of charges for transportation are here extended to communications, as they must be if the purposes of the bill are to be fully accomplished.

Three provisions of the act have been omitted from the bill: Paragraph (4), requiring that in joint tariffs the participating carriers be specified, and providing for the filing of concurrences; paragraph (11), relating to quotation of rates for transportation; and paragraph (12), providing for posting of the name of the rail carrier's station agent. The application of paragraphs (11) and (12) to transmission and transmission companies is probably highly conjectural, but the provisions of paragraph (4) cannot be omitted without weakening and making unworkable the provisions for establishment of through routes and through rates, and publication of the schedules relating thereto.

Four matters in paragraph (a) should be mentioned:

1. Change of the word "route" in line 10, sheet 16, to "system" would conform with like change in the language of the I.C. Act made in two places in line 11.

2. The I.C. Act contains elaborate provisions for publication of charges over through routes. The bill attempts to shorten these to the clause "whether such charges are joint or separate." This is indefinite, and something like

the following, in lieu of the clause quoted, might better serve to attain the ends desired: "When a through route has been established whether the charges applicable over such through route are jointly or separately established."

3. Insertion of the words "from time to time" after "Commission" in line 17 would follow the language of the I.C. Act and would remove any doubt concerning the right of the Commission to change these regulations after once prescribing them.

4. The schedules required are those showing charges for wire or radio communication. That may be the intent, but, as the bill applies to transmission of energy by radio as well, the present limitation may be an oversight.

The limitation of paragraph (c) to communication also may be an oversight. The use of "schedules" in line 6, sheet 17, instead of the words "the charges applicable thereto" appearing in the act, is vague and may prove to be the sources of controversy. The words "and regulations made thereunder" in lines 7 and 8 would be less awkward and clearly unambiguous, if changed to read, "and with the regulations made thereunder." The words "by any means or device" in line 13, read "in any manner or by any device" in the I. C. Act. As the provision would be enforced through proceedings for collection of forfeiture or penalty for violation thereof, and would thus be strictly construed, it may be better to obviate any possibility of an unintended consequence by using the words of the act.

Paragraph (d) authorizing the Commission to reject any schedule which does not comply with the section or any of the Commission's regulations, goes much beyond the present provision of the I. C. Act authorizing rejection because of failure to state an effective date. Whether a given schedule does or does not comply with the section or a regulation thereunder might well be a controversial matter concerning which the carriers would be entitled to a hearing. The failure of the bill to provide such hearing might prove unconstitutional. Apart from this, it is unnecessary to broaden the provision as proposed. The next section of the bill confers power to suspend and investigate any proposed charges, or changes in charges, and that power should serve equally as well as the power of absolute rejection in all cases except the failure of the schedules to state an effective date. The act should be followed in this provision.

Paragraph (e) fixes the penalty for failure to comply with the section or the Commission's regulations or orders thereunder. The corresponding provision of the I.C. Act is limited to the regulations and orders. Violation of the section is punishable under the general penalty provision of section 10 (1), and is subject to a maximum fine of $5,000—a heavier penalty than that provided by the bill. Such heavier penalty may be necessary to bring about compliance with this section of the bill.

Section 204: Suspension and investigation of proposed charges or changes in charges is here provided by adaptation of the provisions pertaining to transportation charges in section 15 (7) of the I.C. Act. The important differences between the two provisions are shown in the following quotation, in which the provisions of the I.C. Act deleted from the bill are in black brackets and the new matter inserted is italic:

"* * * the Commission * * * *may* either upon complaint or upon its own initiative without complaint, [at once, if it so orders without answer or other formal pleading by the interested carrier or carriers, but] upon reasonable notice, * * * enter upon a hearing * * * and * * * may [from time to time] suspend the operation of such * * * charge * * * [and defer the use of such rate, fare, charge, classification, regulation, or practice,] but not for a longer period than [seven] *three* months * * * and after full hearing, [whether completed before or after the * * * charge * * * goes into effect], the Commission may make such order * * *.

Every one of these changes is apt to interfere with the effective administration of the bill. A 3-month period of suspension has proved impracticable in the administration of the I.C. Act and unquestionably would be found impracticable under the bill. The provision for entry of accounting orders does not meet the situation. Such orders are likewise provided by the I.C. Act, yet the latter permits a 7-month suspension period. Moreover, it is not clear that an accounting order can satisfactorily be used in connection with charges for communications. The length of the bill will not be appreciably increased if the language of the act be followed closely, and that course would preclude any possibility of a weaker provision in the bill than now applies to transportation.

Section 205. In authorizing the Commission to prescribe just and reasonable charges, etc., the bill has made important changes in section 15 (1) of the I.C. Act, as follows:

First. The words "made as provided in section 13 of this act" are omitted after the word "complaint" in line 19, sheet 19.

Second. The words "either in extension of any pending complaint or without any complaint whatever" are omitted after the word "initiative" in line 20.

Third. The references to "individual or joint" charges, classifications, etc., are dropped.

Fourth. Requirements in respect of maximum or minimum charges are dropped.

Fifth. While the cease and desist part of the section relates to any charge, the future part relates to any charge "for such transmission." Transmission is not defined in the bill, and it is generally used in connection with radio energy.

Little more than the mere statement of the changes is required to demonstrate the weakening of the present provision which would be effected by the bill. This is one of the most important sections, and such questions as the power of the Commission to prescribe future charges for communications should not rest upon chance when they can readily be resolved by the bill itself.

Section 207: This provision for the recovery of damages, taken from section 9 of the I.C. Act, has generally been designated in interstate commerce parlance as "election of forum for recovery of damages." In view of the omission of the words "and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt", and of the change suggested in the title of the next section, that title is preferable to the title proposed in the bill.

Section 208: This section is taken largely from section 13 (1) of the I.C. Act; although the reference to State commissions is taken from section 13 (2) of that act. The provision of section 13 (1) for proceedings on the Commission's own motion has been carried into section 403 of the bill.

