Telecommunications Structure and Management in the Executive Branch of Government, 1900-1970

Thomas E. Will

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In early 1970 President Richard M. Nixon created a new executive office, the Office of Telecommunications Policy (OTP), and appointed Dr. Clay T. Whitehead as OTP's first director. (Whitehead had previously been on the staff of Peter Flanigan, a presidential assistant responsible for telecommunications policy at the White House.) What was the motivation behind this action? Were political interests being served? With what results? Thomas Will believes that these and other questions must be raised in view of the history of the Nixon administration. In an attempt to answer them, he examines the development of telecommunications policy in the executive branch from 1900 to 1970.

Dr. Will reviews the early executive branch involvement in radio telecommunications, the Radio Act of 1927 and the Communications Act of 1934, the technological advance of radio telecommunications and its effect on the executive branch before and after World War II, the appointments of telecommunications advisors to presidents from 1951 to 1967, and the creation of the President's Task Force in 1967 to deal with the problems created by an inherently limited radio spectrum. He traces the steps taken to create the OTP and analyzes the extent to which the office reflected a traditional progression of executive branch telecommunications authority. His study and conclusions are directly and essentially relevant to the current debate on telecommunications policy.

Thomas E. Will is associate publisher of *Telecommunications* magazine. He was previously a policy analyst with the Office of Telecommunications, U.S. Department of Commerce. Dr. Will holds a Ph.D. from the University of Wisconsin.

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I. The Growth of Radio, 1900-1948

INTRODUCTION

It is common knowledge that telephone, radio, television, and radar are telecommunication technology that assume important functions in everyday life. It is this dependence on communications that increases societal demand of telecommunication services. Yet, in regard to radio telecommunication demand for service may exceed the supply of channels available. Radio is a limited natural resource because of its reliance upon finite space within the electromagnetic frequency spectrum.

This chapter is an attempt to explain the development of the wireless invention in the first half of the twentieth century and its concomitant effect on the executive branch. As technology changed in telecommunication, the structure of the executive was also altered. As the complexity of communications technology increased, the executive management of radio became more difficult.

In 1900, the executive branch handled wireless through the Secretary of the Navy; after World War II every member of the President's Cabinet was involved in radio. The following is a description of the evolution of radio within the executive branch from 1900 to 1948.

THE WIRELESS RADIO COMES TO AMERICA, 1900

As the Nineteenth Century drew to a close, the British Navy was displaying a growing interest in more effective communications among ships of its

fleet. Other countries, including the United States, had the same naval communication needs.

Guglielmo Marconi, an Italian citizen, applied for the wireless (radio) patent in Great Britain in 1896,[1] and by 1899, had reached both sides of the English Channel with his new invention. The British and American Navies quickly adopted the wireless as an answer to their communication needs, and interest in the new communications device was soon worldwide.[2]

The parent Marconi company and its subsidiaries organized themselves to capitalize on its wireless patent, building shore stations to communicate with ships. Marine disasters anywhere speeded the Marconi wireless sales.

> The life-saving aspects of wireless were constantly discussed, but its adoption also dovetailed with the needs of trade, the zeal for empire, and the burgeoning of military budgets.[3]

However, the Marconi Company did not sell its wireless equipment outright. A royalty or leasing fee was attached to each American wireless purchase.[4] Also Marconi had a monopoly on coastal transmitting stations. American wireless was thus subjected to foreign control. Since wireless was a strategic weapon, foreign ownership of this invention did not sit well with the American admiralty.

The effect of Marconi dominance became apparent in 1903. Prince Henry of Prussia, brother of the Kaiser, attempted to radio President Theodore Roosevelt after an American visit. The radio telegram intended for the White House was sent from the Prince's ship, S.S. Deutchland. Since the Prussian ship carried non-Marconi equipment, the Marconi radio receiving station at Nantucket refused to accept the message.[5] Marconi's international company policy was to receive messages only if sent from Marconi equipment.[6] This incident led to the First International Radio Conference organized by the Kaiser and held in Berlin, 1903[7] to end such narrow restraints upon international communication.

THE CABINET REVIEWS THE GROWTH OF WIRELESS, 1904

The Cabinet considered the wireless issue on April 19, 1904.[8] The agenda of this meeting recognized the need for international coordination of

wireless, as recommended by the International Radio Conference of 1903.[9] The Cabinet discussed a letter of protest sent by the Russian government concerning American reporters using radio equipment inside its territory.[10] Discussion centered upon the poor organization of executive branch radio usage, the lack of cooperation among commercial radio companies and the apparent desire of Congress to eventually assume legislative authority if the executive failed to act.[11]

On the advice of the Secretary of the Navy, President Roosevelt created an Interdepartmental Board of Wireless Telegraphy;[12] on June 24, 1904, Roosevelt appointed to the Board representatives of the Army, Navy, Labor and Commerce, Agriculture, and the Bureau of Equipment.[13] Subsequent deliberations by the group resulted in the following directives:

1. the Navy should provide coastwide radio communications;
2. the Army should provide for its specific radio needs; and
3. the Department of Labor and Commerce should be given authority to prevent control of U.S. communications by monopolies and trusts.[14]

This growing executive initiative in radio did not go unnoticed by commercial companies. The American Marconi Company and the National Signalling Company argued that executive branch initiative in wireless would result in the U.S. Army and Navy being given preference when new coastal radio sites were established.[15] The commercial wireless companies had no guarantee that the military would refrain from transmitting commercial type messages.

EMERGENCY PREPAREDNESS IN RADIO - AN EXECUTIVE FUNCTION, 1906

Emphasizing the importance of radio was its terrestrial potential used during the San Francisco earthquake of April 18, 1906.[16] The Naval ship U.S.S. Chicago had left the port of San Francisco on the night before the disaster. After being radioed to return to port, the Chicago interconnected her radio equipment with that of local Army signal units and transmitted emergency communications up and down the Pacific coast.[17]

A probable assumption would be that this incident enhanced the concept of emergency national planning in conjunction with radio use--and suggested as well that this should become an executive telecommunication function.

LEGISLATED EXECUTIVE AUTHORITY IN RADIO COMMUNICATION, 1912

The Second International Radio Conference met in Berlin in 1906;[18] the 27 participating nations recommended intercommunications with all ships at sea regardless of nationality or type of radio equipment onboard.[19] The first international allocation of frequencies was made by the Berlin Conference, which designated 500 and 1,000 kHz for general public service frequencies (wavelengths) for ship-shore wireless telegraphy. The allocation of the first of these frequencies has survived until the present day for calling and distress. Standardization of ship-shore communications centered on the frequency 500 kHz largely because of the resonance characteristics of shipboard antennas in 1906.

Increased exposure to international radio issues was reflected in domestic radio legislation. On June 24, 1910, the Wireless Ship Act[20] required the installation of wireless apparatus and operators on large seagoing passenger vessels. The administrator of the Act was the Secretary of Commerce, who was already administrator of domestic maritime navigational law.[21]

The sinking of the passenger ship Titanic in 1912,[22] prompted Congress to strengthen the safety provisions of the 1910 radio act.[23] Also, a new act, the Radio Act of 1912,[24] specified procedures to be followed in transmitting and receiving distress calls. The Act of 1912 was the first comprehensive radio legislation in the United States,[25] requiring that every radio station secure a license from the Secretary of Commerce for use of a radio frequency.[26]

The Secretary of Commerce had no authority to deny any license. Rather, his function was to minimize radio wave interference among the licensees. Even though the executive branch had been granted regulatory licensing authority, it had no discretionary power.[27] There were no standards by which it could choose among radio applicants, no authority by which it could specify specific frequencies for each applicant, limit the strength of the radio transmission, or set criteria for license renewal.[28]

The same year the executive was given increased authority in domestic radio regulation, the Third International Radio Telegraphic Conference was held in London on June 4, 1912.[29] The Departments of Army, Navy, Agriculture, and Commerce, represented the executive radio jurisdiction at this meeting. The deliberations of the twenty-nine participating nations resulted in radio recommendations concerning ships in distress and emergency radio procedures.[30]

THE EXECUTIVE TRIES TO INCREASE RADIO AUTHORITY AND IS ASSISTED BY WORLD WAR I, 1916

The Secretary of Commerce was in a quandary--transmitting and receiving stations growth were encumbered by increased radio wave interference, and he had no mandate to rectify the situation. Therefore, in 1916, the Executive Interdepartmental Board of Wireless Telegraphy informally discussed expanded executive radio regulation with interested commercial companies.[31] The Board on November 21, 1916,[32] recommended expanded executive powers in radio licensing; Congressman Alexander submitted a bill to Congress in January, 1917,[33] mirroring the Board's recommendation.

The severance of relations with Germany in 1917, at the beginning of World War I, rendered the Alexander bill moot. By proclamation, President Woodrow Wilson commandeered all wireless radio stations in the United States and its possessions in April, 1917.[34] In compliance, the American radio industry not only turned over its stations but also all available technicians and researchers.[35] Marconi Company radio transmitters were now in naval hands.

The World War I radio authority of the executive was formally recognized legislatively in 1918. Public Resolution No. 38, (H.J. Res. 309, July 16, 1918), assigned to the President radio emergency powers.[36]

Woodrow Wilson Uses Radio as a Policy Tool, 1918

World War I gave the executive a radio monopoly in the United States. This radio proximity to the White House encouraged Presidential use of the medium. Wilson's address to Congress on January 8, 1918,[37] was radio-telegraphed worldwide. This Presidential statement dramatically created public awareness of his peace policy of "Fourteen Points." On October 20, 1918, Wilson radio-telegraphed his

policy directly to the German people.[38] The significance of Wilson's radio employment might rest in the immediacy and psychological effect that radio technology had on the audience. That is to say, Wilson spotlighted his policy by the use of radio.

The Armistice: The Navy Wants Radio Control, 1918

Following the end of World War I, the Navy had a national monopoly in radio communication. The Alexander bill was reintroduced on November 21, 1918.[39] The bill was designed to secure governmental ownership of all wireless stations.[40] Yet, America had based its commerce on free enterprise and the naval plan was doomed to failure.[41] In December of 1918, during the Congressional hearings on the feasibility of naval control of American radio, Congressman Green declared:

> I am of the opinion that it is too much to ask the people of America to punish the people of America by restraining all their abilities and opportunities and all their hopes and expectations. You have to have some place of opportunity that young men can in the future get into, because they cannot get into the Navy, because the Navy will not increase as it has during the war, and the Navy bottles up and keeps for itself the opportunities and keeps everybody out.[42] [sic]

On January 16, 1919, the Congress tabled the radio ownership question.[43]

It was, no doubt the "unlovely scramble"[44] at the Peace Conference at Paris, in which "greedy European intriques"[45] revealed themselves to Wilson that reinforced his determination to hinder the Marconi Company's reemergence. There was need for haste moreover, if anything really effective was to be accomplished. The government would shortly be obliged to return wireless stations to their rightful owners. "In such event, no American company would exist that could hope to challenge the Marconi Company in its field."[46]

Franklin D. Roosevelt and Creation of Radio Corporation of America (RCA), 1919

By early 1919, the Marconi Company, partially reestablished, had tried to obtain exclusive use of the Alexanderson alternator which was recognized as the most efficient long-distance wireless apparatus in the world.[47] The news that such negotiations were commencing between Marconi and the patent owner of the alternator, General Electric Company, of course, alarmed the already sensitized executive branch. Since Secretary of the Navy Daniels was accompanying the President on the second trip to the Paris Peace Conference, he left his Under Secretary of the Navy, Franklin D. Roosevelt in charge of the affair.

In retrospect, the significance of this situation is inescapable. A future President of the United States would become involved in the creation of an American radio monopoly, the Radio Corporation of America. Roosevelt on March 29, 1919, as Acting Secretary of the Navy, received a letter from the president of the General Electric Company, Owen D. Young, outlining the details of the Alexanderson alternator sale to the Marconi Company.[48] Following a meeting of the two on April 11, 1919,[49] Young, at Secretary Roosevelt's request, broke off negotiations with the Marconi concern. Then, with the Department of the Navy's assistance, Young initiated and completed a cross-licensing patent agreement with Westinghouse, AT&T, the United Fruit Company, and General Electric, to create a wholly new company, Radio Corporation of America (RCA). Subsequently, the General Electric Company purchased the American Marconi Company and assumed radio operations of its far-flung radio enterprises.[50]

THE CABLE LICENSING ACT OF 1921

Further executive telecommunication authority was legislated through the Cable Landing License Act of 1921,[51] authorizing the President to license the landing operation of ocean telegraph cables. The Secretary of State became the advisor to the President on the matter of granting and evoking such licenses.

NATIONAL RADIO CONFERENCES AND THE CREATION OF THE INTERDEPARTMENT RADIO ADVISORY COMMITTEE (IRAC), 1922

So serious did the problem of rapidly multiplying radio stations become that by mid-winter of 1922, President Warren G. Harding instructed his Secretary of Commerce, Herbert Hoover, to convene a conference of radio manufacturers and broadcasters in Washington, D.C.[52] In opening the conference, Secretary Hoover declared:

> We have witnessed in the last four or five months one of the most astounding things that have come under my observation of American life. This Department estimates that today more than 600,000 (one estimate being 1,000,000) persons possess wireless telephone receiving sets, whereas there were less than fifty thousand such sets a year ago. We are indeed today upon the threshold of a new means of widespread communication of intelligence that has the most profound importance from the point of view of public education and public welfare.[53]

All delegates were united on one point--that the United States needed a structured radio policy.

The executive convened radio conference drew together the various segments of the radio industry; the executive branch was itself a radio broadcaster, the Navy ran two radio stations from Arlington, Virginia and the Great Lakes, while the Post Office transmitted radio telegraphic messages through six stations.[54] The radio companies of 1922, included Westinghouse, RCA, and General Electric, which were concerned with radio set sales. AT&T was contemplating radio as a supplement to its wired systems, especially for rural areas.[55] (WEAF, a New York radio station owned by AT&T in 1922, had already experimented with radio commercial messages.)

The resolution of this first domestic radio conference stipulated that sufficient legal authority should be delegated to the Secretary of Commerce to coordinate radio development.[56] The conference also declared that radio was a public utility and as such should be regulated and controlled by the Federal Government; and radio equipment reducing interference should be made available to the public without restrictions.[57]

A Congressional representative to the conference, Wallace H. White, Jr., of Maine, introduced a bill incorporating the conference resolutions, but the bill failed to leave committee.[58] During the hearings on the bill in the Committee on the Merchant Marine and Fisheries, Congressman White said in part:

> On December 27, 1922, there were in operation in the country 21,065 transmitting radio stations. Of these, 16,898, were amateur stations, 2,762 were ship stations, 569 were broadcasting stations, 39 were coast stations, 12 were transoceanic stations, ... There are, however, in addition to them, receiving stations to the estimated number of 2,000,000.[59]

White also pointed to the fact that the executive was using 122 of the total wave lengths then available, leaving only 29 for more than 17,000 private radio users.[60] He felt that all radio users should be accommodated and unintelligible messages caused by interference be eliminated.[61]

The Creation of IRAC, 1922

However, this radio conference did awaken several government departments to the need for cooperative action. On June 6, 1922, the Interdepartment Radio Advisory Committee (IRAC) was incorporated by Secretary of Commerce Hoover to assist him in assigning radio frequencies to government users.[62] The Departments of Agriculture, Navy, Post Office, State, Treasury, War, Interior, Justice, Labor, and the Office of Chief Coordinator (an office in the Bureau of the Budget) joined the IRAC.[63]

The IRAC agenda in 1922-1923 included: 1) replacement of arc transmitters by vacuum tube transmitters due to broad interference characteristics of the former; 2) preparation for the Second National Radio Conference; and 3) preparation for a possible Pan American radio conference.[64] In 1923 IRAC rules and organization called for subcommittees on broadcasting, technical problems, operation policy, legislation, and mobile radio.[65]

The Second National Radio Conference, 1923

The Second National Radio Conference, 1923, reiterated the recommendations of the First Radio Conference and the pressure on Hoover mounted.[66]

Hoover, frustrated by the White bill's demise, reallocated radio frequencies in July of 1923.[67] Hoover's reallocation scheme had no statutory authorization and failed through noncompliance by the broadcasters.[68]

RADIO, 1923

Warren G. Harding has been dubbed the "first radio President,"[69] inasmuch as his election returns, as well as his inauguration, were reported over radio.[70] On June 21, 1923, a special wire carried a Harding St. Louis address to the AT&T radio station in New York, WEAF, and was then broadcast.[71] Calvin Coolidge who assumed office upon Harding's death, with Hoover remaining as Secretary of Commerce, also utilized radio all through the campaign of 1924.[72]

During this period, the very American radio monopoly the executive branch helped to form, RCA, was being investigated for anti-trade practices by the Federal Trade Commission.[73]

Another conglomerate, AT&T, was also becoming cautious of the executive branch's anti-trust mentality. AT&T, already a national telephone monopoly, was quickly gaining prominence as a radio broadcaster, a motion picture producer, and its Western Electric subsidiary had experimented with sound synchronous movies.[74] By 1923, AT&T through the Bell Telephone Securities Company had distributed AT&T stock among small investors and Bell Telephone employees.[75] So, if the executive branch were to investigate, AT&T ownership would be divided over most of the 48 states.[76]

Executive Personnel Join the Industry, 1922-1924

Although traditional definitions of the term "radio telecommunication" center on media that utilize radio waves, radio wave software cannot be excluded. Sound and pictures are so intertwined with the conglomerate ownership of radio carriers that they should not be ignored. The future development of television would rest heavily on motion picture product.

The executive branch never directly regulated the motion picture industry.[77] However, motion picture companies hedged their bet by hiring executive branch officials to maintain good relationships with the White House.[78] Will Hayes, ex-Post

Master General, assumed the presidency of the newly formed (1922) Motion Picture and Producers and Distributors Association.[79] William G. McAdoo, from the Wilson Cabinet, also son-in-law to President Wilson and Democratic contender for the Presidency in 1924, was hired as first president of the United Artists Corporation.[80]

RADIO CONFERENCES IN 1924 AND 1925

At the Third National Radio Conference, October 6, 1924,[81] Hoover declared "we must have traffic rules, or the whole ether will be blocked with chaos, and we must have safeguards that will keep the ether free for full development."[82]

The Fourth National Radio Conference was held in the autumn of 1925, prompted by the fact that applications for new radio licenses had overwhelmed the Department of Commerce staff.[83] Hoover, persuaded by industry participants to assume allocation of frequency authority without Congressional legislation, picked up the challenge. He was quickly beaten by a problem that arose when the Zenith Radio Corporation applied for a license to broadcast in Chicago.[84] The license was granted although it meant the Zenith station would share the same frequency with a General Electric station in Denver. Zenith requested one of the six broadcast channels which had been allocated for Canadian use by prior agreement between Hoover and Canada.[85] After Hoover refused, Zenith ignored the Secretary's verdict by broadcasting on the Canadian frequency anyway, and the government was forced to bring action. The Court ruled in Zenith's favor, April 16, 1926,[86] giving the Attorney General no choice but to rule that the Department of Commerce had no authority to refuse or assign broadcast frequencies.[87]

THE RADIO ACT OF 1927

Based on the recommendations of the Fourth National Radio Conference for increased governmental regulation of radio use, the House of Representatives passed a radio bill introduced by Congressman White on March 15, 1926. On July 2, 1926, the Senate passed a similar bill introduced by Senator Dill. A Congressional compromise on the two bills resulted in Senate Joint Resolution 125, December, 1926--which was passed and signed by President Coolidge as the Radio Act of 1927.[88]

The Radio Act of 1927, created a five-man Federal Radio Commission. The philosophy guiding these radio Commissioners has been summarized by Sidney Head as:

1. The radio waves or channels belong to the people.
2. Broadcasting is a unique service.
3. Service must be equitably distributed.
4. Not everyone is eligible to use a channel.
5. Broadcasting is a form of expression protected by the First Amendment.
6. The government has discretionary regulatory powers.
7. The government's powers are not absolute.[89]

The FRC Commissioners had authority to grant, renew, or revoke stations licenses.[90] The Act of 1927 stipulated that after one year all authority would be vested in the Secretary of Commerce except that revoking a station's license, or problems of controversy, which would remain with the FRC.[91] In actuality the Secretary of Commerce never obtained his increased radio mandate from Congress. Congress continually extended the one-year limitation of the Act of 1927,[92] and the FRC functioned as radio czar until the creation of the Federal Communications Commission (FCC) in 1934.[93]

Presidential Authority Under the Act of 1927

The Radio Act of 1927, delegated to the President the appointment of the five FRC Commissioners and its Chairman;[94] the assignment of all government frequencies;[95] war powers;[96] and that the Secretary of the Navy would carry commercial type messages for American citizens if no commercial facilities were available.[97]

Although direct authority over radio licensing was taken from the executive branch, the executive still had influence over the new Federal Radio Commission by its authority to appoint all the five commissioners. The first Commission Chairman was Admiral W. H. G. Bullard, USN (Retired).[98] Bullard was sensitive to the executive point of view, having been one of the representatives for President Wilson during the creation of the RCA monopoly.[99] Bullard had been the Director of Communications for the Navy for over ten years and had negotiated with Franklin D. Roosevelt the demise of the American Marconi Company.

