



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

18375

B-203297

June 9, 1981

~~CEB-1-171~~

The Honorable Timothy E. Wirth  
Chairman, Subcommittee on  
Telecommunications, Consumer  
Protection and Finance  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

Subject: Comments on H.R. 3239 and H.R. 3240

Your May 6, 1981, letter requested our comments on H.R. 3239, and H.R. 3240. H.R. 3239 would amend the Communications Act of 1934 to (1) authorize the Federal Communications Commission (FCC) for a one year period instead of on a permanent basis, as is presently the case, (2) require FCC to establish a fee schedule to recover costs which it incurs in carrying out certain regulatory activities, and (3) require FCC to expedite its efforts to revise the uniform system of accounts for common carriers. H.R. 3240 would establish a one year authorization for the National Telecommunications and Information Administration (NTIA), Department of Commerce. NTIA presently has a permanent authorization.

We support the establishment of periodic authorizations for both FCC and NTIA, as well the requirements that FCC formulate a cost based fee schedule and expedite its efforts to revise the uniform system of accounts for common carriers. We are providing below our specific comments on each of these provisions and are also suggesting additional legislative changes in H.R. 3239 which, we believe, will further strengthen the regulatory process.

PERIODIC AUTHORIZATION OF  
FCC AND NTIA WILL BENEFIT  
THE AGENCIES AND THE CONGRESS

We support the establishment of periodic authorizations for FCC and NTIA. Such action will provide the Congress with an added mechanism for overseeing FCC and NTIA activities, which should, in turn, greatly benefit both the agencies and the Congress. For example, it should:

(062293)

115445  
017163

- increase agency accountability,
- provide FCC and NTIA with increased congressional guidance, and
- keep the Congress better informed of developments and activities at the agencies as well as in the field of communications generally.

In our report "Organizing the Federal Communications Commission for Greater Management and Regulatory Effectiveness" (CED-79-107, July 30, 1979) we recommended that such a process be established for FCC.

While we believe that the periodic reauthorization process can be beneficial regardless of the length of authorization period, we generally prefer multiyear authorizations rather than single year authorizations as are proposed in Section 2 of H.R. 3239 and in H.R. 3240. The reauthorization process can be very time-consuming for both the Congress and Federal agencies, if it is to function effectively. For example, an effective reauthorization process requires the Congress to thoroughly evaluate an agency's performance during the prior authorization period. The Congress should also establish or review the agency's goals, objectives, and priorities for the upcoming period. In addition, congressional staff and members must be involved in such activities as reviewing agency reports and evaluations, preparing for and conducting hearings, and formulating new legislation. It is important, therefore, for committees to establish review schedules which will not exceed either their or the agency's capabilities and, thus, impede the establishment of an optimal, systematic oversight process.

The establishment of multiyear authorizations for FCC and NTIA will enable the Congress to carry out the oversight needed to improve the agencies' performance, while at the same time preventing the process from becoming unduly burdensome. An extended authorization period would probably be necessary if the Congress were to enact comprehensive oversight reform legislation, as was being considered in the 96th Congress. Such legislation would commit the Congress to an arduous review schedule. For example, one reform bill would have required that all funded programs be reviewed during a 10 year cycle.

We recognize, however, that shorter authorization periods may be necessary or desirable for certain agencies or programs-- particularly where past problems or changing circumstances warrant close congressional oversight. In light of the rapid technological change which has occurred and is occurring in telecommunications, it may, therefore, be beneficial for the Congress to thoroughly review FCC's and NTIA's activities on a more frequent basis than would be the case for most Federal programs.

To further enhance the Congress' ability to oversee the activities of FCC and NTIA, we suggest including in H.R. 3239 and H.R. 3240 a requirement that the agencies establish goals and objectives for the period for which they are being authorized and report them to the Congress within six months of the bill's passage. These goals and objectives can then serve as benchmarks for future review and as standards for evaluating agency performance. The Congress could also require both agencies to report on an annual basis their progress in meeting these goals and objectives. For example, H.R. 3239 and H.R. 3240 could require that the agencies submit reports which:

1. Contain the agency's statement of the specific and detailed goals, objectives, and priorities which have been previously established along with any new or revised goals and objectives for future years.
2. Include statements of the agency's conclusions as to the effectiveness of its programs in meeting the stated objectives, measured through the end of the preceding fiscal year.
3. Make recommendations with respect to any changes or additional legislative action deemed necessary or desirable to meet goals and objectives.
4. Contain a listing identifying the principal models, analyses, and studies supporting the major conclusions and recommendations and the results of evaluation studies completed.
5. Contain the agency's plan for evaluating programs in the upcoming year.