The designation of the section as "Reparation Proceedings" weakens the provision and may affect the smooth working of the whole bill. There is no separate provision for the making of complaints seeking correction of unlawful charges, etc., for the future, and this provision is not now limited to complaints for reparation. It is suggested that the section be entitled: "Complaints to the Commission."

The principal changes occur in the first sentence and are shown below (deleted matter in black brackets and new matter in italic):

* * * any persons, [firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization], or any body politic or municipal organization, [or any common carrier], *or State commission or the similar agency of any Territory*, complaining * * *

In view of the definition of "person" in section 3 of the bill, the omission of "firm, corporation, company, or association" is of no importance. The omission of "any mercantile, agricultural, or manufacturing society or other organization" and of "any common carrier", however, may not be without effect. There have been cases before this Commission in which the right of a mercantile society to complain has been questioned, and there have been numerous instances of complaint by one carrier against another. The bill cannot leave the right of such parties to complain in doubt, without weakening the present provision.

Change has also been made in the second sentence of the section, which relieves a carrier making reparation "for the injury alleged to have been done" for liability "only for the particular violation of law thus complained of." The first clause has been changed to read "for *any* injury alleged to have been *caused*"; and the second, to "only for *this* violation of law thus complained of." The substitution of "any injury" for "the injury" is especially open to question. The act specifically ties "the" injury to the complaint. The use of "any" tends to ambiguity. It is safer to use the words of the act.

Sec. 211. The filing of contracts required by section 6 (5) of the I.C. Act extends to contracts between communication and transportation companies. With the enactment of the bill, and the concurrent repeal of the application of the act to communication companies, question might arise as to the existence of any requirement that such contracts be filed with either Commission. To

obviate that possibility, it is suggested that a proviso be added to the paragraph as it appears in the bill and in the act. The proviso in the bill might read:

"*Provided*, That this paragraph shall be held to apply to contracts, agreements, or arrangements between carriers subject to this act and carriers subject to the Interstate Commerce Act."

That in the I.C. Act might read:

"*Provided*, That this paragraph shall be held to apply to contracts, agreements, or arrangements between carriers subject to this act and carriers subject to the Communications Act of 1934."

If the filing of such contracts by both communication and transportation companies with both commissions proves unduly burdensome, the two commissions undoubtedly could cooperate so as to make one filing with either suffice for the purposes of both.

Section 212: The I.C. Act does not apply to interlocking directorates of communication companies, and we express no opinion upon the policy of the proposal. Attention is called, however, to the fact that the general penalty provision of the bill states only maxima, whereas section 20a (12) of the act names minima of $1,000 and 1 year.

Section 213: It is not clear that the provision of paragraph (o) authorizing the Commission to "exercise all of the powers and authority conferred upon" this Commission for administration of the valuation provisions in section 19a of the I.C. Act, is sufficient to provide for protest against and hearing upon any valuation fixed by the Commission. No valuation made without the right of hearing thereon can stand the test of court proceedings.

As has heretofore been stated to your committee, this Commission now has under way the valuation of the Western Union Telegraph Co. and the Postal Telegraph Co., and, with the experienced organization it has built up, can readily complete those projects if the Congress so desires and makes appropriate and adequate provision therefor in the bill.

Possibly paragraphs (c) and (d) of section 221 of the bill, which contain new provisions bearing upon valuation of telephone companies, would be better placed as part of this section.

Section 214: The provisions of section 1 (18)–(22) of the I.C. Act as to certificates of public convenience and necessity for rail construction are here adapted to construction of lines and circuits. Whether it is practicable or good policy to so extend these provisions, we do not undertake to say. Several provisions, however, undoubtedly will require further consideration.

It is assumed that the omission of the provisions relating to abandonment of lines is intentional.

The words "line" and "circuit" are not defined. Perhaps they are self-sufficient, but any necessary definition should not be overlooked. Definition of "extension" also would seem desirable, so that the provisions would not hinder or preclude such necessary operating changes or rearrangements of existing lines or circuits for the purpose of meeting changes in the flow of traffic, which otherwise might technically be regarded as extensions of the prior separate lines or circuits.

The act contains provisions for the filing of applications for certificates and for promulgation by the Commission of rules for the conduct of proceedings. If section 4 (i) of the bill be modified as hereinbefore suggested, the omission as to rules will not be material. Specific provision for the filing of the applications should be made.

The requirement of paragraph (b) that notice of the application be published in a newspaper "in each county which said line or circuit will serve" differs from the requirement of the act that such publication be in a newspaper "in each county in or through which said line of railroad is constructed or operates." The provision of the bill may lead to unanticipated results. A line constructed in two counties only can be, and might be, used to "serve" every other county in the United States.

Paragraph (e) purports to follow section 1 (22) of the I.C. Act. The act however, relates only to certain kinds of tracks within the State, and does not exclude construction of main lines even though wholly within a State. Such lines usually are parts of interstate systems. The same can well be true of communication lines or circuits. The paragraph should be eliminated, or should be modified so as to exclude only "lines or circuits within a single State and used solely for intrastate communication."

Section 215: There is no similar provision in the I.C. Act. It is observed that paragraph (a) would give the Commission power to modify prior contracts. That power is bound to be highly controversial, and is of doubtful propriety.

Section 217: This states for general application what is provided in some individual sections of the I.C. Act and in general terms of section 1 of the Elkins Act. No comment is necessary, except to point out that the words "or user" in lines 14 and 16 are not clear.

Section 218: This repeats parts of section 12 (1) of the I.C. Act, the remainder thereof appearing in section 409 of the bill. The bill broadens the provision of the act by including the duty to keep informed as to improvements in electrical communications. As the provision apparently contemplates completed developments and improvements and new inventions, and does not authorize "fishing expeditions" into the privacy of the inventor's laboratory or mental processes, there can be no sound objection to that provision. Probably improvements in radio transmission of energy should be included.