The FRC lacked facilities so the new Commission turned to Secretary Hoover for consultation, if not direct support.[100] Engineering staff for the FRC was provided by the Radio Division of the Bureau of Ships.[101]

> Due to the lack of funds, the Commission [FRC] was forced to open at the Department of Commerce, where Secretary Hoover provided a suite of rooms formerly occupied by the Bureau of Navigation. It was possible to engage only a small office force, and it has been necessary to economize in every possible way.[102]

THE GROWTH OF IRAC, 1927-1932

Section (6) of the Radio Act of 1927, required the President to assign government frequencies, therefore, government agencies submitted their radio needs to IRAC which in turn advised the President. The role of the IRAC as an advisory body to the President was confirmed when, on March 29, 1927, President Coolidge, in a letter to the Secretary of Commerce, affirmed the action of the IRAC assuming the responsibility of Presidential advisor.[103] This procedure was confirmed by subsequent executive order;[104] Executive Order 4846-A, signed by Ccolidge on March 30, 1928, listed approximately 600 assignments between 17.6 and 22,625 kHz,[105] and contained the following executive guidelines:

> No department shall erect a new station in the proximity of an existing government station, unless the same is incapable of rendering to such department the service that it requires... No department shall close a station no longer needed by it which is serving other Government departments without first making arrangements in respect to such service that are satisfactory to the departments being served.[106]

The Federal Radio Commission requested, in 1928, to attend IRAC meetings.[107] This same year the Committee discussed allocation of frequencies between the Federal Radio Commission (non-government users) and the IRAC (government users).[108]

In 1929, IRAC and the FRC scrutinized the problem of frequency allocations for television broadcasting and the aeronautical service. With respect to television the FRC recommended that the entire TV service be placed in 200 kHz of spectrum space in the two MHz band.[109] (This was exactly one thirtieth of the space presently allocated for a single TV channel.) By 1932, IRAC membership had grown to 13 executive departments, and among the topics under discussion was the fact that the field Army had approximately 1500 transmitters. It was prophesied that if all 1500 were utilized simultaneously there would be no radio spectrum left.[110]

The IRAC found itself increasingly involved in international meetings and conferences. The Fourth International Radio Conference, held in Washington, D.C., in October of 1927, and attended by 300 delegates from 79 countries, met to formulate international regulations minimizing interference between radio stations engaged in international service.[111] (The Fifth and Sixth International Radio Conferences in 1932[112] and 1938,[113] reflected the trend of international broadcasters to separate themselves by regional interests; prior to the Sixth Conference, North America held its meeting in Ottawa, the Western Hemisphere met in Lima, Peru, while the Europeans rallied on the continent.[114])

TELECOMMUNICATIONS MANAGEMENT, 1933

Franklin D. Roosevelt assumed the Presidency in 1933, taking command in the wake of the worst economic collapse in the country's history, 1929. The mood of the land was for management of a high caliber and an accountability for executive expenditures. The executive budgetary process had been in reform since William Howard Taft's Administration, as exemplified by the Budgeting and Accounting Act of 1921.[115] A new executive budget process, the Economy Act of 1933,[116] was designed to restrict administrator discretion at the department and agency level, while centralizing review and thus power in the Executive Budget Director's office.[117] As the era of the "New Deal" enveloped the country the concept of a management or accounting budget yielded to a broadening perspective of government responsibility.

It is in this setting that an Interdepartmental Executive Committee,[118] appointed by the Secretary of Commerce, initiated the first significant study of American telecommunication management. (It also seems significant that the Chief Executive in office at that time had experience in radio telecommunication while Under Secretary of the Navy.)

Roper Report, 1934

On January 23, 1934, Daniel Roper, Chairman of an executive study, submitted to the Senate Commerce Committee a report entitled "Study of Communications by an Interdepartmental Committee"[119] which analyzed:

1. the types of communication agencies in the United States;
2. the possible governmental ownership of communications companies;
3. the regulation of two-way communication and broadcasting; and
4. the merger of communications companies and their telecommunication rates.[120]

The Roper Committee found that regulation of radio at the federal level was divided among various agencies. Radio was under the jurisdiction of the FRC; the Interstate Commerce Commission (ICC) regulated interstate telephone and telegraph carriers; and the IRAC was the assigner of executive frequencies.

On the Congressional side Dr. W. W. Splawn was studying telecommunication management for the House Interstate and Foreign Commerce Committee.[121] Splawn's "Preliminary Report on Communications Companies,"[122] suggested that telephone and telegraph regulation under the Interstate Commerce Commission (ICC) had tended to be ignored because of the ICC's concern for railroad regulation.[123] Splawn said the American people needed a new regulatory body to adjudicate equitable telephone and telegraph rates.[124] He felt a new federal commission should be created to make intensive study of telephone and telegraph companies.

THE COMMUNICATIONS ACT OF 1934

Based upon the Roper and Splawn studies,[125] the Congress passed the Communications Act of 1934.[126] This Act created a permanent, seven-man Federal Communications Commission (FCC) as an independent

agency with the (a) regulatory powers over communications carriers that the Mann-Elkins Act of 1910,[127] had invested in the ICC, and (b) the licensing powers over radio obtained by the FRC.[128]

The Act of 1934 allowed the FCC powers over use of the radio spectrum by all entities other than the executive branch. Authority to assign frequencies to federal agencies remained with the President.[129] Therefore, no agency was empowered to resolve the conflicts that would result between federal and non-federal use of the spectrum or to optimize their combined use.

The President under the Act of 1934, would appoint the seven FCC commissioners and designate the Chairman;[130] assign government radio stations their frequencies;[131] authorize construction and operation of foreign embassy radio requests,[132] and have war and national emergency powers.[133]

The following table lists the duties of the President contained in the Radio Act of 1927 and how these were altered by the Communications Act of 1934.

TABLE 1

COMPARISON OF THE RADIO ACT OF 1927 AND THE COMMUNICATIONS ACT OF 1934 IN REGARD TO THE AUTHORITY OF THE PRESIDENT

RADIO ACT OF 1927	COMMUNICATIONS ACT OF 1934
Sec. 3 - The President appoints the five Commissioners and designates the Chairman of the Federal Radio Commission.	Sec. 4 - The President appoints the seven FCC commissioners and designates the Chairman.
Sec. 6 - The President assigns all government frequencies. Upon proclamation of war the President may utilize, control, and compensate, any radio stations.	Sec. 305 - Government radio stations shall use frequencies assigned by the President.
Sec. 7 - Compensation for Presidential war time radio use is determined by the President and appropriated by Congress.	Sec. 305(d) - The President authorizes construction and operation of foreign embassy radio requests.

RADIO ACT OF 1927	COMMUNICATIONS ACT OF 1934
Sec. 8 - Government call letters are designated by the Secretary of Commerce.	Sec. 606(a) - The President may place priority messages on any carrier in war time. (b) The President can use the armed forces to prevent obstruction of communications in war time.
Sec. 30 - The Secretary of the Navy may (a) receive or transmit press messages offered by any newspaper published in the U.S., or citizen of U.S. in a foreign country and (b) receive and transmit any private commercial messages if no private owned station is available.	Sec. 606(c) - Upon proclamation by the President that war, or national emergency, exists he may suspend all rules and regulations applicable to any radio station.

Both the Acts giving the President radio authority envisioned the executive role as a mission-support function.[134] That is to say, no agency was created to administer federal spectrum use, to coordinate federal research and development in telecommunication or the procurement of communications services and equipment by federal agencies, or otherwise to act as a focal point for the executive branch interest in the communications field.[135]

Beyond these specific points of authority the President could exercise influence in more subtle ways. The choice of FCC Commissioners could assist the President in determining national telecommunication policy.[136] Since the Act of 1934, the White House has exercised control in the personnel chosen for the offices of FCC General Counsel, Executive Director, and Chief of the Broadcast Bureau.[137]

IRAC, 1934 to 1940

President Roosevelt wrote to the Chairman, FCC, on November 9, 1934,[138] suggesting that the IRAC continue as a clearing house in the detailed allocation of specific frequencies but that its reports and draft executive orders be submitted through the Chairman, FCC. Again on May 18, 1936,[139] in a letter to the Chairman, IRAC, Roosevelt asked the Committee to select one or more of its members to appear at a Hearing of the FCC with respect to the allocation of radio frequencies to various classes of radio service. Thus, a coordinated estimate of the government's requirements for radio frequencies in the then usable portion of the frequency spectrum was given to the FCC.

In October of 1940,[140] an IRAC/FCC agreement was consummated whereby:

> The Interdepartment Radio Advisory Committee will cooperate with the Federal Communications Commission in giving notice of all proposed actions which would tend to cause interference to non-government station operation, and the Federal Communications Commission [will do the same with the IRAC].[141]

The above agreement has been followed by both parties ever since.

On November 6, 1941, the IRAC approved a set of Bylaws covering its organization and procedures.[142]

WORLD WAR II: IRAC, THE BOARD OF WAR COMMUNICATIONS, 1940-1947

During 1940 and 1941, IRAC was faced with an increasing number of license applications from military agencies, particularly domestic aviation.[143] By 1942, the demand had spread to overseas communications facilities.[144] It was at this time Roosevelt created the Board of War Communications[145] to conduct studies of the nation's available communications apparatus. The Board was composed of the Chairman, FCC, as Chairman, the Chief Signal Officer of the Army, the Director of Naval Communications, the Assistant Secretary of State in charge of the Division of International Communications, and the Assistant Secretary of the Treasury in charge of the Coast Guard. The IRAC was to act as a committee of the Board, but in an advisory capacity.

In 1943, IRAC had begun to deny agency frequency requests;[146] this was the beginning of the exhaustion of the "unseen" natural resource - the electromagnetic spectrum. World War II presented the problems inherent in a limited frequency spectrum in that all available spectrum space was utilized. Also, by then IRAC had a government constituency to assist and protect, while the FCC had a civilian constituency demanding the same allegiance. Disputes between IRAC and the FCC prompted a Congressional investigation[147] in 1943, during which FCC Commissioner Craven suggested that Congress "clarify" jurisdiction over the radio spectrum and "legalize" IRAC in the process.[148] He said that the President should adjudicate FCC/IRAC differences with the advice of an independent advisory board.[149]

The Telecommunications Coordinating Committee

The recommendation for an executive telecommunication advisory board was followed by the creation of the Telecommunications Coordinating Committee (TCC), in the Department of State.[150] The TCC was given status through an exchange of letters between the Departments of State, Treasury, War, Navy, Commerce, and the FCC, on March 14, 1946.[151] The newly created TCC stated it should assume the role of a national telecommunications policy maker; while the established FCC indicated that the TCC was trespassing upon a responsibility that rightfully belonged to it.[152]

The TCC was the President's representative on telecommunication issues, and the FCC was attached to the Congress. Such a conflict in loyalty led to TCC's ineffectuality.[153] The TCC/FCC mission conflict was analyzed by a Bureau of the Budget study in 1946.[154] This study pointed out that inasmuch as the FCC operated as defender of non-government interests in working as a member of IRAC, no resolution to the situation could be seen. Executive agencies, the report stated, traditionally will not allow a co-equal agency to control their internal operations and recommended creation by executive order of a Coordinator of Government Radio in the Executive Office of the President.[155]

The Administrative Procedure Act, 1946

The Administrative Procedure Act of 1946[156] restated the duties of the FCC and the IRAC. The FCC held defined procedures for assigning frequencies in the civilian sphere but not when military or foreign affair issues were involved.[157] (On February 24, 1947, Executive Order 9381 abolished the Board of War Communications.)

IRAC ON THE INTERNATIONAL FRONT, 1945-1947

From 1945 to 1947, the United States participated in a series of conferences preparatory to the International Telecommunication Conference held at Atlantic City, New Jersey, in 1947.[158] During this period, IRAC was primarily engaged in the task of refining and perfecting United States radio proposals, especially in reference to the International Table of Frequency Allocations (the table separating bands of frequencies for specific use internationally).[159] As a result of IRAC/FCC work, the U.S. proposals (a) embraced a new Table extending the radio allocations to 30,000 MHz, and (b) an international frequency registration board which would examine proposed use of frequencies before they were accorded status in an international frequency list.[160]

The IRAC/FCC additionally suggested an engineered frequency list based upon the stated requirements of each participating country.[161] It was the over subscription to this list by all participating countries that forced Presidential attention to the radio telecommunication issue in the late 1940's, as seen in the next chapter.

SUMMARY: EFFORTS TO IMPROVE TELECOMMUNICATIONS MANAGEMENT, 1900-1947

6/24/10	Wireless Ship Act of 1910 enacted, requiring installation of wireless apparatus and operators on large sea-going passenger vessels. Enforcement of Act was responsibility of the Secretary of Commerce and Labor, who at that time administered the domestic maritime navigation laws.
1910	Mann-Elkins Act of 1910 authorized the Interstate Commerce Commission to regulate accounting practices of wire carriers, and to regulate certain operations of radiotelegraph carriers.
7/23/12	Wireless Ship Act of 1910 amended to cover large cargo ships and extended to include the Great Lakes.

8/13/12 Radio Act of 1912 extended Government control to domestic radio communication in general as well as to wireless telegraph, particularly in marine use. The Act made provision for protection of Government operations, gave the President special authority over radio communication in an emergency, and placed licensing of stations and operators in the Secretary of Commerce and Labor.

7/16/18 Public Resolution No. 38 authorized the President to control all communication during World War I.

1921 Cable Landing License Act authorized the President to license the landing or operation of ocean cables. The Secretary of State was authorized by executive order to advise the President on the granting or revocation of such licenses.

6/1/22 The Interdepartment Radio Advisory Committee (IRAC) was organized upon invitation of Herbert C. Hoover, then Secretary of Commerce, to assist and advise in carrying out the President's responsibilities under the Radio Act of 1912. Since that time the President has relied upon the IRAC to handle the details of assignment of radio frequencies to Government agencies and has confirmed such assignments periodically by executive order.

2/27/27 Radio Act of 1927 enacted, creating a five-member Federal Radio Commission (FRC) to regulate certain aspects of radio, including the allocation of bands of frequencies to radio services, assignment of specific power, and issuance of station licenses. The Act assigned to the Secretary of Commerce authority to assign call signs, inspect radio stations, and examine and license radio operators. Regulatory authority over wire communication remained in the ICC. Chaos in the rapidly developing radio broadcast service was the prime reason for the Act.

3/29/27 President Coolidge wrote to the Secretary of Commerce stating that the performance of his duties, under Section 6 of the Radio Act of 1927, involved assigning of frequencies to Government stations and the avoidance of conflicts between various Government services and that in view of the nature of these duties, he wished to have applications from Government agencies for use of frequencies submitted to the IRAC which should make recommendations and advise him in such matters.

1/23/34 Study of Communications by an Interdepartmental Committee, Daniel C. Roper, Chairman, submitted to Senate Commerce Committee. This study and Splawn recommendation that radio, wire and ocean cable communication services be regulated by a single body, influenced the enactment of the Communications Act of 1934.

6/19/34 Communications Act of 1934 enacted, creating a 7-member Federal Communications Commission (FCC), as an independent agency to regulate interstate and foreign commerce in communication by wire and radio, including radio broadcasting and radio operations of state and local governments. The Act continued the President's authority to assign radio frequencies to stations belonging to and operated by the United States, and to control communication in an emergency.

11/9/35 President Roosevelt wrote to the Chairman, FCC, suggesting that the IRAC continue to function as a clearing house in the detailed allocation of specific frequencies, but that its reports and draft executive orders be submitted through the Chairman, FCC.

9/20/40 Executive Order 8546 created the Defense Communications Board, (DCB), name changed to Board of War Communications (BWC) by Executive Order 9183 of January 15, 1942, to coordinate the relationship of all branches of communication to the national defense.

1943 House of Representatives Resolution 21, 78th Congress, created Select Committee to investigate FCC. Commissioner Craven recommended that (a) Congress clarify various jurisdictions over radio spectrum, (b) legalize IRAC and (c) President adjudicate FCC/IRAC differences. He advocated an advisory board to the President.

3/14/46 Telecommunications Coordinating Committee (TCC) was established under sponsorship of the Department of State by voluntary agreement of State, Treasury, War, Navy, Commerce and FCC.

At the outset it was thought that the TCC could formulate policies and develop plans and programs which would promote the most effective use of wire and radio facilities. The FCC pointed to its statutory responsibilities for policy formulation and advice to Congress.

6/21/46 Study, Project 46-40 by Seidman and Moore, Bureau of the Budget, on "Allocation of Radio Frequencies to Government Agencies-Final Report, Project 46-40."

This study was designed to determine the organization required to carry out the President's responsibility for assigning radio frequencies to Government stations. It recommended the establishment, by executive order, of an office of the Coordinator of Government Radio in the Executive Office of the President.

2/24/47 Executive Order 9831 abolished the Board of War Communications.

1947 IRAC/FCC formulated important concepts for international frequency allocation: (1) an international frequency registration board, and (2) international frequency requests would be engineered to meet all countries needs.

II. Presidential Telecommunication Advisors, 1949-1958

INTRODUCTION

After World War II, the International Telecommunications Union (ITU) met in Atlantic City in 1947,[1] as already mentioned in the previous chapter. The ITU was the mechanism that allocated "bands" or portions of the radio spectrum (frequencies) for specific services worldwide. From 1948-1950 the ITU's Provisional Frequency Board (PFB), created in 1947, discussed the drafting of an international frequency list for submission to the Extraordinary Administrative Radio Conference (EARC) scheduled for the Hague in September of 1950.[2] The PFB meeting in Geneva, Switzerland, failed because participating countries would not reduce national frequency demands which far exceeded the total frequencies then available for each nation.[3]

This apparent lack of international cooperation is explained by Harvey Levin:

> All nations are free to claim rights to use spectrum at will and have their claims recorded at the IFRB (International Telecommunications Union, International Frequency Registration Board, Geneva), provided only that they do not conflict with the prior right of others. Since 'squatters' rights have more legal standing in the case of international frequency management than they do domestically, sovereign nations tend to claim far more space than immediately needed out of fear that none will be available when they do need it and/or a national pride that sees in advanced communications systems a sign of having arrived.[4]

The failure of the Provisional Frequency Board of the ITU prompted the FCC to request the establishment of some mechanism for making policy decisions on the use of radio frequencies by executive agencies.[5] Therefore, the U.S. could better coordinate itself in ITU conflicts. In July of 1949, the Department of State submitted a letter to President Harry S. Truman suggesting a commission be set up to achieve this objective.[6] The President concurred with State's request and through Executive Order 10110[7] established the President's Communications Policy Board (PCPB) on February 17, 1950.[8]

In a letter to Dr. Stewart, Chairman of the PCPB, Truman outlined the need for executive branch direction in the telecommunications field.

> Communications services represent a vital resource in our modern society. They make possible the smooth functioning of our complex economy. They can assist in promoting international understanding and good will; they constitute an important requirement for our national security. There is, accordingly, a major public interest in assuring the adequacy and efficiency of these services... I am therefore establishing by Executive Order a temporary Communications Policy Board of 5 members to study and to make recommendations to me on the policies and practices which should be followed by the Federal Government in this field...[9]

Pressure on the President From Congress for Telecommunication Coordination, 1950

Additional motivation for Truman to create the PCPB might have been the pressure exerted by the Congress in 1949 and 1950, for telecommunication management.

Senate Resolution 50,[10] 1949, introduced by Senator Johnson (Colo.), directed the Senate Committee on Interstate and Foreign Commerce to make an investigation of the problems relating to U.S. common carriers in domestic and international operations. The study would weigh common carrier interests with national security requirements; review international radio treaties and the possible need for revision of the Act of 1934; and propose solutions to the unprecedented demands for frequencies by non-government users.[11] (Johnson's resolution resulted in no revision to the Communications Act, although on

April 24, 1951, he did introduce Senate bill 1378[12] to assign governmental frequency allocation to the FCC, as discussed later in this chapter.)

On August 10, 1949, Senator McFarland introduced Senate bill 1973[13] amending the Communications Act of 1934, to deal with noncontroversial FCC organization, procedural, and appellate matters. McFarland's purpose was to clarify the meaning and intent of the Act of 1934. This bill passed the Senate in August 1949, yet failed in the House.[14]

Representative Sadowski introduced bill 6949[15] on January 24, 1950. His intent was to amend the Act of 1934 and provide for an independent agency in the executive branch to be called the Frequency Control Board.[16] The five-man Board would formulate plans and policies with respect to the utilization of the radio spectrum, allocate frequencies and bands of frequencies, and assign frequencies to government stations.[17] The Board would prescribe regulations to govern the assignment, by the FCC, of frequencies to non-government radio stations.[18] Additionally, the Board was to have authority to disapprove FCC assignments which would cause harmful interference to any government use of radio.[19]

The bill would have authorized a Military Liaison Committee to advise the Board.[20] By virtue of the right of appeal to the President, through the Secretary of Defense, the Committee, in matters of national defense, would have virtual veto power over the Board.

The bill failed passage because of the establishment of the PCPB study group and because of strong Congressional opposition.[21]

PRESIDENT'S COMMUNICATIONS POLICY BOARD STUDY AND RECOMMENDATIONS, 1951

The PCPB in March of 1951, researched the fundamental problems in U.S. telecommunication and reduced the problems to five specific areas:

1. How shall the U.S. formulate policies and plans for guidance in reconciling the conflicting interest and needs of Government and private users of the spectrum space--that is, for guidance in making the best use of its share of the total spectrum?