THE CONGRESS SHOULD REQUIRE  
FCC TO DEVELOP A FEE SCHEDULE

[ We believe that H.R. 3239 establishes a firm basis from which FCC can formulate a lawful and equitable fee schedule. Under the criteria specified in Section 3 of the bill, fees would be based on the costs incurred by FCC in providing special benefits to licensees and other regulated persons or firms--beyond those it provides to the public at large. We support fees established in this manner. ]

Since January 1977, FCC has not charged fees for its services. One month earlier, the U.S. Court of Appeals overturned previous Commission fee schedules and called for it to clarify the justification for the schedules and to recalculate its fees accordingly. In our report, "Establishing A Proper Fee Schedule Under The Independent Offices Appropriation Act, 1952" (CED-77-70, May 6, 1977) prepared at the request of the Subcommittee on Communications, House Committee on Interstate and Foreign Commerce and the Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation, we stated that the Commission could and should recalculate previous fee schedules, refund excess fees collected, and establish a new fee schedule. We noted, however, that the Congress could provide additional legislative guidance in this area by either amending the Independent Offices Appropriation Act, 1952 or by enacting new legislation. H.R. 3239 would be in line with our recommendation.

We recognize that in lieu of requiring FCC to establish a fee schedule, the Congress could itself prescribe a specific schedule of fees for FCC services. If fees are to be based on costs, information would be needed in either case to ascertain the costs which FCC incurs in carrying out specified regulatory functions. Establishing fees legislatively would, however, reduce the flexibility which is needed to adjust fees as costs and conditions change. Also, further congressional action would be required if fees for new services become necessary. We also note, in this regard, that if fees exceed agency costs, the excess portion would constitute a tax.

For these reasons we support H.R. 3239's requirement that FCC establish cost based fees in accordance with the criteria set forth in the bill. By establishing an accounting system which will capture the costs incurred in carrying out its regulatory functions, FCC should be able to rapidly implement the provisions of Section 3 of H.R. 3239 and adjust fees as costs change without judicial intervention. Cost information would also provide a common financial denominator for the

measurement and evaluation of efficiency and economy in terms of resources used in performance. Thus, such a system would not only enable FCC to establish a fee schedule consistent with law and regulations, it would also be in the best interest of the Commission from a management perspective.

Regarding the specific provisions of Section 3 of H.R. 3239, we offer two suggestions. First, the language contained in the new Section 417 of the Communications Act of 1934, we believe, clearly intends that FCC develop fees based on its costs of providing certain services to communications suppliers or users. Section 417(a)(2)(A) specifies, however, that no portion of such fees may be based on "the value to the person involved of any license issued to such person by the Commission or any service performed for such person by the Commission." To clarify the meaning of Section 417(a)(2)(A) we suggest adding the following phrase "except as measured by the direct or indirect costs incurred by the Commission in issuing such license or providing such service."

Secondly, we suggest deleting Section 417(a)(3). That Section limits the total amount of funds collected from fees to a maximum of 50 percent of the Commission's annual appropriation. We believe the total amount of fees collected by the Commission should be based entirely on its costs as determined under the criteria specified in Section 417(a). In accordance with Section 417(a)(3), however, if such costs exceed 50 percent of the Commission's appropriation, those costs exceeding 50 percent would then be charged to the general taxpayer rather than to those persons receiving a special benefit from the Commission's actions. Further, if costs exceed the 50 percent limitation, the Commission would be required to make arbitrary determinations on how to adjust its fee schedule to comply with Section 417(a)(3)--for example, by reducing all fees on a pro rata basis or by waiving certain fees. Deleting Section 417(a)(3) would avoid these possible occurrences.

A LEGISLATIVE MANDATE SHOULD  
EXPEDITE FCC ACTION TO REVISE  
THE UNIFORM SYSTEM OF ACCOUNTS

( We also support H.R. 3239's mandate, as specified in Section 4, that FCC complete the rulemaking proceeding relating to its revision of the uniform system of accounts for common carriers as soon as practicable. ) As we recognized in our 1979 report "Outlook Dim For Revised Accounting System Needed For Changing Telephone Industry" (FGMSD-80-9, November 13, 1979), FCC's efforts to develop a system which could be used to determine

the costs of specific telephone services so as to improve regulatory rate review and detect anticompetitive pricing practices have been plagued by a myriad of problems.