The bill narrows the act by omitting at the end the words "and the Commission is hereby authorized and required to execute and enforce the provisions of this act." There are numerous references to this duty in the construction of other provisions of the act by both the courts and this Commission. It is much safer to retain the words.

Section 219: This covers section 20 (1) and (2) of the I.C. Act relating to annual and other reports of the carriers.

The requirement that such reports be filed with the Commission omits the qualification "at its office in Washington." If, as presumably it will, the Commission establishes offices in other cities, the omission might give rise to controversy. Retention of the words would obviate that possibility.

Paragraph (4) of this section of the act, relating to the administration of the oath to these reports, is omitted from the bill without apparent reason. It should be included.

Section 220: The first 7 paragraphs of this section largely follow paragraphs (5), (6), (7), and (8) of section 20 of the I.C. Act and include the substance of provisions in paragraph (1) of that section. The last three paragraphs are new.

Paragraph (j) of these new paragraphs should be most carefully considered. It unquestionably directly conflicts with, and destroys the uniformity of systems of accounts and depreciation accounting required by the preceding provisions of the section. That is not true under the present law. In this connection consideration should also be given to the last 4 lines of paragraph (h).

In paragraph (b), the words "after the Commission has prescribed the classes of property for which depreciation charges may be included", and the words, "after the Commission has prescribed percentages of depreciation", are not derived from the I.C. Act. They are unnecessary, and it seems better to drop them, rather than take the risk of effecting an unforeseen change in the law. The subject is sufficiently complex and productive of contention, without needlessly adding to the difficulties of administration.

The new provision in paragraph (c) placing a burden to justify entries in accounts upon the person making the entry would be strengthened if it were extended to the "person making, authorizing, or requiring such entry."

The words "or other person" in line 6 of paragraph (d) have no antecedent correlative in this section of the bill. Either they must be dropped or some corresponding change must be made in preceding provisions of the section. The words "for each day of the continuance of such offense" read in the act: "for each such offense and for each and every day of the continuance of such offense." The change would be more accurate if the bill were modified to read "for each day of the continuance of each such offense."

The provision of paragraph (e) relating to the destruction or falsification of "any such account, record, or memoranda" reflects a departure from the act which reads: "the record of any such account, record, or memoranda." As this is a penal provision, and thus is subject to strict construction, the broader language of the act, which includes the records of the various documents as well as the documents themselves, should be retained.

Paragraph (f) is addressed to the same subject as, but is materially different from, section 20 (8) of the I.C. Act. The act prescribes a penalty against an examiner convicted of divulging information. The bill merely requires that no member, officer, or employee of the Commission shall divulge information. The difference in the provisions may reflect an intended difference in policy.

That portion of paragraph (g) making it unlawful to keep any accounts, records, or memoranda other than those prescribed by the Commission is taken from the provision of the I.C. Act otherwise covered by paragraph (e) of the bill. The transposition results in elimination of a minimum penalty for such offense.

Section 221: There are no differences of importance between paragraph (a) and section 5 (18) of the I.C. Act. Possibly ineffective or inadequate interstate regulation might result from the new provisions of paragraph (b). Paragraphs (c) and (d) were considered under section 213, relating to valuation of carrier property generally.

TITLE III. SPECIAL PROVISIONS RELATING TO RADIO

This title deals with matters coming within the jurisdiction of the Federal Radio Commission and has not been considered.

TITLE IV. PROCEDURAL AND ADMINISTRATIVE PROVISIONS

Section 401: A duplication between that portion of paragraph (a) appearing in line 24, sheet 68, through line 9, sheet 69, and paragraph (b) is noted. Paragraph (b) follows section 16 (12) of the I.C. Act almost word for word. and the provisions should be dropped from paragraph (a). There are no differences of importance between the remainder of paragraph (a) and section 20 (9) of the I.C. Act from which it is derived.

Under paragraph (c) the Expediting Act and certain provisions of the Judicial Code are made to "apply to any suit in equity arising under title II of this act wherein the United States is complainant." Inasmuch as the Expediting Act relates to "any suit in equity * * * wherein the United States is complainant" and inasmuch as the district court jurisdiction act (see sec. 402) provides for three-judge courts, expedition and direct appeal to the Supreme Court in proceedings to enforce and set aside the Commission's orders, it would suffice if these words were modified to read "apply to title II of this act."

Section 402: This incorporates by reference the machinery now provided by the district court jurisdiction act for court test of orders. Attention is called to a similar provision in the Packers and Stockyards Act, which, as stated in title 7, section 217. of the United States Code, reads:

"For the purposes of sections 201 to 217, inclusive, of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217, inclusive, of this chapter, and to any person subject to the provisions of sections 201 to 217, inclusive, of this chapter."

This provisions apparently has proven satisfactory. The act was passed in 1921 and there has been no subsequent amendment of this provision. It may be desired to substitute a tested provision for the present language of section 402. If such substitution be not desired, the present text should be changed by using the correct title of the act, viz, Urgent Deficiencies Appropriation Act of October 22, 1913. The courts invariably use that title. "District court jurisdiction act" is merely a descriptive designation originated years ago.

Section 405: This adds to section 16a of the I.C. act the words "or any person or any State or political subdivision thereof, aggrieved or whose interests are adversely affected." At times, petitions for reopening of transportation cases have been presented to us by persons not parties to the original proceeding. Such petitions are not considered, nor do we believe that they should be. Otherwise, any person interested in a case could defer action therein until a decision has been rendered, knowing that if the decision be favorable he will be saved time, effort, and money, and if unfavorable, can obtain a reopening of the case. Such procedure is not conducive to effective administration. The rights of any person not aware of the proceeding prior to a decision are fully protected by the provisions under which he could file his own complaint or the Commission could reopen the earlier proceeding on its own motion.

Section 406: In this section, adapted without important change from section 23 of the I.C. act, the words in line 24, sheet 72, "at the same rates as are charged," although taken verbatim from the act, represent the only instance in which the word "rates" has been used in the bill (disregarding title III). Consistency would be attained by substituting "at the same charges."