2. How shall the U.S. meet the recurrent problems of managing its total telecommunications resources to meet the changing demands of national security?

3. How shall the U.S. develop a national policy and position for dealing with other nations in seeking international telecommunication agreements?

4. How shall the U.S. develop policies and plans to foster the soundness and vigor of its telecommunications industry in the face of new technical developments?

5. How shall the U.S. strengthen its organization to cope with the four issues stated above?[22]

The PCPB realized telecommunication presented a special combination of technological, economic, social, and political problems. Telecommunication systems as a whole both public and private, depended to an unusual degree upon technology that in 1951 was rapidly being altered. The Korean War not only increased the rate of communications technological innovation, but also demanded an increasing range of frequencies, both domestically and internationally. The PCPB found the task of adjusting organization and policy implementation to take advantage of technological opportunities complicated by the intimate connection of telecommunication with both the national security and international relations of the U.S.

The radio sector of telecommunication was further complicated by the fact that radio operated in the public domain. The possibility of interference necessitated domestic and international efforts to arrive at agreements for the apportionment of radio frequencies. In 1951, the existing mechanism for frequency assignment to government and to private users was obsolete. The time had passed when frequencies were given upon request and when government needs were small in relation to the whole.

Telecommunication policy formulation, as between the IRAC, FCC, and the Telecommunications Coordinating Committee (TCC) of the State Department, worked only when mutual interests were served.[23] The TCC was unanimity as the only course while acknowledging there must not be intrusion on the statutory or other

authorized responsibilities of any of the component agencies. TCC had adopted a modest charter in which it was agreed by the members that its mission was:

> The coordination of policies of the various departments and agencies of the United States Government relating to domestic and international communications matters..; and advise on problems of an international nature including preparation for international telecommunications conferences. The Committee shall act in an advisory capacity only, but may take final action when specifically authorized by unanimous concurrence of all Government agencies represented by the membership... In accordance with the foregoing, the primary objective of this Committee is the formulation of a national communications policy.[24]

The President's Communications Policy Board outlined the problems of the TCC as:

1. The TCC could lay out areas of disagreement but it could not resolve them or advise heads of agencies, and through them the President.[25]

2. The TCC was hampered by translating technical differences of opinion into policy alternatives, so they could be dealt with by the President or Cabinet officers.[26]

   The Secretaries and Assistant Secretaries couldn't readily grasp the technological problems of radio; usually the TCC member was the agencies' representative to IRAC. These IRAC representatives might have had some effect if they could have made policy commitments on behalf of their agencies, but they could not.[27]

3. The major difficulty faced by the TCC was division of a scarce spectrum resource among military claimants, other executive branch agencies, and non-government claimants, all with their own user interest to protect.[28]

The PCPB Report found that policy formulation on telecommunication in the executive branch was only possible if all participants found some advantage in a particular policy choice.[29]

The PCPB felt changes in telecommunication required the overhaul of government machinery for formulating telecommunication policy and for administering telecommunication activities in the national interest.[30] The Act of 1934, had established a dual system of radio control (IRAC/FCC); the regulation of private telecommunication was a function of Congress exercised through the FCC, while operation of government telecommunication was assigned to the President.

The President's Board determined that the FCC should be strengthened and continue as administrator of civilian radio; the IRAC should retain its functions; and the TCC should be preserved.[31] The PCPB's recommended solution to the lack of executive telecommunication policy coordination was the establishment of a one to three-man Telecommunication Advisory Board[32] in the Executive Office of the President. Its tasks would include formulating and recommending broad national policies in telecommunication and giving advice on policies and positions for international telecommunication negotiations.[33]

THE CENTRAL INTELLIGENCE AGENCY IN EXECUTIVE RADIO POLICY, 1951

The creation of the PCPB was the realization of the importance of radio to the national economy, international relations, and national security. It was with this latter context, national security, that the Central Intelligence Agency (CIA) was drawn in the executive telecommunication policy review process of 1950-1951.

Ralph Clark,[34] an assistant to Walter B. Smith, Director of the CIA, was confronted with the Russians openly jamming U.S., British, and Vatican radio signals in 1950.[35] Due to the national security ramifications of this foreign radio action, plus the creation of the PCPB, Clark aided Smith in writing a recommendation for approval of an executive authority for radio telecommunication.[36]

On January 25, 1951, Smith sent a memorandum to the Executive Secretary of the National Security Council on the advisability of coordinating all executive radio policy:

> It is believed that the National Security Council should consider recommending the establishment by Executive Order of a central authority to coordinate and provide integrated guidance to all United States radio communications systems and organizations as necessary to prepare the United States adequately for defense against Soviet attack on our radio communications systems and to mobilize the maximum United States potential for counterattack. The requisite authority for the establishment of such an agency should rest in the emergency powers of the President under the Communications Act of 1934 and in war emergency legislation.[37] (Complete memorandum in App. D.)

The significance of this memorandum is that in 1951, an agency whose records are usually not made public was participating in executive branch telecommunication policy planning. The potential for full public understanding of Presidential telecommunication policy decisions became clouded; thus, the interpretation given to executive action on telecommunication issues became subject to misinterpretation.

The intelligence gathering techniques of America relied on radio communications, both in multinational CIA communication and radar surveillance from low flying American aircraft.[38] The sophistication of advanced intelligence would later utilize synchronous communication[39] satellite (22,300 miles above earth). In 1951, the CIA became wedded to the executive telecommunication structure but few attended the "ceremony" and there would be no divorce.

A BILL TO GIVE THE FCC CONTROL OF EXECUTIVE RADIO, 1951

On April 24, 1951, Senator Edwin C. Johnson, Chairman of the Senate Committee on Interstate and Foreign Commerce, introduced bill 1378[40] to amend the Communications Act of 1934. Under the Johnson amendment section 305(a) of the Communications Act would provide that the FCC assign executive radio frequencies in accordance with rules and regulations approved by the President and to provide for public hearings on such assignments.[41]

Chairman Coy, FCC, on August 15, 1951,[42] wrote to Senator Johnson that the FCC believed it preferable to await the results of implementation of the PCPB recommendations. Coy referred to the PCPB's consideration of the role of the FCC in the assignment of frequencies to all users, the unlikelihood of acceptance of the FCC as an impartial arbiter, and the PCPB's view that it would be unwise to establish a superboard with overall assignment responsibility.[43]

The Johnson bill 1378 faded without FCC support.[44] Additionally, in October of 1951 Truman appointed a Presidential Telecommunication Advisor.

TRUMAN CREATES THE OFFICE OF TELECOMMUNICATIONS ADVISOR, 1951

Truman approved the recommendation of the PCPB to provide for a Telecommunications Advisor by issuing Executive Order 10297,[45] October 9, 1951, and appointed Haraden Pratt, Vice-President of the American Cable and Radio Corporation, to that position. Pratt was assigned essentially the responsibilities recommended by the Board.[46] (Executive Order 10297, App. E.)

The Meaning and Authority of an Office Created Through an Executive Order of the President

The Constitution, in describing the powers invested in the President of the United States, is brief. The President is,under Article II, Commander-in-Chief of the Armed Forces, authorized to sign treaties, and appoint ambassadors.

These legislated powers of the President have taken a severely narrow view, as in the administration of Truman. Justice Jackson, in writing an opinion on the 1952 Steel Seizure Case, declared that the President: "except for recommendations and veto, has no legislative power."[47]

Presidents do, though, exercise powers which are not expressly granted by the Constitution. Such authority can be broken down into legislative powers, delegated powers, and more specific spending powers, taxing powers, and war powers. Within the legislated Presidential powers, dwell the area political scientists refer to as administrative legislation.[48] Included in this category are treaties, executive agreements, rules and regulations, proclamations,

bill-drafting and executive orders.[49] It is the executive order that is directly related to our discussion of telecommunication in the White House.

Executive orders are laws when based upon constitutional powers held by the President or upon statutory authority.[50] The courts have ruled that executive orders are the same as Congressional legislated law. On occasion the courts do rule that executive orders exceed the President's proper authority, such as the 1952 Steel Seizure Case.[51]

Congress passed the McCormack Act, 1950, to explicitly recognize the President's need to subdelegate some of the functions invested in him by law. Representative McCormack recalled that, during a visit to the White House, President Truman pointed to a pile of papers on his desk and said: "I have got to take that over to Blair House every night and I have to spend three hours going over these things and signing my name. I have to know what I am signing when I sign. Many of the duties imposed upon me I could delegate to others."[53] A survey taken to determine the President's workload uncovered at least 1,100 statutes under which he had to act, either expressly or by inference.[54] On the basis of this knowledge, Congress authorized the President in 1950, to subdelegate functions to his department heads, on the condition that this did not relieve him of responsibilities.[55] It seems apparent, however, that responsibility was lost in practice if not in law.[56]

Subdelegation of authority by the President was first recognized by the Supreme Court in U.S. v. Grimund in 1911.[57] In 1891 the President was authorized by Congress to partition lands as forest reservations. The Department of Agriculture set guidelines for use of these reserves in 1906 and prosecuted sheepherders in violation of its directives. The sheepherders claimed that the Agriculture Department's regulations represented an unconstitutional exercise of legislative power by an administrator; the courts ruled otherwise.[58] In the 1940 Sunshine Anthracite Coal Case,[59] the court held that Executive delegation of duties is a necessity or "the burdens of minutiae would be apt to clog the administration of the law and deprive the agency of that flexibility and dispatch which are its salient virtues."[60] The power associated with delegation of authority is contingent on the underlying constitutional authority.

The Telecommunications Advisor to the President (TAP) 1951-1953

Pratt assumed office and his responsibilities on October 12, 1951. On May 21, 1953, in a letter[61] to the new chief executive, Dwight D. Eisenhower, he explained the function and needs of his office. Pratt said that programs designed to assure maximum security of the U.S. in time of national emergency and radio's efficient national use were his primary concern.[62] He discussed the problems of dual control of the frequency spectrum and unnecessary duplication in executive telecommunication management.[63]

On June 16, 1953, Eisenhower answered Pratt's letter by abolishing his office. Eisenhower wrote:

> After most careful consideration, I have decided to revoke the Executive Order creating the position of Telecommunications Advisor to the President and to issue a new Order providing for the performance by the Director of Defense Mobilization of certain functions relating to telecommunications.[64]

By Executive Order 10460, July 16, 1953, Eisenhower established that the duties of the Telecommunications Advisor would be reassigned to the Director of Defense Mobilization.[65] The Office of Defense Mobilization (ODM) established within itself the Office of Assistant Director for Telecommunications.[66] The new Assistant Director was to be responsible for telecommunication policy formulation in the executive branch, telecommunication management, and CONELRAD.[67]

The Korean War had prompted President Harry Truman in December of 1951, under his emergency powers, to issue Executive Order 10312[68] creating an emergency communications network, CONELRAD. The CONELRAD system functioned between governmental and civilian radio stations and was assigned to the Secretary of Defense and the Chairman of the National Resources Board, later renamed the Office of Defense Mobilization (ODM).[69]

IRAC was now required to report through this Assistant Director in the ODM. There is some indication that during the early 1950's the military influence in IRAC operations became paramount. Herbert Shiller[70] goes so far as to call this era the "military take over"[71] of IRAC. Victor Rosenblum[72] writes that $30,000 dollars from the Department of

Defense was given to IRAC in 1952 to augment its budget. Yet, since the biggest users of frequency in the federal government were the Pentagon's Army, Air Force and Navy, this close cooperation is not surprising. The most significant fact of this military/IRAC relationship is the possible protection of military frequencies from FCC or civilian erosion.

The Wolverton Bill, 1953

William E. Plummer, a member of IRAC and its Director for many years, describes this period of telecommunication management in the executive branch:

> Shortly after the position of telecommunications Advisor to the President was abolished and the function assigned to the ODM, Representative Wolverton, on August 3, 1953, introduced Bill H.R. 6819, 83rd Congress, 1st Session, to establish a telecommunications committee to: (1) coordinate the development of telecommunications policies and standards; and (2) formulate plans and policies with respect to the best possible utilization of the radio spectrum and communication media in promoting the interest of the United States.[73]

The Wolverton Bill, though defeated, was a catalyst for executive action.

A Cabinet Study Group, 1954

The Cabinet Committee on Telecommunications Policy and Organization was established November 4, 1954,[74] with the Director of the Office of Defense Mobilization serving as Chairman and the Secretaries of Defense and State as members. Although the Committee was to review telecommunication policy in the executive branch, it failed to draft a report and was abolished in 1957; its authority was given to the Office of Defense Mobilization.[75]

INDUSTRIES POINT OF VIEW IN THE EARLY 1950's

In 1952, the Joint Technical Advisory Committee[76] (JTAC) of the Institute of Radio Engineers (now the IEEE) and the Radio-Television Manufacturers Association (now the EIA) foresaw that allocation of frequencies could not be continued indefinitely and

that it would be necessary within ten or twenty years to limit the use of frequencies to services which could not be economically provided otherwise. In retrospect, they saw that "the radio frequency spectrum [had] become occupied with useful services, almost always in advance of adequate knowledge of the behavior of the radio frequencies selected."[77]

The JTAC study of technical barriers toward optimum spectrum use offered suggestions in regard to radio efficiency: JTAC wanted to encourage experimental authorization to develop all regions of the spectrum;[78] economic studies made prior to establishment of permanent radio services;[79] improved international cooperation;[80] transferral of radio services to other spectral regions when radio conservation dictated;[81] and technical standards improved to inhibit radio interference while increasing the use of narrower radio band widths[82] (bandwidth, i.e., spectrum space). The JTAC study had hit upon the crux of a crucial debate in radio policy--the need for radio efficiency in a free market, or competitive, radio structure.

GOVERNMENTAL SPECTRUM A TARGET OF OPPORTUNITY FOR COMMERCIAL RADIO, 1955-1958

The JTAC study of 1952 had justified inaction by contending that there was little to be done in regard to reallocation of radio frequencies among commercial users; outside of technological efficiency through narrower band widths and equipment development, little hope existed for increasing the frequency spectrum for new services.

Additionally, the most lucrative of all commercial radio use, television,[83] suffered from a shortage of frequency space. The television situation prompted the Senate Committee on Interstate and Foreign Commerce to convene an ad hoc Advisory Committee on Allocations[84] to make a survey and appraisal of television allocations. On May 6, 1955, Dr. Edward L. Bowles was appointed as Chairman of the study. (He submitted his recommendations to the Congress on March 14, 1958.)[85]

In response to this Congressional initiative the Director of the ODM, which contained the executive radio management authority, suggested to IRAC that it establish a permanent subcommittee to maintain a continuing review of the national Table of Frequency Allocations.[86] On November 11, 1955, IRAC established

the Select Subcommittee on Frequency Allocations[87] to ensure equitable distribution of spectrum space among all radio services, to provide the most effective utilization of radio spectrum, to minimize harmful interference, and to lay the groundwork for the next International Radio Conference (1959).[88]

The FCC was informed on October 21, 1955[89] of the IRAC study group and was urged to work with the Subcommittee. The FCC accepted the offer of IRAC with justified scepticism; for on April 13, 1956[90] the IRAC informed the FCC that based upon intensive research on the use of radio spectrum between 50 and 300 MHz the executive could not release valuable spectrum, including VHF TV frequencies, because of national defense and security requirements.

Potter Resolution 106, 1957

In March of 1957, Senator Potter[91] inquired of the Director, ODM, whether all of the frequencies allocated in both radio and television to the executive branch were utilized sufficiently to warrant such continued assignment. (Letter of March 25, 1957, App. J.) The Director, on April 2, 1957,[92] informed Potter of the executive efforts to resolve the special allocation problems of radio and the conclusion of the IRAC study group that no executive radio spectrum could be released. (Letter of April 2, 1957, App. K.)

Senate Joint Resolution 106[93] introduced by Senator Potter on June 18, 1957, wanted the establishment of a 3-member Commission on the Allocation of Radio and Television Frequencies to investigate executive use of its VHF (television) frequencies.[94]

During the Senate discussion of the Potter resolution, the Bowles Committee submitted its report.

Bowles Committee Report, 1958

The report of the ad hoc Advisory Committee on Allocation (Bowles Committee) submitted its study to the Senate March 14, 1958.[95] Bowles in his letter to Senator Magnuson, Chairman of the Committee on Interstate and Foreign Commerce, advised that the ad hoc group was unable to make specific engineering recommendations which would correct the TV frequency use plan. Bowles concluded his study with four recommendations:

1. an independent audit of the UHF-VHF frequency allocation plan;[96]
2. an objective review of the FCC's mandate, management, operation, and budget;[97]
3. an office in the executive branch to handle telecommunication management;[98]
4. an authoritative review of the radio spectrum requirements of the nation as a whole.[99]

To say the least, the Bowles results after three years of work were minimal.

President Writes Congress, 1958

The Senate passed the Potter bill, Senate Joint Resolution 106, July 18, 1958,[100] although it had been amended to provide for a five-member television allocation commission. (S.J. Res. 106, App. L.) The President on July 28, 1958,[101] wrote Sam Rayburn, Speaker of the House, his view that indeed the executive would welcome a review of its allocation practices--but should not the non-government uses for radio frequencies also be studied? (Letter of July 28, 1958, App. M.) The House Committee on Interstate and Foreign Commerce reported out the Potter resolution on August 2, 1958,[102] with an amendment incorporating the President's views. The broadcasting industry and Senator Potter interpreted the amended House version of the resolution as a move by the military to get non-governmental frequencies and opposed passage of the resolution.[103] As a consequence, the Second Session of the 85th Congress closed without further action on the Potter legislation.[104]

FCC: UHF Allocation Scheme

Harvey Levine wrote that during this period the FCC was proposing exchange of at least part of the UHF channels utilized by broadcast television (518-890 MHz) for military VHF channels (225-400 MHz).[105] This reallocation of frequencies was an alternative means to implement the Commission's TV Allocation Plan. This swap of spectrum would ease the burden of the assignment of UHF-TV channels with steps to activate them.[106] (UHF-TV was less desirable than VHF-TV because of the increased power needed to transmit the TV signals.)

The military rejected the FCC proposed reallocation scheme because it would have had to invest $5 billion to develop new communication systems elsewhere in the spectrum;[107] the interim loss of U.S. and allied defense capability while the change of frequencies was implemented;[108] and the military was not certain how future military capabilities would be comparable to the ones lost in the frequencies exchanged.[109]

SUCCESSIVE ATTEMPTS TO STRUCTURE TELECOMMUNICATION MANAGEMENT IN THE EXECUTIVE, 1958

The Federal Civil Defense Agency (FCDA) and the Office of Defense Mobilization (ODM) were merged into one office, which became the Office of Civil and Defense Mobilization (OCDM).[110]

On December 29, 1958, a Special Advisory Committee on Telecommunications submitted a report to OCDM Director Leo A. Hoegh for transmittal to the President.[111] This committee was created by Director Hoegh to:

1. review the role of the Federal Government in the management of telecommunication;[112]
2. make recommendations to improve the allocation, management, and control of radio and television frequencies for government and non-government use.[113]

The Committee, Victor E. Cooley, Chairman, concluded that: (a) any sweeping change in the regulation and control of telecommunications by the government, and in the legislation therefor, should be considered only after extensive study and the development of a well-thought-out course of action;[114] (b) in advance of such a study, certain immediate steps could and should be taken to strengthen the executive branch side of telecommunication management;[115] (c) it would seem inappropriate to give the FCC the power to act in matters affecting the executive agencies or responsibilities relating closely to national defense or foreign affairs - these are areas of decision which belong to the President and should be his prerogative to delegate;[116] (d) these broad discretionary functions could best be discharged through the creation of a board within the Executive Office of the President to act for and be answerable to the President in the carrying out of his responsibilities under the Communications Act.[117]

The Committee recommended that there be established in the Executive Office of the President, through legislation, a National Telecommunications Board which would report directly to the President; the Board to consist of three members appointed by the President, by and with the advice and consent of the Senate; the Chairman of the Board to be designated by the President; and the Interdepartment Radio Advisory Committee to report to and assist the Board in the performance of the Board's functions.[118]

The Committee also recommended that the Board should be charged, as special duties, to: (a) review the National Table of Frequency Allocations, in consultation with the FCC, to the end that a determination could be made as to whether the division of radio spectrum served the national interest to an appropriate degree; (b) maintain continuing review of the National Table of Frequency Allocations, coordinating with the FCC, for purpose of ensuring an appropriate division of spectrum space between the government and non-government users; and (c) study the role of the Federal Government in the management of U.S. telecommunication and the administrative organizations for discharging the government's responsibilities with particular reference to the division of responsibility under the Communications Act; and (d) to report to the President for transmission to the Congress, recommendations on what changes, if any, should be made.[119]

Although the Director of the OCDM accepted the study in part[120] and several bills introduced by Representative Harris,[121] mirrored the OCDM recommentations, no new telecommunication management was forthcoming.

In 1959, Senator Lyndon B. Johnson's Committee on Aeronautical and Space Science requested from the Library of Congress a report[122] on frequency allocation in regards to scientific exploration of outer space. The report concluded that the basic problems inherent in frequency allocation were one of management.