H.R. 3239's requirement that the Commission report on its progress within one year of the bill's passage should help the Congress monitor the Commission's efforts to revise the system. To further improve congressional oversight in this area we also suggest requiring the Commission to develop a specific time schedule for revising the system of accounts and furnishing it to the Congress within six months, along with its other goals and objectives for its authorization period, as we suggested on page 3.

ADDITIONAL IMPROVEMENTS IN  
FCC ORGANIZATION AND MANAGE-  
MENT ARE ALSO NEEDED

The establishment of a periodic authorization process as set forth in H.R. 3239 can go a long way toward strengthening FCC's direction and management, and thereby its overall effectiveness. To further improve FCC's management and regulatory effectiveness we also suggest incorporating in H.R. 3239 legislative changes to modify the Commission's size, composition, and structure. We recommended these changes in our July 1979 report on FCC's management. Specifically, we favor reducing the number of Commissioners from seven to five, strengthening the Chairman's role as administrative head of the agency, providing for Senate confirmation of the Chairman, legislatively establishing the position of Managing Director at the Commission and lengthening the terms of the Commissioners.

Reducing the number  
of Commissioners

Although we recognize that there is no ideal size for a regulatory commission, reducing the number of FCC Commissioners from seven to five is likely to provide several important benefits. It should help to speed Commission decisionmaking; it should result in improved management by making the Chairman's leadership job easier; and it should reduce administrative costs.

Strengthening the role  
of the Chairman and estab-  
lishing a Managing Director

There is substantial merit in the commission form of organization for regulating the complex and politically sensitive area of communications. A multimember commission cannot,

however, effectively administer the daily affairs of a regulatory agency. While the language of the Communications Act provides that the Commission's Chairman shall serve as its Chief Executive Officer, the Chairman's administrative prerogatives are substantially weaker than at other commissions. We believe, therefore, that the Congress should make the Chairman the administrative head of the agency and endow him with full executive authority, including the power to select the heads of major administrative units (subject to Commission approval), to delegate responsibilities, to assign and transfer staff members, and to make management policy determinations, including determinations as to the Commission's internal organization. Such action would bring FCC's Chairman's powers more in line with those of other regulatory commissions, such as the Federal Maritime Commission and the Commodity Futures Trading Commission.

In view of the important management and leadership role we have outlined for the Chairman, the designation of one Commissioner as Chairman should also be subject to Senate confirmation. Such confirmation would be required separate and apart from confirming Commission members as is currently required. This procedure would permit Senate evaluation of a nominee's management and leadership qualifications in the case where an incumbent Commissioner has been named by the President to fill a vacancy created by an outgoing Chairman.

The Commission has an Executive Director who has responsibility for various administrative functions such as procurement, personnel management, and budget preparation, but has no authority to direct the activities of the Bureaus and Offices. Consequently, no one individual functions as the Chief Operating Officer at the Commission, and the Commission's Bureaus and Offices have operated independently of one another with resultant problems in coordination, communication, and direction. We believe that a central locus of management is needed. To emphasize the importance of a strong Managing Director in improving overall Commission management, the Communications Act should be amended to provide for this position.

#### Lengthening the terms of Commissioners

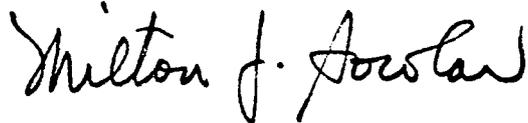
We believe that significant benefits can also be obtained from lengthening the seven year terms of Commissioners. Such action should have a favorable impact on the development of a career concept of Commission service, on the development of regulatory professionalism and accumulation of technical expertise, and on fostering real independence and integrity in the collegial decisionmaking process. It should also serve

to increase (1) interest in the effective administration of the Commission, and (2) support for establishing institutional arrangements more conducive to good management.

In conclusion, we believe that H.R. 3239 and H.R. 3240, together with the other changes we have suggested, will serve several important purposes. H.R. 3239 will provide an improved mechanism for congressional oversight of FCC activities; establish a sound and equitable basis from which fees for FCC services can be developed, and generally improve the Commission's organization and management. H.R. 3240 will similarly allow for improved congressional oversight of NTIA. Thus, they should do much to enhance the agencies' performance and strengthen the regulatory process.

We welcome working with your Subcommittee in its deliberation on this important legislation.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States