Section 409: The first eight paragraphs restate without important change provisions in sections 12 (1)–(7), 17 (1), 18 (1), 19, and 20 (10) of the I.C. act. Paragraphs (i) and (j) repeat the two paragraphs of the Compulsory Testimony Act.

In paragraph (i) the word "tariffs" has been omitted after the word "papers", in line 15, sheet 78. It seems dangerous to anticipate that the remaining documents as specified here will include more than they do in the act. The word "tariffs" (or perhaps "schedules of charges") should be restored to prevent a possible weakening of the law. In line 24, sheet 78, and lines 4 and 5, sheet 79, the word "individual" has been substituted by the bill for the word "person", and the words in lines 2 and 3, sheet 79, "is compelled, after having claimed his privilege against self-incrimination, to testify" have been substituted for the words "may testify." We suggest that "individual" be changed to "natural person", and that the second substitution be not made. Enactment of the Compulsory Testimony Act of February 11, 1893, followed a decision of the Supreme Court that an immunity provision very similar to immunity provisions in the original act to regulate commerce was unconstitutional. Later, in the appropriation for court enforcement of certain acts made in the Legislative, Executive, and Judicial Appropriation Act of February 25, 1903, provision was made for immunity "in *any* proceeding, suit, or prosecution under those acts." Still later, the Immunity of Witnesses Act of June 30, 1906, extended the immunity under the two foregoing and other like provisions, "only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath." That act was the result of court decisions construing the word "person" in the prior enactments. The requirement that the evidence must be in obedience to a subpena has been stressed in court decisions. The bill would extend immunity beyond a subpena. A voluntary witness directed by the court during the course of his examination to answer a question, which the witness theretofore declined to answer on the ground of self-incrimination, would be "compelled to testify" and would thus receive immunity under the bill. Perhaps that is the intention, but it seems desirable that the matter be acted upon advisedly and not as a result of oversight.

Section 410: There is no provision in the I.C. Act similar to paragraph (a) conferring upon joint boards nominated by State commissions power to act on matters under the bill in such manner as the Communications Commission determines. The State officials are not required to act, and there would seem to be no doubt as to the constitutionality of the provision. (See *Dallemagne v. Moisan*, 197 U.S. 169, and Willoughby's "The Constitution", vol. 1, p 92, note.)

Paragraph (b) is similar to section 13(3) of the I.C. Act except that it omits the requirement of notice by the Commission to the States in investigations in which State-made charges or regulations are brought in issue. Section 13(4) of the I.C. Act empowering this Commission to remove unjust discrimination against interstate commerce caused by State-made intrastate charges or regulations also is omitted from the bill. These omissions unquestionably weaken the bill as compared with the act, but whether this weakening is a matter of importance would depend largely upon the extent to which exercise of such power might be necessary. In only one instance has this Commission been called upon to consider the provision in connection with communication charges, viz., *Okla.-Ark. Teleph. Co.* v. *Southwestern Bell Teleph. Co.*, 183 I.C.C. 771. No State-made rates were there involved, however, and there was no necessity to undertake exercise of the power.

Section 412: Excepting the proviso, this largely follows section 16(13) of the I.C. Act. In the bill the words "copies of schedules, classifications, and charges" have been substituted for "copies of schedules, classifications, and tariffs of rates, fares, and charges" appearing in the act. The word "charges" standing by itself is meaningless, and it is suggested that it be replaced by "tariffs of charges."

Section 413: This is much the same as a provision in the Mann-Elkins Act (or Commerce Court Act) of June 18, 1910. As enacted, the provision related to proceedings before the Commission "or before said Commerce Court." The two references of the court appearing in the act have been changed to "or before any court" and "or court" (lines 8–9 and 19). In abolishing the Commerce Court and repealing "all laws relating to the establishment of", and "all laws and parts of laws inconsistent with the foregoing provisions relating to" that court, the District Court Jurisdiction Act made provision for

service of process of the district courts. We are not advised of any court proceeding in which service of process of those courts has been made or attempted under this provision, and the reference to courts should be dropped from this section.

Section 415: This repeats the statute of limitations contained in section 16 (3) of the I.C. Act. Its application to transmission of energy by radio is not clear.

TITLE V. PENAL PROVISION—FORFEITURES

Section 501: Like section 10 (1) of the I.C. Act this provides a general penalty; but unlike the act "aiding or abetting" in doing unlawful acts or in omitting to do required acts is not made punishable.

Apparently it is intended that in instances where a forfeiture is provided both such forfeiture and the penalty of this section be assessed. In some instances this may be rather drastic. As you undoubtedly are aware, too drastic penalties have been held invalid. (See *United States* v. *Clyde Steamship Co.*, 36 Fed. (2d) 691).

Section 503: Paragraph (a) is similar to the third paragraph of section 1 of the Elkins Act which applies to the transportation of property. It is not believed that the changes made in adapting the provision to communication are of such nature as to make this provision weaker than that applicable to transportation. It is noted, however, that the paragraph does not extent to rebates in connection with transmission of energy by radio.

Paragraph (b) is much the same as section 16 (8) of the I.C. Act, but the sections specified in line 9, sheet 88, are open to question. The act names sections 3, 13, and 15. Reference to section 15 with contained in the original enactment, which in section 15 (1) specifically gave to the Commission the power to prescribe rates for the future. Reference to sections 3 and 13 was inserted by the Transportation Act, 1920, which added in section 3 the provisions as to common use of rail terminals and as to extension of credit for freight charges, and added in section 13 the provisions as to unjust discrimination against interstate commerce. None of these provisions of sections 3 and 13 are in the bill. The sections named in the bill cover portions of section 1 and section 15 (7) of the I.C. Act. It is impossible to understand why the bill makes no reference to section 205 which covers section 15 (1) of the act. This penalty was originally enacted for the specific purpose of requiring obedience to orders entered under that provision. It became applicable to transmission when the act was extended thereto in 1910, and unless reference is made to section 205, there will be a material weakening of the present law. While the entry of orders is provided for in sections 201 and 204 of the bill, violation of such orders, as just pointed out, has not heretofore been subject to the severe penalty provided in this section. The efficacy of that penalty in inducing obedience to orders under section 15 (1) has been recognized by the courts (see *Baltimore & O. R. Co.* v. *United States ex rel Pitcairn Coal Co.*, 215 U.S. 481), but it may be regarded as too drastic in respect of violation of the other orders.