> With respect to national policy, none has yet been formulated and adopted which clarifies the dual control of the radio frequency spectrum by the FCC and the IRAC...no criteria have been established between the conflicting needs of Federal Government and non-government (civilian) users... Just as the United States lacks a clear

> policy for dividing the spectrum among its users, so it lacks a policy for guidance in preparing the national position for international negotiations.[123]

THE ABOVE 890 DECISION, 1959

In the last year of the Eisenhower administration the FCC announced the Above 890 MHz[124] decision granting construction permits of privately owned microwave systems. This FCC ruling could be called the modern era of telecommunication competition. Until 1959, the AT&T (and other common carriers) along with the government had the only authorization to utilize microwave.[125] From the issuance of the telephone patents to A. G. Bell in 1876, to their expiration in 1893-1894, the American Bell Telephone Company (AT&T today) had a total telephone monopoly in the United States.[126] Expiration of the patents opened the floodgates of competition. Within four years 6,000 independent telephone companies were formed.[127] Because of Bell's 17 year lead, the most lucrative markets had already gone to AT&T. Fierce competition and duplication of telephone companies intracity forced state regulation, 1907, and federal intervention, 1910.[128] Regulation controlled telephone competition, brought interconnection, and established the principle of having a single franchised monopoly in each geographical area for telephone exchange service.[129] Naturally, radio technology, used for telephone interconnection (microwave) also fell into the common carrier domain.

By 1956, large corporations had challenged microwave exclusively owned by common carriers.[130] These companies argued to the FCC that privately owned microwave systems could improve company efficiency and lower communication costs.[131] The FCC was forced to analyze the following criteria in coming to its decision in 1959.

> What effect would the authorization of private point-to-point systems where common carrier facilities are available have on the ability of the common carrier to serve the general public and, if such effect is detrimental, the specific nature, extent and magnitude of such detriment?

> Would a policy of restricting or denying a private point-to-point system because common carrier facilities are available be inconsistent with any of the provisions of the Communications Act? Would such restrictions result in a lessening of competition or a fostering of monopoly in the manufacture, sole use or provision of communications facilities contrary to the public interest?[132]

The approval of private point-to-point microwave in the Above 890 Decision by the FCC in 1959, was the initiation of a competitive environment in telecommunications that had been dormant since the "Kingsbury Commitment"[133] of 1913; the agreement of AT&T to desist from buying up competing telephone companies.

As the Kennedy administration prepared to assume leadership of the executive branch the die had been cast by the FCC towards competitive common carrier telecommunications in the United States.

SUMMARY: EFFORTS TO IMPROVE TELECOMMUNICATION STRUCTURE AND MANAGEMENT, 1949-1958

2/3/49 Senate Resolution 50, 81st Congress, introduced by Senator Johnson, (Colo.), directed Senate Committee on Interstate and Foreign Commerce to make investigation into the problems arising from the unprecedented demands for frequencies for non-government users; and policies which Congress should adopt for the granting of such allocations.

8/10/49 Senator McFarland introduced Bill S. 1973 to amend the Communications Act of 1934 to deal with non-controversial FCC organization, procedural, and appellate matters to clarify the meaning and intent of the Act.

Bill passed the Senate August 9, 1949 but failed in the House.

1/24/50 Representative Sadowski introduced Bill H.R. 6949, 81st Congress, 2d Session, to amend the Communications Act of 1934 to provide for an independent agency in the executive branch to be known as the Frequency Control Board.

2/17/50 Executive Order 10110 established the President's Communications Policy Board (PCPB) to study and make recommendations on the policies and practices which should be followed by the federal government in the field of telecommunication to meet the broad requirements of the public interest. The Board was to report by October 31, 1950 - later extended to February 16, 1951.

Decision to appoint Board stemmed in part from inability of existing organizations to resolve competing requirements of FCC on behalf of non-government users and government agencies for high frequencies as submitted to Provisional Frequency Board and to provide U.S. delegation to PFB with timely guidance.

2/16/51 The President's Communications Policy Board (PCPB) submitted its Report "Telecommunications - A Program for Progress", published March 1951.

10/9/51 The President approved the recommendation of the PCPB to provide for a Telecommunications Adviser within the Executive Office of the President by issuing Executive Order 10297 of October 9, 1951, and appointed Haraden Pratt, Vice President of the American Cable and Radio Corporation, to that position. Mr. Pratt was assigned essentially the responsibilities recommended by the Board.

10/12/51 to 6/16/53 Mr. Pratt assumed office and his responsibilities October 12, 1951. Executive Order 10460 was issued June 16, 1953, abolishing the position of Telecommunications advisor to the President and assigning the functions to the Director of the Office of Defense Mobilization. Reorganization Plan No. 1 of 1958, merging FCDA and ODM into

the new Office of Civil and Defense Mobilization July 1, 1958, resulted in the execution of the President's telecommunication functions being placed four echelons below the President.

8/3/53 Bill H.R. 6819 introduced by Representative Wolverton to establish a Telecommunications Policy Committee to coordinate the development of telecommunication policies and standards. The bill failed of enactment.

11/5/53 ODM General Administrative Order IX-1 established the position of Assistant Director for Telecommunications with the responsibilities enumerated in Executive Order 10460, and directed the IRAC to report through the Assistant Director.

11/4/54 Cabinet Committee on Telecommunications Policy and Organization established, with Director, ODM, as Chairman and Secretaries of State and Defense as members. The Committee was to review existing policies and programs affecting all forms of electrical communication except domestic broadcasting and report by 1/31/55. The Committee made no formal report and was abolished 7/3/57 and the responsibility assigned to the Director, ODM.

6/21/55 Senate Committee on Interstate and Foreign Commerce convened ad hoc Advisory Committee on allocations. Dr. Edward L. Bowles, Chairman, submitted a chairman's report March 14, 1958, advising that the committee was unable to make specific engineering recommendations which would correct the frequency use plan. (See entry 3/14/58)

8/15/55 ODM suggested to IRAC that it establish a permanent subcommittee to maintain continuing review of the Table of Frequency Allocations to ensure an equitable distribution of the radio spectrum space among radio services and to provide allocations for newly developed techniques and radio services. In compliance IRAC established (10/11/55) the Select Subcommittee on Frequency Allocations (SSFA).

FCC was informed October 21 of the establishment of the SSFA and urged to work with the Subcommittee. The FCC accepted in a mild way November 4, 1955.

4/13/56 Informed FCC that based upon intensive study of the use of radio spectrum between 50 and 300 megacycles, begun in November, 1955, and carried out jointly with the Commission, the Government could not release any VHF spectrum space because of essential requirements of national defense and security and the far-flung aeronautical airways and communications systems.

2/28/57 FCC ordered hearing in the matter of Allocation of Frequencies above 890 Mc/s. Hearing set for September 1958, closed November, 1958. Initial notice of hearing issued December 7, 1956.

3/25/57 Senator Potter inquired of Director, ODM, whether all of the frequencies allocated in both radio and television to the Federal Government are utilized sufficiently to warrant such continued assignment. The Director, ODM, April 2, informed Senator Potter of efforts in the executive branch to resolve the special combination of technological, economic, social, and political problems presented by telecommunication and the divided responsibility. The Director advised the Senator of the Joint ODM/FCC study of use of the band 50-300 MHz and the conclusion that no space could be released without impairing national defense and the Federal Airways (See April 13, 1956 entry).

4/11/57 FCC issued initial notice in matter of Statutory Inquiry into the allocation of Frequencies to the various non-government Radio Services between 25 and 890 MHz. Docket 11997.

6/18/57 S.J. Res. 106 introduced by Senator Potter, to establish a 3-member Commission on the Allocation of Radio and Television Frequencies to investigate the utilization of the radio and television frequencies allocated to executive agencies.

The Senate Committee on Interstate and Foreign Commerce reported out (Report No. 1854 dated July 18, 1958) and the Senate passed July 21, 1958, S.J. Res. 106 amended to provide for a 5-member Commission.

6/20/57 H.R. Res. 381, same as S.J. Res. 106, introduced by Representative Bray.

The House Committee on Interstate and Foreign Commerce reported out (Report No. 2355 dated August 2, 1958) S.J. Res. 106 with Section 2(a) amended.

The amendment was made at the suggestion of the President and with the concurrence of the FCC.

7/3/57 The members of the Cabinet Committee on Telecommunications Policy and Organization (appointed 11/4/54) having left the Government service, the President officially terminated the Committee and assigned to the Director, ODM, the responsibilities previously vested in the Committee.

3/14/58 Report of the ad hoc Advisory Committee on Allocations (Bowles Committee) to the Senate Committee on Interstate and Foreign Commerce, "Allocation of TV Channels", submitted: 85th Congress, 2d Session. (ad hoc Committee established June 21, 1955).

7/1/58 FCDA and ODM merged into one office which later became the Office of Civil and Defense Mobilization (OCDM). The telecommunication function formerly assigned to the Director, ODM, by Executive 10460 was assigned to the Director, OCDM, by Executive Order 10773 of July 1, 1958, as amended. September 5, 1958, the ODM Telecommunications Area was directed to report to the Associate Director for Resources, who reported to the Assistant Director for Resources and Production, who reported to the Director, OCDM.

7/21/58 The Senate passed S.J. Res. 106 (Report No. 1854, dated July 18, 1958, 85th Congress, 2d Session) amended to provide for a five-member Commission. (See item 6/18/57).

7/28/58 The President communicated to the Honorable Sam Rayburn, Speaker of the House of Representatives, his view that, in essence: changing technology, needs and problem require a fresh examination of the role of the Federal Government in telecommunication; the examination should include non-Government as well as Government uses of frequencies; and the examination should include study of the administrative and procedural arrangements which exist with respect to allocation, management and control of frequencies. The suggested changes in language to accomplish these purposes were transmitted to Rayburn by the Director, OCDM, July 29, 1958.

8/2/58 The House of Representatives Committee on Interstate and Foreign Commerce reported out (Report No. 2355, dated August 2, 1958, 85th Congress, 2d Session), S.J. Res. 106 amended to incorporate the Administration views.

The broadcasting industry and Senator Potter interpreted the amendment to broaden the study to include non-Government as well as Government frequency usage, to be a move by the military to get non-Government frequencies and opposed passage of the resolution. In consequence, the Second Session of the 85th Congress closed without further action on the Resolution. (See item 6/18/57)

12/29/58 The Special Advisory Committee on Telecommunications submitted its report to OCDM Director Leo A. Hoegh for transmittal to the President.

3/27/59 The Report of the Special Advisory Committee on Telecommunication dated December 29, 1958, was transmitted to the Congress.

5/7/59 House Report No. 343, "Satellites for World Communication", Report of the Committee on Science and Astronautics, U.S. House of Representatives, 86th Congress, 1st Session.

5/11/59 H.R. 7057 introduced by Representative Harris. This is the draft bill recommended by the Special Advisory Committee on Telecommunication to establish a three-member Board in the Executive Office of the President. This bill died in Committee, 86th Congress, 2d Session.

7/28/59 H.R. 8426 introduced by Representative Harris in the 86th Congress, lst Session, "To strengthen the procedures governing the allocation, and to provide for more efficient utilization of the radio spectrum, and for other purposes." Short Title--Radio Frequency Allocation Act. The Bill failed of enactment.

III. Telecommunication Structure and Management in the Executive Branch of Government, 1959-1967

INTRODUCTION

In November of 1959, the United States Court of Appeals for the District of Columbia issued the Bendix Aviation Corporation[1] decision. The Bendix case upheld the contention of the Federal Communications Commission (FCC) and the Department of Justice that frequencies deemed necessary by the Office of Civil Defense Management (OCDM) for the national security were not subject to FCC supervision.[2] The OCDM was an Executive Office of the President charged with executive branch telecommunication frequency management. The Bendix case added clarity to Presidential telecommunication authority, the court holding that:

1. the President allocated frequency bands to government radio stations;
2. the head of a government agency could act for the President under delegated telecommunication authority, and
3. it was the prerogative of the executive branch to determine what radio frequencies were essential to national defense.[3]

With over one year left in the Eisenhower administration, the FCC announced the Above 890 MHz[4] decision granting construction permits of privately owned microwave systems. Kennedy or Nixon would be confronted with a modern era of telecommunication competition.[5] Government had the only authorization to utilize microwave. Private point-to-point microwave ownership was a competitive challenge in what, until 1959, had been an AT&T monopoly.

THE GROWTH OF TELECOMMUNICATION MANAGEMENT IN THE EXECUTIVE OFFICE OF THE PRESIDENT, 1960-1961

President-elect Kennedy appointed James Landis to analyze regulatory agencies prior to the start of the Kennedy administration.[6] The Landis study was made public through James O. Eastland, Chairman of the Subcommittee on Administrative Practice and Procedure to the Committee on the Judiciary.[7] The Report found inadequacies in the nation's approach to the management of telecommunication, saying in part:

> Communications presents [an] area where effective interagency action is lacking. Present communication policymaking machinery was established in 1934 in the context of regulating a private industry, and before the advent of radar, television, jet aircraft, intercontinental rockets, space communications and radio astronomy.[8]

Landis had analyzed the complex telecommunication policy problems not only of the FCC and IRAC but also of the National Aeronautics and Space Administration (NASA) and the Federal Aviation Administration (FAA).[9] Modern developments in space telecommunication pointed to the possibilities of a substantial augmentation of limited international communications through communication satellites.[10] Reliance on both NASA and the FAA for implementation of satellite placement necessitated even closer cooperation among more executive agencies than ever before.[11] Yet, such executive cooperation was minimal in 1960.

> The Federal Communications Commission expends substantially all its energies on the handling of problems relating to public broadcasting. The Telecommunications Division within the State Department entrusted with international telecommunication relationships is several layers deep within the Department. It has been permitted to decline in expertness, leadership, activity in international matters, as well as personnel. The Interdepartment Radio Advisory Committee has a responsibility with reference to Federal and non-Federal frequency allocations but each government body makes its own allocations within the areas allotted to it, so that apportionment of the radio spectrum is a matter of ad hoc negotiation rather than of planned usage. There exists also a Presidential

telecommunications adviser whose many other duties frequently overshadow telecommunications.[12]

James Landis believed that the first step towards improved executive telecommunication coordination was the appointment of qualified personnel to key positions.

> Good men can make poor laws workable; poor men will wreak havoc with good laws.[13]

The recommendation to President Kennedy for increasing the quality of telecommunication policy in the executive was to

> create within the Executive Office of the President with appropriate powers an Office for the Coordination and Development of Communications Policy and simultaneously by Executive Order transfer to this Office all powers relating to telecommunications now vested in the Office of Civil and Defense Mobilization.[14]

In summary, the Landis report concluded that the Office of Civil Defense Mobilization and the Department of State were unable to furnish adequate telecommunication leadership. The priority assigned to telecommunication by the President was far too low. Landis suggested that an office in the Executive Office of the President should be established to assume this needed function.

Based on the Landis recommendations, President Kennedy, through Executive Order 10995,[15] created the Director of Telecommunications Management (DTM) in the Office of Emergency Planning (OEP) in February 1962. The OEP Office had already subplanted its predecessor, Office of Civil Defense Mobilization.[16]

The duties of the DTM were to coordinate telecommunication activities in the executive branch,[17] formulate uniform telecommunication policies,[18] inform itself of governmental frequency issues,[19] and contract for research and development in the field.[20] Further responsibilities in regard to frequency allocation were redelegated from the Director of the OEP in February 1962, to the DTM.[21] IRAC was to report to the DTM who would then approve the IRAC frequency assignments.[22]

THE FIRST DIRECTOR OF TELECOMMUNICATIONS MANAGEMENT

Dr. Irvin Stewart, former FCC Commissioner, President of West Virginia University, Chairman of the President's Communications Policy Board (1950-1951), and member of the OCDM Special Committee on Telecommunications (1958), was commissioned April 3, 1962, as Assistant Director, Office of Emergency Planning, and Director of Telecommunications Management (DTM).[23] Although the Office appeared to possess a sensible mandate and a qualified leader, it lacked funds.[24]

> Dr. Stewart soon relearned some government facts of life. OEP changed Directors just before Executive Order No. 10995 was issued and the new OEP Director, while sympathetic, had his own responsibilities and provided neither additional funds nor personnel to support the additional responsibilities assigned to the DTM. Next, the Congress adjourned in the fall of 1962 without considering Dr. Stewart's supplemental budget for FY 1963 in conference on the grounds that telecommunications had waited this long, it could wait a little longer until the Congress convened in January. The supplemental request was approved in the spring of 1963 after Dr. Stewart had resigned in frustration.[25]

To fill the vacancy of DTM, President Kennedy appointed Dr. Jerome B. Wiesner[26] to serve as interim Acting Special Assistant to the President for Telecommunications.[27] Dr. Wiesner reviewed the history of the Administration to build a telecommunication management capability, the complete collapse of the effort, and recommended creation of a separate office to handle executive telecommunication policy.[28]

THE COMMUNICATIONS SATELLITE ACT OF 1962

Although the Director of Telecommunications Management was not adequately staffed or funded in 1962, his responsibilities multiplied rapidly. A major portion of this expanded authority flowed from the passage of the Communications Satellite Act of 1962.[29]

The creation of the Communications Satellite Corporation (COMSAT) through the Communications Satellite Act of 1962, occurred only after extensive discussion, reflected in 4000 pages of Congressional hearings and reports and 600 pages in the Congressional Record.[30] COMSAT was established to (a) develop a commercial international communications satellite system,[31] (b) operate the American segment of that system,[32] and (c) manage the satellite system in cooperation with other countries.[33] The COMSAT hearings encompassed diversity of opinions as to the alternative types of possible COMSAT ownership:

1. government ownership;[34]
2. common carrier ownership;[35]
3. private, broad-based ownership.[36]

The resolution of the ownership debate was the creation of COMSAT as a public corporation. Half of the COMSAT stock would be owned by common carrier companies and half by individual investors.[37]

With the passage of the Communications Satellite Act in August of 1962, Presidential telecommunication responsibilities were expanded.[38] Compliance with the policies in the Act and coordination of the electromagnetic spectrum were executive duties in order to assure satellite compatibility with existing communication facilities.[39]

Satellite Act of 1962

SEC. 201. In order to achieve the objectives and to carry out the purposes of this Act--

(a) the President shall--

(1) aid in the planning and development ...of a commercial communications satellite system;

(2) provide for continuous review of all phases of the development...;

(3) coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in this Act;

(4) exercise such supervision over relationships of the corporation with foreign governments or entities...;

(5) insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system;

(6) take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes...; and

(7) so exercise his authority as to help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the system with existing communications facilities both in the United States and abroad.[40]

Sixty days after passage of the 1962 Satellite Act, the President turned his attention to space again. This time the topic was missiles in Cuba.

THE CUBAN MISSILE CRISIS

The need for greatly improved Government communications was brought home by the Cuban missile crisis[41] of October and November, 1962. This crisis sharply revealed the inadequacy of governmental communications in carrying a very heavy load of high priority traffic under emergency conditions.[42] This serious problem served to underscore the knowledge that conventional high-frequency radio could not be fully depended upon and that normal communication methods for reaching remote spots around the globe were inadequate.[43]

President Kennedy quickly realized the strategic importance of radio telecommunication to the executive. Prior to the blockading of Cuba in 1962, Kennedy told the State Department of his desire that all South American governments be informed of his blockade strategy before it was implemented.[44] Since the State Department utilized Western Union telegraph offices for such emergency governmental dispatches, and Western Union telegraph offices in these Latin American countries were only opened five hours a day and closed at five o'clock, the Presidential military planning was encumbered.[45] The Kennedy reaction to this deficiency in telecommunication planning was to create the National Communications System[46] (NCS). After an interdepartmental study, President Kennedy issued a memorandum[47] to heads of Executive departments on August 21, 1963, establishing the NCS, under the Secretary of Defense.

Also, in regard to the NCS, the Director of Telecommunications Management was to serve as a Special Assistant to the President.[48] The Director would be responsible for policy direction during the development and later the operation of the NCS.[49]

The NCS comprised primarily long-haul, point-to-point trunk communications. The NCS served the Departments of Defense and State, the Federal Aviation Agency, the National Aeronautics and Space Administration, and the General Services Administration.[50] (The Federal Telecommunications System (FTS), established in 1961, and managed by the General Services Administration, dealt with domestic communications needs of Federal agencies.)[51]

In creating the NCS the military looked to the AT&T Company for guidance and common carrier expertise. The NCS is a wired and radio telecommunication system because of radio and satellite susceptability to jamming and destruction.[52] This military/AT&T alliance made it a formidable opponent to other executive telecommunication offices.

The mission of NCS was to provide a unified Federal communications system for operation under all conditions ranging from a normal situation to national emergencies and international crises, including nuclear attack. Initial emphasis, however, of the system was to be on meeting the critical needs for communications in national security programs, particularly to overseas areas.[53]

THE SECOND DIRECTOR OF THE OFFICE OF TELECOMMUNICATIONS MANAGEMENT

No change in organization occurred after Dr. Stewart's departure from the Office of Telecommunications Management. A new Director was appointed May 15, 1964.[54] Lieutenant General James D. O'Connell,[55] former Chief Signal Officer (USA, Ret.), became the second Director of the OTM and Special Assistant to the President for Telecommunications.

General O'Connell upon assuming office was faced with telecommunication management in the federal government at several interacting levels. He encountered policy direction in the Executive Office of the President; planning, programming, and procurement activities in the Department of Defense; and the regulatory action of the FCC. In regulatory proceedings before the FCC, the government agencies were represented by the General Services Administration, already noted as being in charge of the FTS (Federal Telecommunication System).