Sec. 504. Paragraph (a) repeats section 16 (9) and (10) of the Interstate Commerce Act and adds the sentence beginning in line 20, sheet 88. The comments under section 501 with reference to both penalty and forfeiture for the same offense are pertinent here.

Paragraph (b) is new. Fines are not "collected by the Commission."

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Paragraph (a) proposes to transfer to the Communications Commission the powers and duties of this Commission under the Government Aided Railroad and Telegraph Act. That act embraces telegraph lines of subsidized telegraph companies and telegraph lines of subsidized railroad companies. Presumably it is intended to effect complete transfer. Such transfer, however, should not be permitted to affect the administration of acts under which this Commission now functions in respect of transportation companies. As the provisions of the bill are not as clear as they might be, it is suggested that this paragraph be made to read as follows:

"SEC. 601 (a). All duties, powers, and functions of the Interstate Commerce Commission under the Act of August 7, 1888 (25 Stat. 382), relating to operation of telegraph lines by railroad and telegraph companies granted Government aid in the construction of their lines, are hereby imposed upon and vested in the Commission: *Provided*, That such transfer of duties, powers, and functions

shall not be construed to affect the duties, powers, functions, or jurisdiction of the Interstate Commerce Commission under, or to interfere with or prevent the enforcement of, the Interstate Commerce Act and all acts amendatory thereof or supplemental thereto."

Section 602. The repeal in paragraph (b) of provisions of the I.C. Act relating to communication should make exception of the proviso in section 1 (7) of that act relating to exchange of franks between communication and transportation companies and should be accompanied by amendment of sections 1 (5) and 6 (5) of that act as hereinbefore suggested.

Section 604. To obviate any possible hiatus between this provision and other provisions of the bill, it is suggested that the following proviso might be added to the paragraph:

"*Provided*, That they shall be construed as though promulgated by, and as constituting requirements of, the Commission."

The words "the Commission" in line 12, sheet 93, presumably have reference to the words "the Interstate Commerce Commission", in line 10. In that event they should be changed to read "that Commission."

Mention of several matters pertaining to the bill generally may prove helpful. There is no provision with reference to further proceedings in, and disposition of, pending court cases.

In many instances the words "carriers subject to this act", and like clauses, are used. In other instances, merely the word "person" or "carrier" is used, despite the fact that the clause "subject to this act" appears in the corresponding provision of the acts. Uniformity, of course, is desirable, if not essential, and can briefly be brought about by omitting the clause in the individual provisions and including in the definitions in section 3 a paragraph to the effect that "carrier" or "person" wherever used in the bill means a "carrier or person subject thereto."

In a number of instances the words "and/or" have been used. In *State* v. *Dudley* (159 La. 872), the court said:

"The expression 'and/or' is quite frequently used in contracts but we confess this is the first time we have ever found it in a legislative act. When used in a contract the intention is that the one word or the other may be taken, accordingly as the one or the other will best effect the purpose of the parties as gathered from the contract taken as a whole. In other words, such an expression in a contract amounts in effect to a direction to those charged with construing the contract to give it such an interpretation as will best accord with the equity of the situation and for that purpose to use either 'and' or 'or' and to be held down to neither. Such latitude in contracts is, of course, permissible to individuals, who may contract as they please, but not so with a legislature in making its laws; it must express its own will and leave nothing to the mere will or caprice of the courts, especially in the matter of punishing offenses."

These words have been noted in the bill as follows: Line 15, page 2; line 2, page 5; lines 1 and 2, page 29; the last line on page 32, line 16, page 40; line 18, page 44; lines 9 and 10, page 50; line 15, page 53; line 4, page 54; lines 4 and 17, page 56; lines 2, 4, 13, and 24, page 57; and lines 4 and 6, page 58.

The words "wire and radio" in the last line on page 1 and in lines 3 and 8 on page 2 should be changed to read "wire or radio."

The words "full opportunity for hearing," or like words, appear in section 202, line 21, sheet 14; section 205, line 18, sheet 19; section 214, line 3, sheet 28; and section 215, line 4, sheet 29. As there is no intention to differentiate between an "opportunity" for a hearing and the hearing itself, the words "opportunity for" should be dropped. The courts insist upon hearings as the basis of mandatory action.

Typographical or clerical errors have been noted as follows:

	Sheet	Line
Insert a comma after "Columbia"	3	24
"Proofs" should be "proof"	12	2
"Improvement" should be "improvements"	32	1
"Prevent" should be "prevents"	72	21
Insert a comma after "manner"	81	10
"(7)" should be "(g)"	85	14
In view of sec. 216, the words "and any receiver or trustee thereof" are unnecessary, and should be omitted	86	7
In view of sec. 216, the words "receiver, trustee," are unnecessary, and should be omitted	88	7

It seems unnecessary to add that our sole endeavor in bringing these matters to your attention has been to aid to as great extent as possible in perfecting the details of the bill. We shall, of course, be glad to cooperate in any further possible manner.

Respectfully submitted.

FRANK MCMANAMY,
Chairman Legislative Committee.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
Washington, D.C., March 16, 1934.

Hon. CLARENCE C. DILL,
Chariman Committee on Interstate Commerce,
United States Senate, Washington, D.C.

DEAR SENATOR: We are glad to note that under the terms of section 4, paragraph (f), p. 9, of S. 2910 (a bill to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes), provision is made for appointment, with some exceptions, of all employees of the proposed communications commission, subject to the provisions of the Civil Service Laws and the Classification Act of 1923 as amended. It is noted, however, that among those positions which may be appointed without regard to the Civil Service laws or the Classification Act of 1923 as amended, inspectors are listed.

It would clearly seem that inspectors should be taken out of their present category, and their appointment provided for in accordance with Civil Service Laws. We are urging that this change be made in the interest of sound personnel administration, and trust that the bill may be amended in this particular.

Very truly yours,

LUTHER C. STEWARD,
President.

(Whereupon, at 12:30 p.m., the committee adjourned.)

PROPOSED AMENDMENT TO S. 2910, BY SENATOR WHITE, OF MAINE

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. (a) For the purpose of regulating interstate and foreign commerce in communication by wire and radio, there is hereby created a commission to be known as the "Federal Communications Commission" (in this act referred to as the "Commission"). The Commission shall be composed of seven commissioners, appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing supplies or services to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this act, nor own stocks or bonds of any corporation subject to any of the provisions of this act. Such commissioners shall not engage in any other business, vocation, or employment. Not more than three commissioners shall be members of the same political party.

(c) The Commissioners first appointed under this Act shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance

in office, but for no other cause. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(d) Each Commissioner shall receive an annual salary of $10,000, payable in monthly installments.

(e) The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expenses prevented thereby, the Commission may hold special sessions in any part of he United States.

(f) Without regard to the Civil Service laws or the Classification Act of 1923, as amended, (1) the Commission may appoint and prescribe the duties and fix the salaries of a secretary, a chief engineer, and one or more assistants, a general counsel and one or more assistants, experts, inspectors, and special counsel, and (2) each Commissioner may appoint and prescribe the duties of an assistant at an annual salary not to exceed $4,000 per annum. The general counsel and the chief engineer shall each receive an annual salary of not to exceed $9,000; and no assistant, expert, or inspector shall receive an annual salary in excess of $7,500 per annum. The Commission shall have authority subject to the provisions of the Civil Service laws and the Classification Act of 1923, as amended, to appoint such other officers, examiners, and other employees as are necessary in the execution of its functions.

(g) The Commission may make such expenditures (including expenditures for rent and personal services at the seat of Government and elsewhere, for office supplies, law books, periodicals, and books of reference, and for printing and binding) as may be necessary for the execution of the functions vested in the Commission and as from time to time may be appropriated for by Congress. All expenditures of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees, under their orders, in making any investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose.

(h) Three members of the Commission shall constitute a quorum thereof. The Commission shall have an official seal which shall be judicially noticed.

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested.

(k) The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary: *Provided*, That the Commission shall make a special report not later than February 1, 1935, recommending such amendments to this Act as it deems desirable in the public interest.

(l) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

(m) The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proofs or authentication thereof.

SEC. 2. Upon the effective date of this Act:

(a) The Commission shall be vested with all the powers, authority, and duties now vested in the Interstate Commerce Commission with respect to common carriers engaged in the transmission of intelligence by wire or wireless, and now vested in the Federal Radio Commission by the Radio Act of 1927, as amended; and the powers, authority, and duties of the Interstate Commerce Commission with respect to said common carriers shall cease; and all of the powers, authority, and duties of said Radio Commission shall cease, and said Radio Commission shall cease to exist.

(b) Said common carriers now subject to the jurisdiction of the Interstate Commerce Commission, and all persons, firms, companies, and corporations now subject to the jurisdiction of said Radio Commission shall become subject to the jurisdiction of this Commission to the same extent as they are now subject to the jurisdiction of either the Interstate Commerce Commission or said Radio Commission.

(c) Wherever in the Interstate Commerce Act, as amended, or the Radio Act of 1927, as amended, reference is made to the Interstate Commerce Commission or to said Radio Commission, and wherever in any other Act of Congress reference is made to either of said Commissions or to any provision of the Interstate Commerce Act, as amended, or said Radio Act, as amended, such reference shall, with respect to the transmission of intelligence by wire or wireless; or radio, or those engaged in such transmission, be construed as meaning the Commission hereby created, or this Act, respectively.

(d) All provisions of existing law relating to proceedings before the Interstate Commerce Commission or said Radio Commission, to the summoning and examination of witnesses, to the enforcement of orders of said Commissions and to judicial review of such orders, shall remain in effect, and shall apply in the same manner and to the same extent to proceedings before the Commission hereby created and to the enforcement and judicial review of orders made by it.

SEC. 3. (a) All duties, powers, and functions of the Intersate Commerce Commission with respect to telegraph lines and companies operating telegraph lines under the Government-aided Railroad and Telegraph Act, approved August 7, 1888, are hereby imposed upon and vested in the Commission.

(b) All duties, powers, and functions of the Postmaster General with respect to telegraph companies and telegraph lines under any existing provision of law are hereby imposed upon and vested in the Commission.

SEC. 4. (a) The last sentence of section 2 of the Act entitled "An Act relating to the landing and operation of submarine cables in the United States", approved May 27, 1921, is amended to read as follows: "Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission with respect to the transmission of messages."

(b) The first paragraph of section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, is amended to read as follows:

"SEC. 11. That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers other than common carriers engaged in wire or radio communication; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communications; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

SEC. 5. (a) All officers and employees of the Federal Radio Commission (except the members thereof, whose offices are hereby abolished) are hereby transferred to the Commission, without change in classification or compensation.

(b) There are hereby transferred to the jurisdiction and control of the Commission (1) all records and property (including office furniture and equipment, and including monitoring radio stations) under the jurisdiction of the Federal Radio Commission and (2) all records under the jurisdiction of the Interstate Commerce Commission relating to common carriers engaged in wire or radio communication, and of the Interstate Commerce Commission and the Postmaster General relating to the duties, powers, and functions imposed upon and vested in the Commission by this Act.

(c) All appropriations and unexpended balances of appropriations available for expenditure by the Federal Radio Commission shall be available for expenditure by the Commission in the same manner and to the same extent as if the Commission had been named in laws making such appropriations.