The General had many responsibilities to perform and a very limited staff to support him.[56] The priorities of the Office were U.S. leadership in new communications technologies, expansion of a global satellite network, and assuring economic viability of the U.S. international carriers.[57] Providing for efficient use by government agencies of telecommunications technology and preparation for crisis or emergency planning overtaxed the DTM's energies. The Director lacked resources and influence, and therefore the Office of Telecommunications Management never rose to a decisive policy and management position.[58]

The House Military Operations Subcommittee on Government Operations[59] recommended in October 1964, hearings that President Johnson submit to Congress a reorganization plan to reconstitute the functions of the Director of Telecommunications Management. The Subcommittee suggested that this Office be separated from the Office of Emergency Planning and placed in the Executive Office of the President.[60] Such a reorganization plan would accord the telecommunication office separate status, coequal with the Executive Office units for national security, economic, scientific, emergency mobilization, and budgetary affairs. In addition, it would provide a statutory base for the Director in dealing with the Congress. O'Connell's nonstatutory role of Presidential Adviser made relationships with the Congress a sensitive issue and created uncertainties as to what he would convey to the Congress in the way of information.[61]

One of the major problem areas, acknowledged by O'Connell, was the relationship of the OTM to the Secretary of Defense, who served as Executive Agent for the National Communications System, as previously described. Kennedy's memo of August 21, 1963, establishing NCS, created confusion as to where the policy management of the system by the Office of Telecommunications Management began and the unified technical planning and operations of the Secretary of Defense, as Executive Agent for the NCS, ended. Further confusion was introduced when President Johnson designated the Secretary of Defense to arrange with the Communications Satellite Corporation for the procurement of communication services, in 1964.[62]

Indeed, O'Connell had a complicated management problem. The extensive technical resource of the Department of Defense, its large yearly expenditures for telecommunication, and the specific assignment to handle COMSAT matters, gave the Secretary of Defense considerable policy leverage in telecommunications management. This placed the Director of Telecommunications Management in a difficult position, particularly since he was supposed to exercise by delegation the responsibilities vested in the President under the Satellite Act to supervise the government use of satellite services.

COMSAT As An Example of Executive Branch Telecommunication Policy Conflict

Executive Order 11191[63] required O'Connell to continuously review COMSAT's activities and progress toward a global system of communications, and to take appropriate means for insuring efficient government use of the system. Supervision of the foreign activities and negotiations required by or associated with the global satellite system were made a responsibility of the Secretary of State.[64] COMSAT, which was the focal point of government agency concerns in satellite communications, was both a profit-seeking corporation and chosen instrument of the government for extending global telecommunication. COMSAT represented the U.S. Government and performed foreign policy functions much as an agency of government participating in or dealing with international bodies or foreign governments. Questions immediately arose as to the effectiveness of the State Department's supervision of COMSAT's foreign-oriented activities; and the jurisdiction the FCC had on COMSAT's participation in multination joint ventures.[65]

COMSAT was at once a domestic corporation subject to FCC regulatory control as a communications carrier, and a member of the International Consortium for Satellite Communications (Intelsat) which was beyond the reach of FCC's jurisdiction. As a majority owner and general manager of the Consortium, COMSAT played two disparate roles and moved quickly between the domestic and the foreign scene. Inevitably, gray areas of FCC control developed, which then became the subject of discussion and attempted policy resolution by the affected government agencies and the Director of Telecommunications Management as the President's representative.[66] As a consequence of four-cornered correspondence between COMSAT, the State Department, the Director of Telecommunications Management, and the FCC, executive telecommunication policy on international communications suffered.

MILITARY AND INTELLIGENCE UTILIZATION OF TELECOMMUNICATION TECHNOLOGY IN THE 1960's: SPIES AND SECRETS

General O'Connell's telecommunication authority was demarcated by the management responsibilities and the budgets of the Central Intelligence Agency and the Department of Defense in telecommunications.

The Central Intelligence Agency (CIA)

The Central Intelligence Agency entered executive telecommunication policymaking in 1950. That year, the President's Communication Policy Board, created by President Truman, was analyzing the possible alternatives for executive branch telecommunication structure, policy, and management.[67] That Policy Board's study prompted Walter Bedell Smith, Director of the CIA to write:

> The Soviets are rapidly achieving the capability of launching an effective all-out electromagnetic war against the non-Soviet world.[68]

Smith's letter was the beginning of the CIA entry into the electromagnetic war with the Soviets. In the course of the next sixteen years, as satellite technology developed, the CIA had become an active telecommunication technology participant.[69] Satellites owned or controlled by the CIA could act as communication vehicles anywhere in the world; specialized photography satellites could record data worldwide. Ray S. Cline,[70] former Deputy Director of the CIA, was not pleased with the extent the CIA had gone in telecommunication information gathering by 1966:

> The one major change in CIA's structure that McCone [CIA Director, 1961-1965] made was one I disapproved of. He felt strongly that CIA, in order to compete with the Pentagon in the field of technical reconnaissance research and development, had to strengthen its scientific and technical resources. Accordingly, he created a new Directorate, Science and Technology. In order to give some warm bodies and an appearance of bulk to the Directorate, he took the scientific intelligence analytical staff from the DDI [Directorate of Intelligence] and turned it over to his new Deputy Director, a young scientist, Albert (Bud) Wheelon, who stayed only a short time before going back to industry. The result was, in my opinion, that CIA advocacy of its own scientific collection techniques became mixed up with its objective analysis of all scientific and technical developments. The appearance of objectivity was hard to maintain when analysis and collection were supervised by the same staff.[71]

What effect the telecommunication resources of the CIA had on Presidents Truman, Eisenhower, Kennedy, and Johnson cannot be determined since no CIA data is available for public scrutiny. Therefore, the CIA impact on Presidential telecommunication policymaking in regard to international and domestic satellite is also unknown. Yet, it can be summarized that the CIA did have direct access to the President through weekly briefings in the National Security Council; whereas the Director of Telecommunications Management never saw the President. If access to the President is a major criteria in determination of telecommunication policy input, then the CIA had more telecommunication influence than General O'Connell.[72]

The Department of Defense

Michael E. Kinsley[73] in his book on satellite policy in the United States quotes from a memo to President Kennedy from Secretary of Defense McNamara and NASA Administrator James Webb:

> Our attainments are a major element in the international competition between the Soviet system and our own. The non-military, non-commercial, non-scientific but "civilian" projects such as lunar and planetary exploration are, in this sense, part of the battle along the fluid front of the cold war.[74]

The memo might appear to say that military--telecommunication--policy might overlap "civilian"--telecommunication--planning.

O'Connell has stated that Secretary of Defense McNamara attempted to assign military communications needs in Vietnam via the Intelsat (the international consortium of satellite users) system in the mid-1960's.[75] The McNamara proposal was apparently defeated by Scandinavian objections to military manipulation of Intelsat functions. The McNamara communication problems in Vietnam seem to fall into the category of the McNamara/Kennedy memo; the Office of Telecommunications Management was circumvented in the policy process on this issue.[76]

a. The military saw satellite as a back-up system for the NCS.[77]

b. The expediency of satellite communications attracted the Secretary of Defense.

c. America's increasing participation in Asian warfare in the mid-1960's would intensify the needs of the NCS and the Secretary of Defense.

d. O'Connell, although adviser to the President on executive branch telecommunication problems, could be "out gunned" by military influence.[78]

The Results of Intelligence and Military Involvement In Executive Branch Telecommunication Policymaking

The period 1951-1965 saw increasing use of telecommunication technology by the CIA and the Department of Defense. The Korean War, the American/Soviet "cold war", the Cuban missile crisis, and the Vietnam conflict, emphasized the importance of telecommunication toward the national security.

Therefore, the CIA's presence at National Security Council meetings offered the opportunity to suggest policy on international communication topics such as satellite. Whereas the DTM, who had executive responsibility for international satellite development, seldom spoke to the President or the National Security Council.[79]

The Defense Department was estimated to have spent approximately $200 million on its international satellite communication planning by 1964.[80] The DTM's yearly budget of approximately $2 million was far overshadowed by the money and resources of the Secretary of Defense.[81]

O'Connell, DTM, felt that the pressures exerted by the executive agencies concerned with national defense had the consequence of minimizing his mandate.[82]

A WEAK OFFICE OF TELECOMMUNICATIONS MANAGEMENT: OTHER AGENCIES VIE FOR ITS AUTHORITY

Because the Office of Telecommunications Management was partially ineffective due to its position in the executive pecking order, contestants had assembled for the right to become communications coordinators in the executive branch. On October 18, 1966, the Department of Commerce released the report, "Electromagnetic Spectrum Utilization--The Silent Crisis."[83]

Describing an anticipated overcrowding of the electromagnetic spectrum as "the silent crisis," a panel of communications experts from industry and universities called for more research to improve efficiency of use of the spectrum.[84]

In this report, published by the Telecommunication Science Panel of the Commerce Technical Advisory Board, a critical and growing need was found for means to contribute to more efficient use of radio frequency bands in all segments of the spectrum. Its key recommendation was that the Federal Government develop a major new telecommunication research organization.[85] The proposed organization would conduct research embracing all types of spectrum uses including radar, police and industrial radio, navigation, and radio and television broadcasting.[86]

The panel's report was addressed to Secretary of Commerce John T. Connor. The panel studied telecommunication uses of the frequency spectrum, and anticipated future applications in commerce, transportation, and defense, as well as the growing cultural importance of mass media of communications using the spectrum.[87]

Approximately $20 billion[88] annually was spent on uses of the frequency spectrum. Facilities and operations were growing more than twice as fast as the gross national product.[89] Potential uses of communication satellites and expansion of mobile radio[90] were already inhibited by lack of unallocated or unused frequency space, the panel reported. In the unanimous opinion of the panel, the growth of the nation--including its economic, defense, cultural, and other aspects--could be seriously inhibited by overcrowding of the spectrum.[91]

The panel said that there were five principal ways by which additional research might lead to improvements in overall effectiveness of spectrum utilization. They were:

1. The usable regions of the spectrum might be extended. This would require research and development to make new regions of the spectrum available to new or existing services.[92]
2. The "technical" capacity of given telecommunications channels might be increased. This would require research in propagation, telecommunication systems, and information theory in order to obtain the transmission of the maximum number of bits of information in a given time through a given channel used by an aggregate of systems.[93]

3. The efficiency of operation of a given telecommunication function might be increased.[94]
4. The spectrum might be vacated by transferring the telecommunication function to a non-atmospheric form of transmission.[95]
5. The total complex of telecommunication capabilities could be optimized on the basis of the overall value to the nation.[96]

The last three ways also would require technical analysis, research, and engineering. The panel observed that while natural incentives existed in industry, government, and scientific activities for a variety of specific developments, there was a "clear lack of natural incentives"[97] to optimum overall use of the spectrum, and an absence of quantitative means to determine what was optimum.[98]

The panel said, further, that its study had identified "two very basic shortcomings"[99] in telecommunication science in the United States. First, there are "completely inadequate quantitative measures of the relative value to the nation of existing and future telecommunication services."[100] Second, there are "grossly inadequate technical programs"[101] designed to alleviate the anticipated overcrowding of the electromagnetic spectrum, i.e., "the silent crisis."

On the basis of those findings, the panel made the following recommendation:

> That the Federal Government develop a research organization which has as its primary objective the improvement of the overall effectiveness of the electromagnetic spectrum.[102]

Such an organization would, according to the panel, serve the Director of Telecommunications Management, the Federal Communications Commission, the Department of State, and all the other government, industrial, and academic institutions having interests in telecommunications, by providing them "with the economic, social, and technical information and analyses necessary"[103] to aid judgments affecting use of the spectrum.

Finally, the proposed organization would "identify and stimulate technical research programs which were essential to the improvement in the overall effectiveness of the use of the spectrum and execute or sponsor those which, for any reason, were not likely to be included in the related scientific and technological research programs of the nation."[104]

OTM's Own "Crisis" Report

In the same month that the Commerce Department released its report on the radio spectrum--October 1966--the Office of Telecommunications Management in the Executive Office of the President prepared a report for Congress entitled, "A Report on Frequency Management Within the Executive Branch of the Government."[105]

This report outlined many immediate problems requiring study such as: allocation proportions between various radio services;[106] spectrum division between government and non-government;[107] frequencies preferred for various applications;[108] allocation to terrestrial microwave and communication satellites vs. domestic wirelines and microwaves systems;[109] spectrum space for land mobile services;[110] giving up government allocations for city, State, and private uses;[111] increased sharing;[112] effect of millimeter and laser systems;[113] cable and waveguide vs. radio-communications;[114] needs for phone vision;[115] "mail" service via land line and radio;[116] and effect of improving technical standards.[117]

Long-range planning needed studies to determine the value and benefit to the nation of the various radio services, the contribution of each service to the GNP and relative importance indicators for each service and type of operation.[118] The Office of Telecommunications Management recommended encouragement of research to develop economical modes for providing services then emphasizing the radio spectrum,[119] to increase the efficiency of use of the spectrum,[120] to reduce interference,[121] and to open up spectral areas not then being utilized.[122] They also pointed out that less than one tenth percent of the spectrum value for spectrum management was far too small an amount for proper operation.[123]

OTM concluded that spectrum management must be improved to avoid major problems and stagnation. They suggested as national goals: doubling the spectrum contribution to the GNP;[124] fostering non-radiating telecommunication modes;[125] encouragement of space communications techniques;[126] and encouragement of research to improve the use and extend the useful range of spectrum.[127]

Included in the report was a section called "An Appeal" that is important to this report in that it forecasts situations that have emerged this very day in radio policy analysis.

> The evidence of present and impending massive trouble in our use of the spectrum is clear. We can continue to refuse to give adequate attention to this national resource until pollution, misuse, and saturation reach crisis proportions.
>
> When this happens our problems of immobility of capital investment will be so large that it will take us many years and much government and private money to straighten out the mess. We will, at this point, be forced to go to a National Frequency Bank Exchange, radically change all our present policies of frequency use, capitalize the spectrum, and sell or lease it to users on a competitive basis...[128]

This Office of Telecommunications Management report was not permitted to be immediately released by the Bureau of the Budget (BOB).[129] Such action by the Bureau of the Budget was probably in reaction to the release of the Department of Commerce report also in October of 1966. This incident is an example of the Budget Bureau's function as White House coordinator and will be expanded upon later in this research. Also highlighted in this BOB action is the tenuous position of the Director of Telecommunications Management. He was subject to BOB scrutiny and also suspect by other Executive agencies, such as the Department of Commerce.

CABLE TELEVISION AS AN ALTERNATIVE TO A CROWDED RADIO SPECTRUM

The Office of Telecommunications Management and the Assistant Secretary of Science and Technology, Department of Commerce, in their 1966 reports just discussed, advocated cable-TV (Community Antenna Television) as an alternative to the limited frequency spectrum of the United States.[130] Neither organization had an active program in stimulating cable-TV growth, such stimulation came from the Congress and the FCC. Yet, as Don R. LeDuc documents in Cable Television and the FCC: A Crisis in Media Control,[131] stimulation is hardly the word for the reflexive cable-TV rules of the FCC.

Cable TV Development

> Cable television is, in actuality, a deceptively uniform term which describes without differentiating among the three distinct forms of wired service it encompasses. Cable can mean the true 'community antenna,' a four-to-six channel operation simply enhancing the clarity of existing television signals; the typically twelve-channel 'CATV', augmenting local transmission with broadcast programming imported from other markets; or the modern 'cable-TV,' whose twenty-four to forty-eight channels and two-way circuitry provide a communications network for a broad spectrum of private information as well as general entertainment services.[132]

In 1952, the FCC reserved two thousand (VHF-UHF) television channels for individual community use.[133] The two thousand reserved TV frequencies, to serve 1300 communities, never materialized because of the economically oriented "market" standard of the broadcast industry.[134] The number of homes in rural America's TV "markets" did not produce sufficient advertising revenue to support TV broadcasting. On the other hand, cable-TV was a subscriber-supported system and did not rely upon the advertising dollar.[135] Therefore, in the 1950's and 1960's cable-TV systems were built to fill the non-broadcasting TV gap in rural areas. Cities where natural (mountains) or man-made (skyscrapers) obstructions limited broadcast TV reception also utilized cable-TV. The FCC ignored broadcaster complaints about cable-TV's siphoning, encroachment, on broadcast "market" revenues until 1965.[136] The FCC placed restraints on cable-TV growth in order to protect the broadcast industry's markets.

> By 1965, however, the FCC was finally forced to accept the fact that the broadcast market structure then supporting 569 commercial television stations would never furnish the full array of spectrum coverages necessary to supplant cable without regulatory intervention. In fact, the cable industry, which had swelled to more than 1300 systems serving 1.2 million subscribers, appeared likely, through its technique of flooding markets with network and syndicated-film programming, to undercut the economic base of existing stations and make future broadcast

growth impossible. Thus the Commission, responsible for the community-based, local program orientation of television control, was compelled to base its cable restraints upon the need to protect the broadcast industry's markets and functions of national-program distribution.[137]

The result of the FCC extending its authority to include cable-TV microwave interconnection in April of 1965, was to "freeze" future cable growth in its tracks. Cable-TV was denied the right to utilize most film and syndicated programming on its channels.[138] Thus cable-TV's potential in larger cities was only duplication of existing over-the-air broadcasting fare. Home owners in markets served by over-the-air broadcasters would not pay for something they already received; only in areas of poor TV reception, therefore, could cable-TV prosper. The cable alternative that was suggested by the executive branch in 1966, as a technology that might circumvent a limited frequency spectrum was thwarted by an arm of Congress, the FCC.

The Executive Branch and Cable-TV

The cable-TV/broadcasting issue was never directly attacked by the executive branch from 1965-1967 because:

1. The Office of Telecommunications Management, outside of suggesting alternative solutions to the inherent problems of a shortage of all frequencies, had no legislated mandate to involve itself in what appeared to be a civilian, FCC, television issue;
2. The Office of Telecommunications Management and the Science Panel's of the Department of Commerce approached the frequency scarcity issue as an engineering problem, while the cable-TV/broadcasting debate was economic in character; and
3. The overriding fact of life in regard to any executive branch intervention in broadcast television issues was that President Lyndon B. Johnson was a television millionnaire. (Explained in depth on following pages.)

The overall telecommunications responsibilities of the President are contained in the:

a. Communications Act of 1934;

b. The Federal Property and Administrative Services Act of 1949;

c. The Civil Defense Act of 1950; and

d. The Communications Satellite Act of 1962.

None of the above gave the President authority to involve himself in direct policy decisions involving the civilian use of the spectrum. The President was the administrator of governmental frequencies (IRAC) and the coordinator for efficient spectrum usage by the executive branch, among others. Therefore, although a possible solution to a limited spectrum might exist in cable-TV or reallocation of VHF or UHF television frequencies, the President had no mandate to take any forceful action on these issues. Of course, the President was not forbidden from making broad national statements as to the merits of telecommunication alternatives. The only exception to all the above was the President's emergency powers in time of disaster or war.

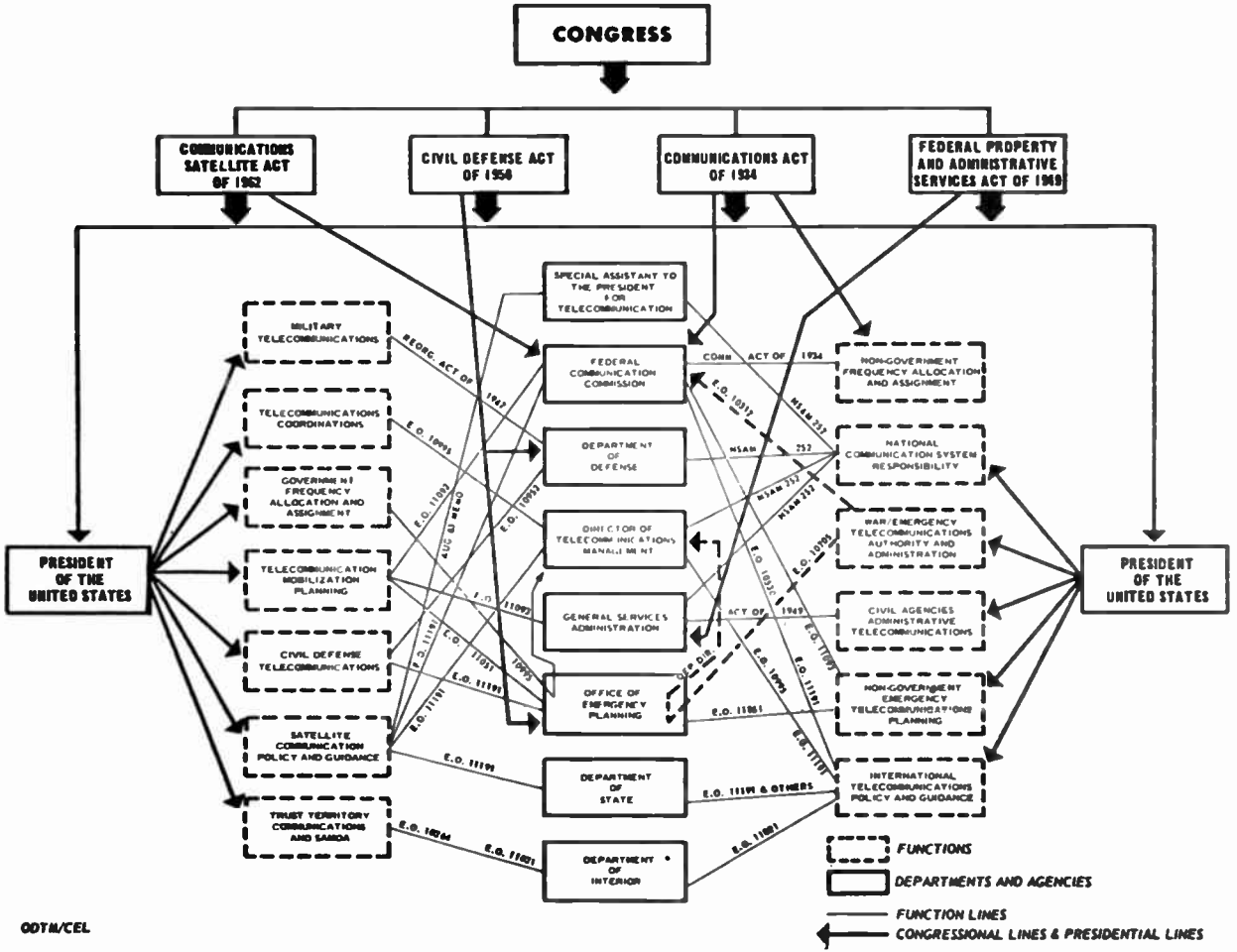
The following charts contain the telecommunication responsibility of the President that were assigned to him by Congress.