SEC. 6. (a) All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this Act or in the exercise of duties, powers, or functions transferred to the Commission by this Act, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law.

(d) Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission by this Act or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this Act.

(e) All records transferred to the Commission under this Act shall be available for use by it to the same extent as if such records were originally records of said Commission. All final valuations and determination of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communications, and all orders of the Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this Act.

SEC. 7. This Act shall take effect upon the organization of the Commission, except that this section and section 1 shall take effect upon the enactment of this Act. The Commission shall be deemed to be organized upon such date as three members of the Commission have taken office.

SEC. 8. This Act may be cited as the "Communications Act of 1934."

CABLE & RADIO USERS' PROTECTIVE COMMITTEE,
New York, March 17, 1934.

The Honorable CLARENCE C. DILL,
Chairman Committee on Interstate Commerce,
United States Senate, Washington, D.C.

MY DEAR SENATOR: I have read Mr. Willever's reply of last Thursday to my previous statement before your honorable committee. It is a matter of regret that Mr. Willever, speaking on behalf of the cable and radio telegraph companies, has neither addressed himself to the main issues I raised nor, as I see it, has he dealt fairly with the facts.

As I trust I have made clear, I am in no sense attempting to try a rate case before your committee. My original statement was directed to demonstrating, first, that there is a monopoly in the trans-Atlantic cable and radio telegraph communications service; second, that there now exists no tribunal or body to which a user of such communications can go for relief from any arbitrary or unfair actions of that monopoly; and third, that there is a real necessity for the prompt establishment of such a regulatory body. With none of these important and fundamental matters does Mr. Willever deal.

He has, however, introduced many immaterial and extraneous matters, which tend to becloud the main issues. We have no desire to enter into controversy or to burden the committee with unnecessary details but, in order that the record in this matter may be reasonably correct, we beg to call attention to certain omissions and inaccuracies in Mr. Willever's statement.

Mr. Willever charges that our committee represents a very small group and seems to imply that for that reason we are not entitled to consideration. While the group is small in numbers the volume of business transacted by the group is exceedingly large and affects many essential interests throughout the country. As a mere indication of volume, the five firms and institutions with which the immediate members of our committee are connected, as distinct from the larger group whom we represent, alone paid cable and radio bills for the year 1933 totaling in excess of $700,000. These and other similar organizations are simply the channels through which is handled a large proportion of certain important types of business which Americans do abroad. For example, the efficient marketing and financing of that part of our cotton crop which is sold abroad requires throughout the many stages of the operation, constant cable communication of the type under discussion. The same is true of our grain

exports and of our imports of such commodities as silk, rubber, coffee, and sugar, and of the intricate and economically important financial operations by which our general international trade is carried on and balances invested and transferred. In the disorganized state of world currencies an uninterrupted current record of exchange fluctuations is essential to the proper administration of the export and import trade of our country. For Mr. Willever to characterize these transactions as "international speculative operations" betrays, in my opinion, a fundamental lack of understanding of the business in which many of the customers of his company are engaged.

Contrary to Mr. Willever's repeated charge, our committee neither asks nor desires any discrimination on behalf of the group we represent. We strenuously object, however, to the monopolistic suppression of those benefits in the way of reduced costs and improved service, to which all users are alike entitled and which result from the great advances made in the communications art in recent years.

Mr. Willever says, "Until the Madrid Conference of 1932, messages classed as 'urgent' were supposed to be charged at triple rates in order to enjoy the preferential handling which they were given * * *. Because no other rate was provided except the excessive triple rate, the American communication companies in responding to the demand for this extraordinary service, provided at the ordinary rates the best possible service with ordinary facilities." The sentence last quoted is not correct. The fact is that from 1923 until January 1 last, there was provided on the North Atlantic by the cable companies a so-called "preferred service", at a differential of 25 percent over the ordinary rate, and the kind of "extraordinary service" that Mr. Willever describes was developed and was for years paid for at the preferred rate, with satisfaction to the users and apparently to the companies and with entire fairness to all of their patrons.

This was true until the advent of R.C.A. Communications, Inc., as a serious competitor of the cable companies, in 1930 and 1931. Radio never put into effect the preferred rate and, as a consequence of its smaller volume of business in these formative years, was able to give service comparable to the preferred service of the cable companies, but at the rates 20 percent lower. To meet this competition the cable companies actively solicited many of the clients whom they are now so vigorously assailing as racketeers, offering them priority service at the ordinary rates. If there was racketeering it seems to me that it was done by the cable companies themselves and not by their customers, on whom the services were pressed.

Not being able to persuade Radio Corporation to give up its profitable competitive advantage for a mere increase of 25 percent in its rates, the cable companies entered into an agreement with Radio to increase the rates on this class of traffic to twice the ordinary rate, plus a charge for the extra word "urgent", a scale which was authorized by the Madrid Conference but which the companies were no more compelled to charge than they had been compelled to charge the former triple rate, never used on the North Atlantic. It was the cancelation of the preferred service by the cable companies, as announced by their circulars previously referred to (copies of which are attached), and the substitution of the new double rate which is one of the specific complaints of the users whom I represent. It is this increase which is responsible for my statement that the charges for this type of priority service have been increased 60 percent and more, as compared with the former preferred rate of the cable companies, and over 100 percent in the case of Radio.

Mr. Willever also says that those whom I represent "are here concerned solely in the perpetuation of the grossly discriminatory service secured by them to the detriment of the public at large, who, under the laws of this country, are entitled to equal service with them at the same rates." No one should know better than Mr. Willever that many of those whom I represent never ceased to pay the preferred rate until it was discontinued and have not been the recipients of the discriminatory service offered by the cable companies. I have insisted throughout my negotiations with the companies that their past discriminatory actions were improper and that priority service called for proper priority rates, but that the new double rates were unfairly and uneconomically high. Unfortunately there exists in this country no tribunal with adequate powers to consider and determine this conflict of opinion between the companies and their customers.

Mr. Willever states that there is absolutely no basis for my statement that the consent of the British post office to the new rates had to be secured and

that ordinary messages are held up in order to compel the use of the double urgent rates. In this connection it may be sufficient to say that the companies suggested to our committee a compromise of this rate increase on the basis of a rate for priority messages 50 percent above the ordinary rate, plus the charge for an extra word. This was subject, however, to three conditions; first, it was to apply only to England and not to the Continent; second, it was to be subject to the consent of the British post office, it having been repeatedly emphasized by accredited officials of the companies that any changes of rates to England were subject to such consent; and, third, all ordinary messages, even though sent by telephone to the company's main office, were to be still further delayed prior to their transmission for some minimum length of time calculated on the basis of the period required for a boy to be sent for and to call for the message. In other words, having already combined to suppress the benefits to which users are entitled from technical advances and lowered costs brought about by radio, the cable companies were proposing to still further turn back the hands of the clock and eliminate as well the time-saving benefits of the telephone.

Mr. Willever also says, "Specifically, therefore, the American companies have not increased rates charged to the general public for regular or standard service * * *." He fails to mention, however, that night-letter rates to England were, on January 1 last, increased from one fifth of the ordinary rate to one third of the ordinary rate. As an example, a 25-word night letter from New York to London now costs $1.67 as compared with a previous cost of $1, with proportionate increases on longer messages. The night letter is characteristically the popular service of a vast number of individual and business users throughout the country. If it be true, as Mr. Willever says, that "there is no element of public interest" supporting our complaint in this regard, it is my opinion solely because the thousands of individuals and businesses affected by the increase in the rates for this service are so scattered and unorganized.

Mr. Willever closes by quoting from "the International Telegraph Convention, signed by the American delegation at Madrid * * *." We are in complete accord with the principles contained in the paragraph which he quotes but we have been advised by officials of the State Department that the American delegation at Madrid did not sign the Telegraph Convention, as he states. This statement of Mr. Willever's is typical of the practice which these companies have been enabled to follow in many matters, due to the particular situation existing on the North Atlantic. They conform to the Telegraph Convention in matters of their choice and ignore it when that better suits their convenience.

I regret having taken so much of the time of your committee with controversial matters. They are not raised by me or by those for whom I am acting. They should be discussed before a competent regulatory body and be adjudicated by that body. That such a body be promptly established is our only request to your honorable committee.

I respectfully request that this letter be made a part of the records of your committee.

Very respectfully yours,

G. M.-P. MURPHY, *Chairman.*

NEW URGENT INTERNATIONAL TELEGRAPH SERVICE

DECEMBER 1, 1933.

The new international regulations adopted by the Telegraph Administrations of the world, which become effective January 1, 1934, reduce the rate for "urgent" telegrams from triple to double the normal rate. The American communication companies are now prepared to offer urgent or priority service at double rates to clients requiring extremely rapid communication service. Such messages require the addition of the paid word "urgent", and will be transmitted with the utmost expedition.

ALL AMERICA CABLES, INC.
COMMERCIAL CABLE CO.
FRENCH TELEGRAPH CABLE CO.
MACKAY RADIO & TELEGRAPH CO.
POSTAL TELEGRAPH-CABLE CO.
R.C.A. COMMUNICATIONS, INC.
U.S. & HAYTI TELEGRAPH & CABLE CO.
WESTERN UNION TELEGRAPH CO.

NEW INTERNATIONAL TELEGRAPH REGULATIONS—REVISED RULES

DECEMBER 1, 1933.

In accordance with the amendments to the International Telegraph and Radio Regulations adopted by the Madrid Conference, the following new rules in international communication will become effective as of January 1, 1934.

1. The present 10-letter code system will be abolished and no code word may thereafter exceed 5 letters in length. There will be no restriction as to the formation of these 5-letter code words with the exception that accented letters will not be admitted.

2. Every code message must bear the indicator "CDE" preceding the address. This indicator will be transmitted free of charge.

3. The charge per work for "CDE" messages will be 60 percent of the full ordinary rate, rounded up to the nearest cent, with a minimum charge of 5 words for each message, address and signature counted.

4. Words in the address and bona fide signatures of "CDE" messages, while chargeable at the reduced rate, will be counted at 15 letters to the word.

5. In mixed "CDE" messages, containing both code and plain language, the plain language words will be charged at the rate of five letters to the word.

Example: CDE, shipyards, London; XGYPB YOBTS, mailing factory invoices.

The chargeable number of words in message as per above example would be ten.

6. Figures will be admitted in "CDE" messages, but will be limited to one half of the total chargeable words and groups contained in the text and signature. They will be counted on the basis of 1 chargeable word for each 5 figures or any fraction thereof in each group.

Commercial marks composed of letters and figures will also be accepted at 5-letter count but they and other figure groups must not exceed one half of the chargeable words contained in text and signature.

Where one half of the total chargeable words in text and signature results in a fraction, the chargeable number of figure groups permissible will be rounded up to the next whole number.

7. Urgent "CDE" messages will be charged at double the "CDE" rate plus one word for the service indicator "urgent" written before the address. Urgent plain language and cipher messages will likewise be charged at double rates, under the same conditions. Partially urgent and preferred services will be canceled. Night-letter rates in accordance with the international regulations will be uniformly one third of the full ordinary rate, minimum 25 words.

8. Messages which contain words in secret language exceeding 5 letters in length and those that contain more than the specified proportion of figure groups or commercial marks will be chargeable at the full rate, each secret language word being counted at the rate of 5 characters to the word. Plain language words in such messages will be counted at 15 letters to the word.

9. Messages containing combinations, abbreviations, contractions, or mutilations of plain language words are not admitted.

10. Bank or similar messages written in plain language may include a check word or number as the first text word. The check word or number will be limited to five characters. For the purpose of charging, such messages are not considered as code messages.

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