THE PLIGHT OF THE DTM: LBJ AND TV OWNERSHIP

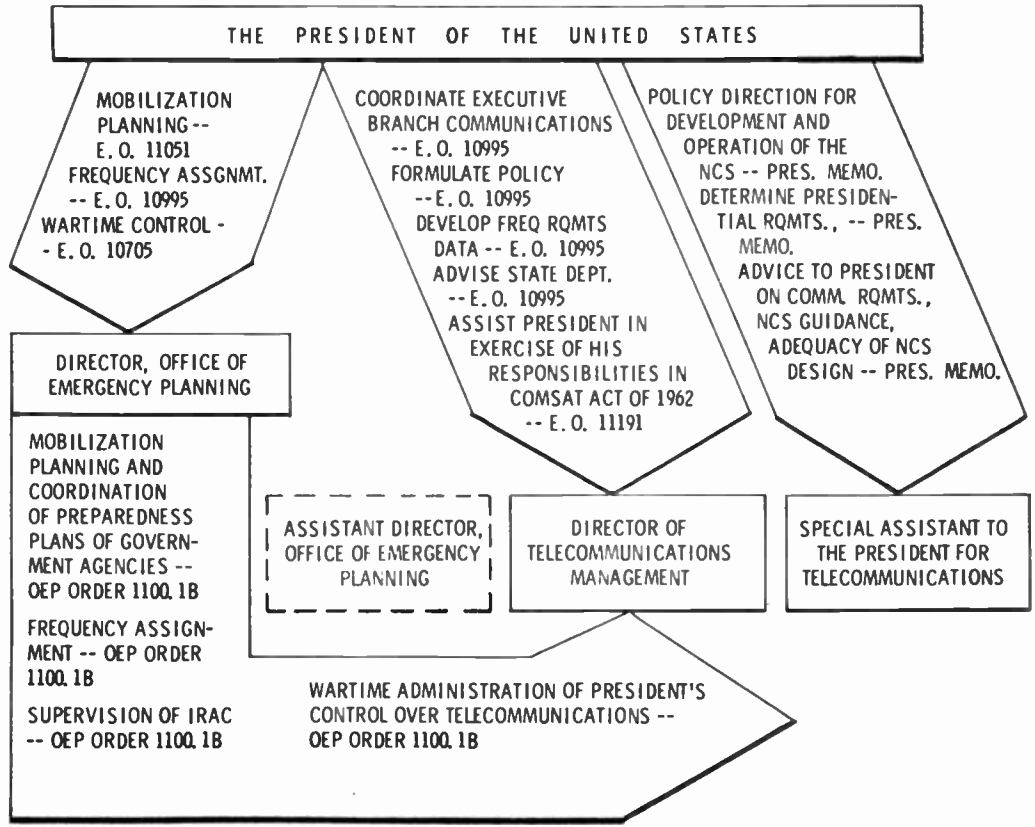
General O'Connell, Director of Telecommunications Management, was confronted by a situation outside his control, a situation that hindered any attempt to make telecommunications policy planning highly feasible. The problem had to do with the relationship of the Office of Telecommunications Management to the President, and, more to the point, with the financial interests of this particular President.

Lyndon B. Johnson was a millionnaire when be became President. As a 34-year old Congressman he had bought, through a small inheritance of his wife's, a small radio station in Austin, Texas, KTBC.[139] When the FCC ended the 1952 freeze on television allocations, Claudia Ladybird Johnson was the only applicant for the only VHF signal in Austin, and valued her worth at $500,000 (radio broadcasting

TELECOMMUNICATION RESPONSIBILITY ASSIGNMENTS



SOURCE OF AUTHORITY & RESPONSIBILITY ASSIGNMENTS



dollars).[142] In 1963, when LBJ became head of state, KTBC-TV had become affiliated with all three national television networks.[143]

Several of Johnson's political advisers had at one time or other been employed in his Texas stations. Walter Jenkins, sometimes called LBJ's Chief of Staff, had been for years involved in the management of KTBC.[144] Bill Moyers and John Connally were also on occasion employed in the broadcasting company.[145] Johnson's sensitivities in regard to his broadcasting ownership were acute. Dungan and O'Connell, who both worked with the President during his first year of office, could not recall a single reference that he ever made on his radio or television properties.[146] As Eric Goldman, a Johnson White House Aide, observed, "Secretive as Lyndon Johnson was, he became almost rigid when the family properties were discussed."[147]

> Clearly, Lyndon Johnson was hypersensitive about the source of his wealth, and the possible embarrassment it might cause him politically. It had not been an easy matter to handle as a Senator and as a Vice President. As the President--with the responsibility of appointment the membership of the agency which regulated his stations--it would be even more complex. When Johnson entered the White House, however, he did not sell his broadcasting holdings even though he was advised to do so. For instance, LBJ sought the advice of CBS board chairman, Dr. Frank Stanton, who advised him to dispose entirely of his broadcast holdings. Instead, the name was changed from the LBJ Co. back to the Texas Broadcasting Co., and then the entire corporation was placed in trust. Mrs. Johnson resigned as Chairwoman of the board. But the problem was only superficially solved. President Johnson made seven appointment decisions which affected the FCC. What Lyndon Johnson did when he was compelled to fill FCC vacancies and what he did with sitting FCC commissioners seeking reappointment illustrated the sometimes very subtle and often very complex effect of the fact that his wife was a multiple licensee of that agency.[148]

Lyndon Johnson's hypersensitivity to this possible conflict of interest might have precluded effective exposure for O'Connell and his Office of Telecommunications Management staff.

O'Connell in fact had to resort to public relations techniques to gain the President's attention and to plead for an expanded mandate for his office. Such was a letter addressed from the General to the President with a listing of support from a veritable "Who's Who" in telecommunications--the letter urged an expanded role for telecommunications policy analysis in the executive branch.[149] However, on August 14, 1967, Johnson did officially recognize some telecommunications issue: the policy underlying the development of global and domestic communications satellite.[150] In a letter transmitted to Congress the President established a task force--which became known as the Rostow Task Force--to study international and domestic satellite.[151]

SUMMARY: EFFORTS TO IMPROVE TELECOMMUNICATION STRUCTURE AND MANAGEMENT, 1959-1967

11/13/59	The United States Court of Appeals for the District of Columbia issued a decision in Bendix Aviation Corporation upholding FCC Order Nos. 14650 and 14693. Within the FCC decision by the Court were the following clarifications of the President's telecommunication authority: (a) allocation of government radio frequencies; (b) the right of the President to delegate his radio authority; and (c) the prerogative of the executive to reserve radio frequencies for national defense.
2/16/62	Executive Order 10995 assigned telecommunication functions to the new Director of Telecommunications Management (DTM) to be held by an Assistant Director in the Office of Emergency Planning.
4/3/62	Dr. Irvin Stewart was appointed first Director of Telecommunications Management.
6/15/62	Reorganization of the Office of Emergency Planning (OEP) announced by Administrative Order No. 42. to incorporate the new Office of Telecommunications Management (OTM).

8/31/62 The Communications Satellite Act of 1962, H.R. 11040, was passed into law by Congress. Public Law 87-624. Under the Act of 1962 the President was responsible for executive branch compliance with the policies of the Act and efficient use of the electromagnetic spectrum.

10/22/62 President issued his Proclamation about missile bases in Cuba.

4/12/63 The White House announced acceptance of the resignation of DTM, Stewart, who felt his office was shortchanged by the President and Congress.

8/21/63 The White House directed the establishment of the National Communications System (NCS) to provide better communication support to critical functions of government under all conditions.

The President designated the DTM as Special Assistant to the President for telecommunication in regard to the NCS development and the Satellite Act of 1962.

The President designated the Secretary of Defense as the Executive Agent for the NCS. He directed that the Federal Telecommunications System, operated by the General Services Administration, be part of the NCS. (28 F.R. 9413, August 28, 1963)

5/15/64 Lt. General James D. O'Connell (USA-Ret.) was appointed the second Director of Telecommunications Management and Special Assistant to the President for Telecommunications.

1964 The House of Representatives, 88th Congress, 2nd Session, released a report by the Military Operation Subcommittee, Committee on Government Operations, entitled "Satellite Communications (Military-Civil Roles and Relationships)". This report was based on a series of hearings held in March, April, May, and August, 1964.

It recommended that the President should submit to the Congress a reorganization plan to place telecommunication management in a separate executive office of the White House.

10/11/66 DTM sent to the White House a "Report on Frequency Management within the Executive Branch of Government." The Report recommended a program of analysis, planning and action to halt and reverse spectrum waste.

10/18/66 The Department of Commerce printed "Electromagnetic Spectrum Utilization - The Silent Crisis." The Telecommunication Science Panel of the Commerce Technical Advisory Board recommended (a) increased support for all executive telecommunication efforts and (b) to identify and stimulate telecommunication technical research programs.

The Problems, 1959-1967

The problems of executive branch telecommunication policymaking in the Kennedy and Johnson years can be broken into four parts:

1. the executive interactions in international telecommunication;
2. the executive interaction in emergency telecommunication;
3. the executive telecommunication responsibility;
4. the pressures each of the above exerted upon the policy makers.

Executive interactions in international telecommunications

Telecommunication between the United States and overseas points have become increasingly important to this country since the end of World War II. The U.S. participation in world problems had led to a rise in commercial and social relations with other countries. The diplomatic and military commitments in various parts of the world required the telecommunication interest of an assortment of executive branch departments:

Office of Telecommunications Management -- Radio Coordinator

Department of Defense -- the National Communications System

The Central Intelligence Agency -- Scientific Intelligence

Department of State -- International Relations

The commercial interests in international telecommunication were represented by the technology they utilized:

AT&T -- undersea cable

ITT World Communications, RCA Communications, Western Union International -- record carriers, i.e., telegraph messages, using HF radio.

The aerospace industry -- satellite.

The point of contention where all the above met was the creation of COMSAT in 1962:

a. the passage of COMSAT was in favor of common carrier interests;

b. the authority assigned to the President was confusingly apportioned to the OTM, Department of Defense and Department of State.

The telecommunication need aroused by the Cuban Missile Crisis of 1962 was satisfied by the creation of National Communications System (NCS) in 1963. The Secretary of Defense, as Executive Coordinator for the NCS, relied upon the AT&T company for long-haul, point-to-point, overseas communications. This military/AT&T alliance in international telecommunication, the yearly budget for the NCS, and the size and revenue of the AT&T made this tandem a formidable opponent to any other executive agency or commercial telecommunication industry.

Although O'Connell (DTM) had the executive orders to prove he was indeed the President's radio coordinator, in reality telecommunication management rested outside his office.

Executive interaction in emergency telecommunication

Emergency telecommunication included preparation for war or national disaster. The Central Intelligence Agency (CIA) and the Department of Defense (DOD) had more influence on the President in regard to emergency preparedness. Both the Director of the CIA and the Secretary of Defense directly saw the President; the DTM never did.

A hypothetical example of the type of input from the CIA or DOD that could affect the Presidential thinking on telecommunication policy might be:

> Under the mandates of national security and emergency preparedness it is better to have a competitive international satellite environment. The more international satellites in space the greater the difficulty for the enemy to monitor important commercial import and export data of the U.S.; also competition increases the satellite targets needed to be destroyed before or during an enemy attack.

Such emergency preparedness telecommunication policy would circumvent the DTM. Presidential policy decisions on telecommunication in the above instance are impossible for the DTM or the public to monitor. It could be said that:

1. It is impossible to isolate civilian communication systems from military and intelligence scrutiny.
2. Such scrutiny is required in the interest of emergency preparedness and national security.
3. Executive branch objectives in emergency preparedness involve both domestic and international telecommunication planning.

Overall Executive Branch telecommunication responsibility

Presidential responsibility in telecommunication policymaking was limited to:

The Communications Act of 1934

The Federal Property and Administrative Services Act of 1949

The Civil Defense Act of 1950

The Communications Satellite Act of 1962.

None of the above legislation gave the President the prerogative to directly insert himself in a non-governmental telecommunication problem. The Presidential devices for attempted solution of U.S. frequency scarcity were:

1. broad statements of national policy and goals;
2. general cooperation between IRAC, the executive branch radio coordinator, and the FCC, the civilian radio authority;
3. specific creation by executive order of executive offices to deal with telecommunication problems and as Advisor to the President on such problems;
4. subtle Presidential telecommunication ploys such as budget allocations, appointments, Congressional liaison, task forces, and study groups.

The Presidential telecommunication responsibility was basically engineering oriented. Therefore, it is not surprising to find that the majority of executive branch personnel were engineers. Of the OTM, CIA, DOD, and Commerce employees (interviewed by the author) involved in telecommunication policy and management between 1959 and 1967, the vast majority had backgrounds in engineering or physics. The above is relevant to the executive branch's approach, during this period, in regard to new competitive telecommunication technology such as cable-TV.[152]

"Cable-TV" to the OTM and Department of Commerce in 1966 represented an engineering solution to a limited frequency spectrum. The possibility that cable-TV would affect the revenue of established over-the-air broadcasters was not particularly relevant. Similarly, the AT&T telephone system was efficient, integrated, and worked closely with the National Communications System; to the engineer AT&T did the job.

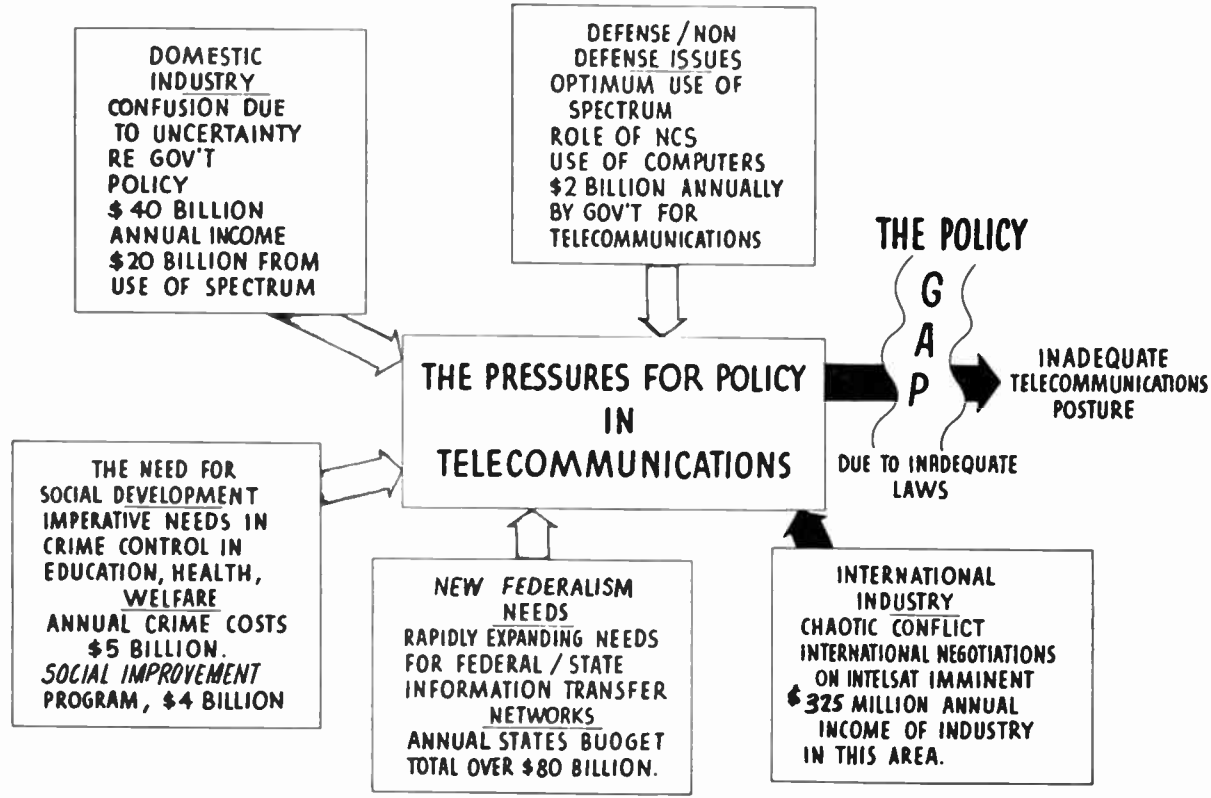
The financial interest of President Johnson in over-the-air television certainly did not make the OTM's job any easier. Possibly the relationship of the President to broadcasting kept him from being aggressive in the entire telecommunication domain.

The Pressures on the policy makers

Factors one, two, and three listed above caused an ineffective executive branch posture in telecommunication policy and management. Federal, industrial, and social, telecommunication problems from year-to-year were studied but not resolved. Conflicts in authority between the DOD and the OTM were encircled by the industrial feud between the aerospace industries and established radio and wire common carriers.

The pressure on the executive branch was for strong leadership, but inadequate laws created a wide telecommunication policy gap. Fred W. Morris has called 1959-1967 "The Squeeze on the Policy Makers." Morris' diagram of the executive branch telecommunication policy "squeeze" is on the following page.

THE SQUEEZE ON THE POLICY MAKERS



IV. The President's Task Force on Communications Policy, 1967-1968

INTRODUCTION

President Johnson sent a message to Congress on August 14, 1967, creating a Task Force that would make a comprehensive study of communications policy.[1] Johnson appointed the Task Force to:

1. study the efficiency of spectrum utilization;
2. study the economic feasibility of domestic satellite (Domsat);
3. consider whether the Domsat system should be general in purpose or specialized and whether there should be more than one Domsat system; and
4. determine whether Domsat would affect COMSAT and the international communication carriers.[2]

The Task Force would examine the U.S. international communication posture; the division of ownership in U.S. international communication facilities; and the telecommunication technologies that were efficient in their use of broadcast spectrum space.[3]

The Task Force established working groups of government and nongovernment experts to study the various technical, economic, and social telecommunication questions.[4] Along with the Task Force, the Bureau of the Budget was commissioned by the President to make a thorough study of government organization in telecommunication.[5] The Bureau was to suggest any needed modification in federal telecommunication structure.

Four objectives guided the Task Force direction:

1. The U.S. should remain a leader in communications science and technology.[6]

2. Telecommunication policy should seek to maintain and develop an environment always sensitive to consumer needs.[7]

3. None of the telecommunication policy issues of the Task Force could be viewed individually without the constant realization that telecommunication interconnection overlaps public and private interest and common carrier and broadcasting industries.[8]

4. Modern telecommunication systems are valuable to the economic, social, and political progress of developing nations.[9]

The Task Force recommended in certain areas that telecommunication policy rely more on market forces and less on regulation.[10] Policy should rely on the spontaneous initiatives of private business, non-governmental research, and supplemented where necessary by government sponsored development.[11]

> The main concern of policy in this field should be to improve the effectiveness of regulation where regulation is necessary, to remove unnecessary restraints on private initiative, and to provide as free a field as possible for the imagination and enterprise of innovators.[12]

The "Final Report" of the Task Force was organized around specific themes:

1. promoting telecommunication experimentation and technological advancement;
2. determining the proper roles of monopoly and competition in the provisions of telecommunication services;
3. enhancing the potentialities for progress through the removal of unneeded or obsolete restrictions on private initiative;
4. improving the capacity of government to meet its continuing responsibilities in telecommunication;
5. expanding the study and research both public and private in the field of telecommunication policy and;
6. promoting international cooperation.[13]

The Final Recommendations of the Rostow Task Force were not necessarily the ones advocated by the existing authority in the executive branch. The Task Force instilled in the executive branch thinking competitive telecommunication viewpoints toward common carriage, television, and domestic satellite. The purpose for review of the Task Force work is primarily to illustrate:

1. the differences between Task Force philosophies and those of the existing executive branch;
2. the subtle change of course in executive telecommunication thinking caused by the Task Force;
3. the inability for the Task Force to rationalize an immediate competitive environment for Domsat; and
4. the problems faced by the aerospace industry, in particular the Hughes Aircraft Company, because of the Task Force Domsat recommendation.

THE DIFFERENCE IN PHILOSOPHIES: TASK FORCE AND THE EXECUTIVE BRANCH

Johnson chose as Chairman of his Task Force Eugene V. Rostow.[14] Rostow was Under Secretary of State for Political Affairs. Prior to joining the Department of State, Rostow had been a Professor of Law at Yale University. His background had not included relationships with the telecommunication industry.

Rostow as Under Secretary for Political Affairs was conscious of the world picture, having been briefed weekly by Richard M. Helms, the Director of the Central Intelligence Agency.[15] W. Devier Pierson,[16] Associate Special Counsel to the President in 1967, assisted in writing the President's telecommunication message to Congress. Pierson felt that the President chose Rostow because of his non-communications background.[17] George Reedy,[18] Press Secretary to the President, saw the Rostow appointment as a reflection of the President's confidence in Rostow's ability to understand the global picture from his Deparment of State vantage point.[19]

Reedy believed that Johnson took very little interest in the mission of the Task Force once it was formed.[20] Johnson took much more interest in

the selection of personnel to do a particular job than in how the job was actually accomplished.[21]

General O'Connell, the Director of Telecommunications Management, was made Task Force Vice-Chairman.[22]

Since Rostow had a multitude of responsibilities and could devote only partial time to any one of them, the selection of Executive Director of the Task Force was of paramount importance. At the first Task Force meeting, September 8, 1967, Rostow announced the appointment of Jan Deutsch, Professor of Law at the Yale Law School, as Executive Director.[23] Several weeks later, however, it became apparent that Deutsch could not be released from his obligation to the University and an alternate Executive Director was named; he was Alan R. Novak,[24] then an Assistant to Under Secretary Rostow. Novak was also from Yale, and had a background in both economics and law. He had been the clerk for Justice Potter Stewart and a legislative aid for Senator Edward M. Kennedy (D., Mass.).[25]

Alan Novak and "The Best and the Brightest"

The Rostow Task Force was one of the most important research undertakings in the history of U.S. telecommunication. Other reports from the Office of Telecommunications Management, the Department of Defense, and the Department of Commerce, never approached the entire telecommunication field as did the Rostow Task Force.

Novak realized the opportunity he had before him. Novak adjudged the persons he and Rostow chose for the staff and consultants of the Task Force as "the best and the brightest" talent available.[26]

An overview of the Rostow Commission's personnel might be summarized by a review of an article written by Zbigniew Brzezinski[27] in 1967, and distributed to members of the Rostow Commission to provoke thought.[28] The Brzezinski belief was that the U.S. was preparing to enter the "technetronic age," the electronic industry's impact on society.

> Unlike the revolutions of the past, the developing metamorphosis will have no charismatic leaders with their strident doctrines, but its impact will be far more profound. Most of the change that has so far taken place in human history has been gradual--with the great "revolutions" being mere punctuation marks to a slow,

> eludible process. In contrast, the approaching transformation will come more rapidly and will have deeper consequences for the way and even perhaps for the meaning of human life than anything experienced by the generations that preceded us.
>
> America is already beginning to experience these changes and in the course of so doing it is becoming a "technetronic" society: a society that is shaped culturally, psychologically, socially, and economically by the impact of technology and electronics, particularly computers and communications. The industrial process no longer is the principal determinant of social change, altering the mores, the social structure and the values of society. This change is separating America from the rest of the world, prompting a further fragmentation among an increasingly differentiated mankind, and imposing upon America a special obligation to ease the pains of the resulting confrontation.[29]

Brzezinski further stated that as electronic automation revolutionized American working habits, leisure would become the practice and work the exception.[30] Leisure for the majority of workers would increase recreational or amusement oriented activity, such as mass sports or watching television.[31] At the same time, the "technetronic age" could create a small elite group which would run the society.[32] This elite group would utilize computer telecommunication to cope with the accelerated need for information.[33] Therefore the "revolution" of the "technetronic" society might come from control of information or computer telecommunication ownership.

The elite of the "technetronic age" did not exist in 1967, because the U.S. had not reached Brzezinski's automated society. By 1967, 48% of the nation's work force was already involved in some form of information transfer.[34] The era of computer telecommunication mergence had arrived. Novak's allusion to the Rostow Commission staff as the "best and the brightest" talent available suggests they might be viewed as the forerunners of the "technetronic age" elite. If this is indeed the case, then the Rostow Commission staff would have a telecommunication mission different from other telecommunication offices then in the executive branch.

A high percentage of the Rostow Commission staff were economists and lawyers.[35] As was mentioned previously, the Office of Telecommunications Management, the Department of Defense's NCS, and the Department of Commerce, consisted primarily of personnel with engineering backgrounds. Engineers generally approach telecommunication as a system. The integrated telecommunication system does not fall neatly into economic libertarian thought; that is to say, the economic libertarian advocates "free markets" or a competitive environment in industry. The engineer on the other hand might advocate regulated monopoly simply in the quest for communication efficiency.

The thinking of engineers of the executive branch did not run counter to the television interests of President Johnson but the economic thought of the Task Force did. Johnson's own Task Force would eventually investigate the cable-TV/over-the-air broadcasting[36] issue, certainly a topic Johnson would prefer to avoid. The Task Force would also analyze the feasibility of specialized common carriers, certainly not in the interests of established common carriers like AT&T.[37]

THE ROSTOW COMMISSION'S ANALYSIS OF DOMESTIC SATELLITE (DOMSAT)

The Rostow Commission broke its assignments into manageable sections. These sections were called "task statements" and were grouped into six categories:

1. the national policy and national interest in telecommunication;[38]
2. the communication technology and service requirements;[39]
3. the use of the frequency spectrum;[40]
4. the proper role for the federal government in telecommunication matters;[41]
5. the use of satellites in domestic communications;[42] and
6. the industry structure--competition and regulation.[43]

The Rostow Commission's "task statement" on domestic satellite was to determine how and when communication satellites could make an efficient contribution to domestic service. The Task Force was not certain of the direction of Domsat technology and in its "Final Report" would opt for the middle ground; the Task Force suggested a pilot project for Domsat run by COMSAT.[44]

Domsat has been selected as an example of the Rostow Task Force's analytical process because:

1. Domsat is important to both wired and radio telecommunication systems;
2. Domsat illustrates the inability of the Task Force to advocate immediate satellite competition and why;
3. Domsat exemplifies the conflict between the aerospace industry and AT&T;
4. Domsat recommendations by the Task Force provide points of comparison with the Nixon administration's consideration of Domsat the following year.

Domsat: Questions for Study

The Task Force broke the Domsat issue into separate questions for study:

1. What is the need in the immediate future of a communications satellite system for domestic purposes in the U.S.?

2. What is the economic benefit from using the communications satellite mode in preference to conventional modes, including foreseeable improvements in these modes or new terrestrial technologies?

3. Will new technologies such as laser beams, wave guides, etc., affect our choice of modes?

4. How serious is the radio frequency interference problem between communication satellite and terrestrial microwave in the 4 and 6 gigacycle band, present and planned?

5. Are there readily available technological solutions to the above radio frequency interference problem?

6. What are the advantages and disadvantages of multipurpose versus single purpose satellites?

7. What impact would authorization now of a domestic experimental satellite pilot program have on the best choice of modes for our domestic communications?

8. How will our position on definitive arrangements for INTELSAT be affected by an affirmative decision in the near future to go ahead with a domestic communications satellite system?

9. If there would be financial benefits accruing from the use of communications satellites for any type of service, should these benefits be broadly distributed or be limited to the system operator, to all users of the communications system, or shared by the public as a social dividend to aid in financing educational television or other public communications activities?

10. Who should be authorized to own and operate a domestic satellite system, i.e., the common carriers or private foundations, private companies, etc.?[45]

The primary analysis on domestic satellite was to be done by the Rostow Central Staff,[46] specifically Richard Posner,[47] General Counsel, with the aid of space engineer, Walter Hinchman.[48]

Due to the Rostow Task Force initiative in the Domsat area, the FCC as well as the entire executive branch, took a wait and see attitude on the issue.[49] It was much easier to defer comment on the controversial Domsat ownership question until the Task Force had done its own research.

The Posner recommendations for analyzing the emerging technologies, such as satellite, included:

1. Avoid irreversible steps that may later prove mistaken (keep options open).[50]

2. Minimize the wasteful or disruptive effects of technological change.[51]

3. Assure an adequate rate and diffusion of new technology.[52]

The Background of Domsat in the United States

With the initiation of the Intelsat, or the global communication satellite system in 1964, the desire for a strictly national, or domestic, satellite system was not far behind.

The Hughes Aircraft Company, builder of the first Intelsat satellites, contacted the American Broadcasting Company (ABC) concerning a Domsat system.[53] The Hughes Company was interested in creating a domestic market for its satellite technology. Dr. Harold Rosen, of Hughes, explained to ABC the advantages of having an individual company satellite, a national network in the sky.[54] Such a Domsat system would bypass AT&T's expensive rates for microwave interconnection from the East to the West Coast.

> Rosen told Aviation Week and Space Technology in February 1965 that a synchronous satellite could be built with current technology for use in television broadcasting, including direct broadcasts to private homes. Rosen attracted the attention of the American Broadcasting Company. In May 1965, armed with information provided by Hughes, ABC informed the FCC of its desire for a private satellite system to deliver network shows to affiliated stations. ABC figured the networks could save substantially on the $50 million a year they currently were paying AT&T.[55]

ABC filed an application for satellite ownership and construction on September 21, 1965.[56] The ABC concept was to provide, by satellite, the transmission of network programs to earth stations situated in New York and California and the rest of its affiliated stations.[57]

COMSAT, the international satellite owner, felt that Congress had given it the mandate to control all American satellite utilization. After COMSAT filed opposition to the ABC request,[58] the FCC returned the ABC application without prejudice. The FCC then instituted a broad-ranging inquiry into the question of American Domsat policy.[59]

The principal points raised in the FCC inquiry were whether there was any legal constraint on the FCC's power to authorize the construction and operation of a Domsat system.[60] Although nineteen studies or statements were filed with the FCC during the inquiry by August 1, 1966, it was only the Ford Foundation Domsat proposal that raised a myriad of new issues.[61]

The Ford Foundation proposed a model Domsat system be owned by a nonprofit corporation. The Ford plan was construed by a joint effort of aerospace and telecommunication firms.

> In addition to answering the question posed by the Notice of Inquiry, the Ford Foundation submitted a model of a private satellite system to provide for the transmission of both commercial and noncommercial television programming and called for the creation of a Broadcasters' Nonprofit Service Corporation (BNS) to establish such a system.
>
> The Ford plan was to provide wholly new order service--six channels in each of the four time zones. The new satellite system, which had been developed by engineers, scientists, and economists borrowed from Hughes Aircraft, IBM, the Rand Corporation and several universities, could provide greatly expanded and improved transmission at much lower cost to the commercial television networks. Similarly ABC had estimated that it could reduce its own AT&T long-line costs by as much as 30 percent by switching over to satellites.[62]

The Ford Foundation did not believe their money being invested in public television was producing dividends. Rosen had talked to McGeorge Bundy, Director of the Foundation, and his telecommunication assistant Fred W. Friendly, about the cost savings of Hughes' Domsat concept for television.[63] Because of Rosen's persuasiveness and Ford Foundations' imagination, the Ford Foundation proposal was submitted in 1966.[64]

All respondents to the FCC's Domsat inquiry agreed on the desirability of proceeding with a Domsat system. The major differences of opinion related to the use and ownership of a Domsat.

COMSAT, AT&T, Western Union, and IT&T, among others believed that a multi-purpose Domsat system should be owned by common carrier operations. This multi-purpose system would supply telephone, TV, and data services, through domestic satellite.[65]

Non-common carrier respondents--principally the TV networks, the Ford Foundation, and educational interests--urged that a specialized Domsat system be approved by the FCC. The specialized satellite system could be owned by other than common carrier companies.[66]

Twenty-one parties had filed with the FCC concerning Domsat by December 16, 1966.[67] Yet, the proposals of ABC, Ford Foundation, COMSAT, and AT&T, had attracted the widest attention. The COMSAT and

AT&T FCC filings, were counterproposals to those of ABC and the Ford Foundation. By 1967, both COMSAT and Ford had supplemented their original FCC filings suggesting a Domsat pilot project.[68]

> Four parties (ABC, Ford, COMSAT, and AT&T) had submitted proposals for domestic satellite systems. Those of COMSAT and AT&T were counter-proposals to the ABC and Ford proposals aimed at retaining the former's preeminence in domestic and space communications activity. They urged the FCC to authorize general purpose systems while the latter proposals asked for special purpose systems for the distribution of television programs, anticipating cost savings made possible by satellite technology. During the course of the proceeding both COMSAT and Ford supplemented their original proposal by suggesting pilot programs rather than full-scale operational domestic systems.[69]

AT&T held a 29% ownership interest in COMSAT[70] and Hughes Aircraft had been the promoter in both the ABC and Ford Foundation Domsat proposals, it might be said that the Domsat issue was a direct confrontation between AT&T and Hughes Aircraft. The significance of the head-to-head competition between Hughes and AT&T will be explained later in this paper.

The FCC

The pilot project concept for Domsat was a middle ground accepted by the FCC in 1968. FCC Chairman Rosel Hyde believed that a Domsat pilot project would assist the FCC in gathering data toward formulation of a Domsat decision.[71]

> With respect to domestic satellites, it is reasonable to look forward to the time when satellites will be competing with, or complementing, terrestrial microwave and cable for long-distance telephone and other point-to-point communications services. The issue of how to structure the ownership, operation and use of a domestic satellite system is now before us in a general public inquiry. Its purpose is to resolve a number of difficult legal, technical and policy questions involved in the use of satellites by both carrier and noncarrier

entities. We have under consideration a pilot program to assist in accumulating data toward formulation of final format for our domestic system.[72]

The Office of Telecommunications Management (OTM)

The OTM had been studying Domsat since the beginning of the issue. During the hearings on satellite communications in August, 1966, Senator John O. Pastore (D., R.I.) requested the OTM to explore the Domsat situation.[73]

The July, 1967, study[74] of the OTM felt that the responses to FCC Docket 16495 (Domsat) indicated the strong possibility that interference would result in the 4 and 6 GHz bands of radio frequency.[75] These bands were used for microwave relay, space research, radar, aeronautical radionavigation, and radio astronomy, among others. Therefore, a full scale initiation of a domestic satellite system at that time was not warranted.

The OTM suggested that there was need for additional experimental evidence and actual operational experience to determine precisely the geographical areas and the extent to which more than one domestic satellite system might be possible.[76] Additional experiments were also required to determine the extent to which frequencies above 10 GHz could be exploited to provide an expanded spectrum space for Domsat service.[77]

As Advisor to the President on international satellite issues, the OTM said that procedures should be established for international operational coordination for system design, frequency usage, and orbital positioning.[78]

The study contended that the cost for TV distribution could be lowered through a Domsat system but could not make the same contention of certitude about long distance telephone calls.[79] The report observed that new technologies such as millimeter wave guide and laser might substantially lower terrestrial long distance telephone costs and thus in the long run, domestic satellite might not be the less expensive transmission system.[80]

The OTM, in line with its contentions, advocated a limited pilot program to investigate the utility of domestic satellite with domestic carriers allowed an opportunity to participate.[81]

The Rostow Task Force on Domsat, 1967-1968

The Rostow Commission personnel were divided among:

1. the executive branch employees detailed to assist the Task Force;
2. the consultants and outside advisory personnel hired and organized by Rostow or Novak; and
3. the Central Staff of the Task Force that worked in the offices with Rostow and Novak in the State Department.[82]

The Central Staff of the Task Force prepared memoranda and, eventually, final documents for the rest of the Task Force participants.[83] The Central Staff controlled the pace and research of the entire effort; therefore, the Central Staff working papers suggest the orientation of the entire staff from September, 1967, through December, 1968. The Central Staff Director on Domsat has already been mentioned, Richard Posner. In December of 1967, Posner had drafted an outline for Domsat research.[84] By January 11, 1968, all Task Force members received a copy of a Central Staff paper on the "Domestic Pilot Satellite Proposal."[85]

This January memorandum was signed by Alan Novak and indicated that the Central Staff had decided to accept a Domsat pilot system as a temporary solution. Two modifications on the pilot project were mentioned by Novak:

> The first is technical. A pilot project should be designed to obtain as much experimental data relating to the utilization of satellites for domestic communications as is technically and economically feasible...
>
> The second area in which modification of the Comsat proposal would be considered involves the ownership and regulation of the pilot system. We think it important that the government avoid any appearance of prejudging the difficult issues in this area, such as adopting for the pilot system one mode (e.g., common carrier operation) to the exclusion of all others. One possibility for maintaining full flexibility and preserving all options would be to make the system a consortium of all interested parties (common

carriers, broadcasters, and other users), managed by Comsat. Another would be to divide ownership among (1) Comsat, (2) the surface common carriers, and (3) the broadcast networks or some other broadcast entity, and to permit simultaneous experimentation with both a multi-purpose common-carrier-type domestic system and a single-purpose or dedicated system, such as proposed by the Ford Foundation.[86]

The Central Staff and Novak by April 29, 1968, had suggested to the rest of the Task Force personnel why the Domsat pilot system seemed the most stable course to take.[87] They felt a pilot project, constituting the first phase of a full fledged operational system, but leaving open the ultimate choices, seemed the wisest way to begin the process of hard decision-making.[88]

In addition, the pilot system would provide very useful free interconnection of educational television stations.[89] Since the noncommercial interests would be invited to participate prominently in the design and use of the system, it would also accelerate the process by which the government, as a matter of policy, could provide greater assistance and support to such interests.[90]

A serious concern was that proceeding with a domestic satellite system at that time would freeze the structure and institutional arrangements of the domestic satellite industry prematurely.[91] Designing the system as a "pilot" would help, but obviously those who participated would have a tremendous advantage in winning a place in any subsequent fully operational system. This potential danger was tolerable if among the realistically available candidates, COMSAT was given primary responsibility for the pilot system.[92] In one view, COMSAT's primary function would be as the nucleus of a single U.S. international transmission (cable-satellite) entity which would have no domestic affiliations. If that was what the future held, COMSAT really would be operating the domestic pilot project in trust for new owners who would succeed when the single entity was formed. Whatever turned out to be COMSAT's permanent role, the Rostow group recommended that the conflict of interest inherent in the presence of the common carriers on COMSAT's board and in COMSAT ownership be eliminated.[93]

On this basis, Novak and the Central Staff concluded that going ahead with a pilot system was justified in view of the benefits it would confer--a Domsat pilot project should be operational in 1970-1971.

They felt the pilot Domsat should be related to the international satellite consortium (Intelsat) through mutual agreement.[94] Also the pilot system would be charged with the responsibility for performing technical experiments necessary to determine a final decision on Domsat's configuration. Such experiments would aid Intelsat in research and development of its next advanced satellite series (Intelsat IV).

The Central Staff recommended that Comsat be the manager of the entire pilot system, and be given ownership and control, as trustee only, of the space segment.[95] The TV transmission users would have an option to invest in the receive-only and TV send-receive stations;[96] and the common carriers could jointly own the other ground stations.[97] Non-commercial interests should be given every possible consideration, said the Task Force, including free Domsat interconnection and participation in the systems design, use, and rates.[98]

The Task Force believed that the executive branch input in Domsat development was limited by the Communications Act of 1934 and the Satellite Act of 1962; therefore, the FCC should consider a statement of general policy outlining the conditions upon which a pilot Domsat would be built.[99]

THE "FINAL REPORT" OF THE ROSTOW COMMISSION

The President's Task Force on Communication Policy, on December 7, 1968, sent its Report to the White House, including partial dissents by the Director of Telecommunications Management (also Vice-Chairman of the Task Force) and the Department of Commerce.[100] The Report was weighted in favor of competition, flexibility, free access, and innovation while calling for increased resources for telecommunication regulation and management, with all frequency allocation authority and OTM functions to be consolidated and placed in an existing department.

The Final Report's Dissenters

The dissenters to the Final Report were General O'Connell of the OTM and Joseph W. Bartlett, Under Secretary of Commerce. The dissents were not critical of the Domsat pilot project concept, but confined their criticisms to the effect of the report in increased competition in telecommunication. The relationship between the philosophical competitive approach to telecommunication services (Rostow) and the integrated monopoly structure that existed in the U.S. telephone industry was reflected in O'Connell's dissent.[101]

Bartlett did not believe the sections in the "Final Report" on cable-TV and television were warranted. He said the President's August, 1967, message said nothing of research on these technologies.[102]

The Rostow Report is Buried in the White House

The Rostow Report was never officially released. Both W. Devier Pierson[103] and George Reedy[104] agree that it is unlikely that President Johnson specifically suppressed the "Final Rostow Report." Its failure to be released is probably explained by Johnson's removal from the Presidential race and the Democratic defeat of 1968. With a change to a Nixon administration no great Democratic effort was made to release the report. Undoubtedly the Lyndon Johnson family TV holdings were in conflict with the Report and provided additional motivation for President Johnson to forget the Task Force effort.

THE ROSTOW TASK FORCE STUDY AS AN EXAMPLE OF THE INCREASING PRESSURE FOR COMPETITIVE TELECOMMUNICATION SERVICES

In 1967 and 1968, the Rostow Commission was the center of attention in regard to telecommunication policymaking. All the other executive branch telecommunication offices, DTM, NASA, State, Defense, had taken a wait and see attitude until the Task Force recommendations were published. Even the FCC was willing to recess its Domsat decision until the Task Force had finished its research.[105] Therefore the Rostow Task Force became the focal point of all those groups interested in telecommunication issues.

The pressure for a competitive or free market environment in telecommunication centered on the Task Force for fifteen months. This burden would shift to the Nixon administration in January of 1969. In order to gauge the influence and drive of the pro-competitive telecommunication camp a short review will be made on one of the most prominent free market telecommunication advocates--the aerospace industry; and specifically the most active of this industry, the Hughes Aircraft Company.

The desire of Hughes Aircraft to build a national satellite system was reflected in its attempt to build a Domsat system for ABC in 1964. The continued interest by Hughes in building a Domsat system was manifested in the Ford Foundation Domsat proposal in 1966. With the creation of the "free market" Rostow Commission, the Hughes attention was turned to the Rostow Central Staff.

Three factors indicate the energy and the pressures that the Hughes Aircraft Company exerted in 1967 and 1968, in order to capture a market for its satellite technology:

1. the employment of Dr. Albert D. Wheelon in 1966, and his liaison function with the Task Force in 1967;
2. the Howard Hughes', President of Hughes Aircraft, attempt to purchase the American Broadcasting Company in July of 1968; and
3. the "fourth television network" plan of Howard Hughes in 1968.

Dr. Albert D. Wheelon

In 1966, the Hughes Aircraft Company hired Dr. Albert Wheelon as Vice-President of Engineering.[106] Wheelon had previously been Director of Scientific Intelligence for the Central Intelligence Agency (CIA). This CIA division has already been discussed in Chapter IV. The resources of the Scientific Intelligence Division of the CIA had potential impact on the President in regard to telecommunication policy planning. One of Wheelon's assignments from Hughes Aircraft was to be the Liaison with the President's Task Force on Communications Policy in 1967.[107] The advantages of using Wheelon as Liaison are numerous. He was one of the most knowledgeable men in the country on satellites and intelligence, satellite engineering concepts, and possibly during his government career had dealt in policy issues regarding international satellites.

Wheelon's role at Hughes was concerned mainly with the use of high powered laser for communication use.[108] Since Rostow had "grabbed the ball"[109] in regards to Domsat research, he was assigned to answer any questions the Rostow satellite staff might have.

In 1967, Wheelon was assigned his duties by Alan Pucket, a Vice President of the Hughes Aircraft Company.[110] Wheelon felt that he was assigned the Rostow Liaison activity because of his "soft sell"[111] approach. Wheelon felt that COMSAT believed it had "royal blood"[112] when it advocated outright ownership to the entire Domsat system. He regarded the Office of Telecommunications Management as an "echo chamber of AT&T."[113]

Indeed, the OTM was engineering oriented and advocated an integrated telephone network, possibly making the OTM pro-monopoly. COMSAT did feel it had royal blood and had tried both in Congress and the FCC to convince them its mandate included Domsat ownership. Wheelon looked upon the Rostow people as "free traders"[114] and an opportunity to challenge the executive branch pro-monopoly outlook.

Ray S. Cline, Deputy Director of the CIA in 1966, felt the Wheelon move to private industry was a poor precedent.[115] The CIA had traditionally been made up of academically or militarily oriented personnel, who returned to their environment.[116] Wheelon was a newer breed of technician that would be acceptable to private industry.[117]

The Hughes Aircraft Company employed Wheelon not only for his technical skills but also his knowledge of the executive branch. Wheelon had the opportunity to influence the Rostow Task Force more than other industrial liaisons.

William Stump was in charge of the Liaison activity for the AT&T with the Rostow Central Staff.[118] Stump was an engineer and had spent 20 years with AT&T.[119] Although impressed with the quality of the Rostow Commission personnel, he felt his input was limited because of the intellectual and philosophical orientation of the staff toward "free markets."[120]

The Wheelon experience in scientific intelligence, both collection and evaluation, could be put to practical use during the tenure of the Rostow Task Force. It is likely Wheelon knew, by January of 1968, that the Rostow Central Staff was biased towards a pilot project for Domsat.[121] Therefore, by January of 1968, the President of Hughes Aircraft, Howard Hughes, would also have known that a Domsat pilot decision by the Task Force was possible.

Howard Hughes Buys ABC, July 1968

By April 29, 1968,[122] the Rostow Task Force had decided to recommend to the FCC a pilot project for Domsat with the ownership shared by:

1. COMSAT as manager of the entire system (a trustee);
2. TV transmission users (TV networks); and
3. common carriers.

As in the COMSAT ownership decision of 1962, the aerospace industry was not considered for Domsat ownership.[123] All the aerospace industry would be allowed to do was build the Domsat pilot system. Yet, with a pilot project, the construction of other Domsat systems might be postponed for many years or possibly forever.

Howard Hughes, might have realized his only inroad into Domsat was through ownership of part of the pilot system; therefore, he bought a TV transmission user, American Broadcasting Company (ABC), in July of 1968.[124] Thomas W. Moore, former Vice-President of ABC said:

> For 20 hours on July 15-16, 1968, Howard Hughes had the American Broadcasting Company in his grasp: the television network, radio network, five television stations, seven AM and seven FM radio stations, seven record labels, three newspapers, 399 movie theaters and other subsidiaries....
> Hughes coveted the media business. He was in aviation, mining, hotels, gambling, motion pictures, space - it would be fitting to add one of the three television networks. And he had $150 million in cash; that was all it took to control ABC in 1968....[125]

Apparently Howard Hughes, not being able to get into the satellite-television business, went the only available route opened to him, an outright purchase of an existing television network.

The reason that Hughes only controlled ABC, through stock options, for twenty hours was based on his unwillingness to physically present himself in Washington, D.C.[126] Under the Communications Act of 1934, the FCC must approve the sale of any broadcast station.[127] The ABC owned five VHF TV stations, thus Hughes' TV-station purchases needed FCC sanction.

The General Counsel of the FCC in July of 1968, was Henry Geller.[128] Geller negotiated only with the attorney representing Hughes.[129] Geller was informed by the Hughes attorney that his client would not come to Washington, D.C. Howard Hughes would, though, present himself via closed circuit television to the FCC Commissioners.[130] Geller felt Hughes' proposal did not meet the requirements of the Act of 1934.[131] On July 16, 1968, Howard Hughes rescinded his ABC stock options.[132]

The Howard Hughes "Fourth Television Network"

Howard Hughes had been stymied on two fronts:

1. the "free-marketeers" of the Rostow Commission would advocate a pilot project for Domsat--such a policy limited Hughes Aircraft's ambitions in Domsat; and
2. the outright purchase of one of the potential pilot Domsat participants, ABC, was partially defeated by FCC fules and regulations.

Another frustration to Howard Hughes was the apparent defeat of the Hughes "fourth television network."[133] (The exact date of the formulation of the Hughes "fourth network" is unknown; the concept was formally filed with the FCC in March, 1970.[134] It is assumed by this report that the "fourth network" was discussed by Hughes in 1968.) Wheelon has stated that the "fourth network" was the brainchild of Howard Hughes, Patrick Hyland (General Manager of Hughes Aircraft), and Irving Kahn, President of Teleprompter (a cable-TV company).[135]

The Hughes "fourth network" was a Domsat system that would provide distribution of multiple channels of high quality television signals throughout the United States.[136] Hughes proposed to use this system for the distribution of television programs to cable-TV systems.[137] Hughes owned 17% of Teleprompter Corporation, the largest cable-TV company in America, and 50% of the Teleprompter systems in New York and San Diego.[138]

> Hughes had become interested in creating a satellite-to-cable television network. It wanted to supply community cable systems with full-time channels of special interest programming, such as children's shows and theater, which the mass-oriented national networks could not offer. Hughes was part owner of a cable system in Manhattan, and a large stockholder of TelePrompter Corporation, the largest cable system owner (800,000 subscribers in 1973). But it had talked to all comers. Hughes applied for two large transmitting earth stations and seven receive-only stations near the headends of CATV systems, worth a total of about $75 million. It planned eventually to have hundreds of receiving stations at cable systems around the country.[139]

The Rostow Commission's decision favoring an initial pilot project for Domsat would not allow Howard Hughes his "fourth television network," at least immediately.

The Hughes Aircraft Company had gone to a great deal of trouble in its attempts to own or participate in a Domsat system. By December, 1968, that opportunity for Hughes was remote; yet a change in Administration offered hope for a change in Domsat policy. Hughes as well as all pro-competitive telecommunication interests would watch the Nixon White House for a transformation in executive branch telecommunication management and policy.

SUMMARY: The Summary will incorporate important points from Chapter III and Chapter IV. This will allow the reader an easier transition into Chapter V.

The OTM was situated under the Director of the Office of Emergency Planning (OEP), and Executive Office of the White House. General James D. O'Connell was the Director of the OTM. O'Connell's authority was diminished for several reasons:

1. The OTM placement under the OEP made visibility minimal outside the executive branch.

2. President Johnson had a potential conflict in telecommunication through his family ownership of a Texas TV station.

3. O'Connell was in competition with the National Communications System (NCS) of the Defense Department; the NCS had more money, more people, and much more responsibility.

4. The OTM was regarded as being pro-monopoly in telecommunication policymaking, thus alienating pro-competitive parties.

5. O'Connell did not concern himself with "hot" news items such as broadcasting or cable-TV and thus was shunned by the press.

6. The Rostow Task Force from 1967-1968 had stolen whatever thunder the OTM might have possessed.

O'Connell had not in reality "spoken for the President" because he seldom saw or communicated with President Johnson. This lack of communication stopped the OTM from filing on any FCC docket. According to William E. Plummer, the OTM could not file an opinion with the FCC because it did not want to put the President in a position of being over-ruled by his own FCC appointees. The result of such OTM procedure left them only the devices of letters and telephone calls to the FCC in order to express their position. The OTM personnel might best be described as rigid, efficient, favored a monopoly telecommunication structure, and consistent in their beliefs

The President's Task Force on Communication Policy, on December 7, 1968, sent its Report to the White House, including partial dissents by the Director of Telecommunications Management (also Vice-Chairman of the Task Force) and the Department of Commerce. The Report was oriented toward competition, flexibility, free access, and innovation. The Report recommended expanded resources for telecommunication regulation and management.

A pilot proposal for domestic satellite was a Task Force position; with Domsat ownership spread across all interacting interests. The exception would be the aerospace industry, especially the Hughes Aircraft Company, who had an abundance of technological satellite expertise but no domestic market to sell it

to. The domestic satellite question was not a singular issue, the relationship between satellite and computers, satellite and specialized common carriers, satellite and cable television, impinged upon the economics and social costs of established common carriers (telephone companies). The ability of domestic satellite to circumvent normal terrestrial telephone lines and cables created revenue questions that had to be answered by the Rostow staff and ultimately the FCC in the 1967-1968 period. The Rostow Task Force philosophy in regard to continued and increased competition in telecommunication can be summarized as:

> The goal of public policy in this area should be an environment for the provision of services which will assure the maximum freedom of opportunity for such developments while preserving the integrity and economic viability of the basic integrated [telephone] network.

The general question of telecommunication competition and specific telecommunication issues such as Domsat were thrust upon the Nixon administration in January, 1969. If Brzezinski's "technetronic age" was indeed upon the U.S. then the Nixon White House would be making telecommunication decisions which could shape America's culture for a long time to come.

V. The Nixon Years, 1969-1970

INTRODUCTION

Richard M. Nixon became President in January of 1969. Whereas the executive branch telecommunication structure and management had floundered for seventy years--the Nixon White House gave it direction. It is significant that the last era discussed in this book's research is by far the most dynamic.

Between 1969 and late 1970, the administration placed more resources than ever before on the executive branch telecommunication issue. A Special Assistant to the President was placed in charge of executive telecommunication. Yet, somehow, somewhere, the term "executive telecommunication management" overlapped the administration's political judgments--and the differentiation between the two became difficult. Nixon appointed his two financial campaign coordinators of 1968--Peter M. Flanigan and Maurice A. Stans--as the executive branch officials that would try to reshape telecommunication structure and management.

Stans as Secretary of Commerce from February 3, 1969, through September 2, 1969, attempted to place more executive telecommunication policymaking authority in his office. In addition, Stans desired the spectrum allocation duties of the FCC.

By September of 1969, Melvin Laird, Secretary of Defense, had written Stans that his telecommunication plan was not in the best interest of the Department of Defense. Therefore Flanigan, Special Assistant to Nixon, and Clay T. Whitehead, a staff assistant to Flanigan, replaced Stans as the White House telecommunication architects. Flanigan-Whitehead would eventually create a new executive

telecommunication organization--the Office of Telecommunications Policy--to which Whitehead would be appointed Director.

Flanigan-Whitehead would also orchestrate a study on Domsat, and would recommend immediate "open entry," i.e. a competitive environment for domestic satellite.

The same philosophy that inspired the Nixon White House toward Domsat competition also was reflected in other telecommunication issues--cable-TV and specialized common carriers. Yet, possibly beneath the surface of Nixon's pro-competitive telecommunication policy lurked minatory motives. That is to say, that in advocating pro-competitive telecommunication decisions from the FCC the status quo in telecommunication ownership are subject to loss of revenue and influence. In Nixon's case his anti-status quo stance would be against the television networks.

MAURICE STANS, SECRETARY OF COMMERCE, TRIES TO CAPTURE TELECOMMUNICATION AUTHORITY, 1969

The Office of the Assistant Secretary for Science and Technology, Department of Commerce, had within its domain the National Bureau of Standards, and within it a telecommunication analysis function of the electromagnetic engineering type.[1] This Commerce function was hardly the kind to make headlines and it was only natural that physicists and engineers trapped in such an environment should try to increase recognition of their work. This is usually done in the executive branch by increasing one's budget, increasing personnel, or reorganization. The attempt in the Assistant Secretary's Office was to accomplish all three through the creation of the Office of Telecommunications under the Assistant Secretary for Science and Technology.[2] This new office, created in 1967, consisted of few people until Stans arrived.[3]

In 1953, Stans joined the House Appropriations Committee in its study of budgets; became deputy postmaster general in 1955; deputy budget director in 1957; budget director by 1958; and was in private business in the 1960s.[4] When Nixon took office in 1969, he appointed his assistant campaign chairman, Stans, as Secretary of Commerce.

According to Robert C. Powell,[5] who worked for the Assistant Secretary for Science and Technology, the first point of business on Secretary Stans' desk

was to capture the telecommunication policy function for the Department of Commerce.[6] This expansion of Commerce authority was already noted in other commercial areas. Robert Novak and Rowland Evans had written in The Washington Post that Stans was the administration's most proficient empire builder.[7] Responsibility for some foreign trade negotiations had drifted into the Stans' domain; the gift of such authority came from Robert Ellsworth, Nixon's 1967 pre-campaign manager.[8] (Ellsworth was named Ambassador to NATO and his job filled by Flanigan.) Stans' had already copped control over small business loans and taken a moribund Commerce Department, doomed for extinction by President Johnson, and injected a new life blood.[9]

On February 3, 1969, Stans sent a memorandum to Nixon concerning Federal telecommunication policy management.[10] If Stans did not work on the weekends immediately following the Nixon inauguration, then the memorandum was conceived, written, and delivered six working days after he was sworn in as Secretary of Commerce. The memorandum's time frame is important because of the magnitude of the Stans' request of the President.

Stans wrote Nixon that telecommunication policy formulation in the executive branch was dysfunctional; that FCC spectrum allocation procedure could be improved; and therefore the Secretary of Commerce should be given telecommunication policy authority over the entire spectrum.[11] He said:

> The present system for formulating and managing telecommunication policy is dysfunctional because there is not properly ordained central policy locus. Mismanagement of the electromagnetic spectrum has resulted in valuable spectrum space lying unused and technical improvements unexplored. I propose you delegate responsibility for policy formulation and management to the Department of Commerce.....
>
> Legislation (or a reorganization plan if the Reorganization Act of 1949 is revised) would be necessary to transfer the spectrum management function from the FCC to my office. The FCC would continue its regulatory functions and license spectrum space, but the policy direction would be unified under my office. This combined policy direction would materially assist coordinating the agencies in government who use the spectrum with private civilian and industrial requirements.[12]

Powell has stated that although Commerce telecommunication plans had been drawn up by himself and several others, there was nothing then in the Department of Commerce that was equipped to assume the responsibility requested by Stans.[13] Powell believed Stans had an interest in telecommunication policy prior to taking office.[14]

In the Stans' memorandum to the President, mention was made of two telecommunication reports done in 1968, that supported the Stans' position: A Bureau of the Budget Report[15] and the Rostow Task Force "Final Report."[16]

Stans Supports His Position with Two Studies

In the August 14, 1967, message to Congress of President Johnson, he stipulated that the Task Force and the Bureau of the Budget should study government telecommunication structure and management.

The "Final Report" of the Rostow Task Force recommended that legislation should be considered which would vest in an executive branch agency the overall responsibility for efficient spectrum use both in the government and non-government sector.[17]

The FCC response in 1968 to the Task Force recommendation to unify spectrum management and allocation within the executive branch was immediate. The FCC felt that the spectrum allocation, licensing, and regulatory functions were integrated to the point of being unseparable; to give the executive branch allocation authority over civilian spectrum would sacrifice the achievement of a unified communications policy in the non-government area.[18] The FCC said that improvements could be made to the allocation process without going into the "drastic step"[19] of a fundamental realignment and division of authority which might have serious "detrimental effects."[20]

The Bureau of the Budget (BOB) had completed its study of federal communications organization by December, 1968. The Bureau recommendations were not based on their own research; the Bureau simply concurred with the Central Staff of the Task Force that a unified spectrum manager did seem to be called for.[21] The BOB recommended:

1. A new and strengthened central policy and long-range planning organization in either the Department of Commerce or the Department of Transportation, using the existing OTM as the nucleus.[22]
2. Merger of the General Services Administration Federal Telecommunications System into the

National Communications System - if study by the NCS proved it feasible; and study of reorganizing the Office of Secretary of Defense to provide unified guidance over the NCS.[23]

3. The NCS as a central procurement source for other agencies.[24]
4. Limited in-house research capability in the new organization to support frequency management and policy development.[25]
5. Management of Government's use of the spectrum--and the total spectrum management function if a unified spectrum manager was adopted.[26]
6. Technical assistance to Federal agencies, State and local governments.[27]

White House Machination

By February of 1969, Stans had written Nixon that the Rostow Task Force supported his contention for increased executive management of the non-governmental spectrum. Yet, in early 1969, Whitehead, staff assistant to Flanigan, told the press that the "Final Report" of the Task Force could not be located.[28] News articles contended that the Task Force Report was being concealed in the White House.[29] The Report was released on May 20, 1969, to Representative Broyhill (R., N.C.) with the statement that the administration in no way endorsed the recommendations of the Task Force or its analysis of the issues.[30] Therefore Secretary of Commerce Stans had a copy of the Task Force effort but the President's staff did not.

Also in May of 1969, the BOB would circulate its 1968 study of executive telecommunication management saying in part:

> Since the Task Force devoted a considerable portion of its efforts to an intensive review of frequency spectrum problems, we have not retraced its steps but have considered those Task Force spectrum recommendations which have significant organizational impact.[31]

Therefore the BOB analyzed the Task Force recommendation for legislation to increase Presidential authority in non-governmental spectrum allocation; the BOB concurred with this Task Force finding. Yet, the White House could not endorse the Task Force but could encourage the BOB to use the Task Force research.

One of the reasons for this White House emphasis on the BOB work while suppressing the Task Force Report could be--the Task Force only recommended legislation to create a new executive telecommunication agency while the BOB Report recommended the Department of Commerce (or Transportation) to be given increased telecommunication authority. The BOB Report supported Stans' contentions--the Task Force study supported Stans only generally.

There seemed to be movement between the White House and the BOB to support the Stans desire for control of non-governmental spectrum.

The Strength of the Stans Debate for Telecommunication Control

Both the Rostow Task Force and the BOB had adopted a viewpoint that suggested a unified spectrum manager was needed in the executive branch. The President's Communications Policy Board in 1951, had said the same thing. The problem was not suggesting a solution, but implementing a solution. The Task Force, the BOB, and Stans, had not done their historical homework on telecommunication policy structure. There was no possible way that the Pentagon was going to give its radio authority to the Department of Commerce; regardless of what other executive agencies believed was most efficient.

Stans, to further explain his position, had his Department write "Federal Telecommunications Management and the Department of Commerce."[32] What this document entails are the "task statements" that the Rostow Commission had attempted to answer in 1968. Thus Stans seemed not only to be power grabbing, but also to be plagiarizing the work of this Task Force.

STANS CONFRONTS THE DEPARTMENT OF DEFENSE (DOD)

Stans, from July 24 through September 2, had launched a campaign to convince the Secretary of Defense, Melvin R. Laird, of the benefits of Commerce's telecommunication position.[33] Stans' plan was to give himself: policy,[34] management,[35] and research[36] authority in telecommunications:

> Policy--e.g., policies and programs of the executive branch affecting domestic and international telecommunication; responsibilities of the executive under the Communications Act of 1934 and the Satellite Act of 1962; liaison

with and representations to the Federal Communications Commission on policy issues; federal-state activities; national allocations of the spectrum in cooperation with the FCC; and, with the Department of State, international coordination of telecommunication matters.

Telecommunication Management for Federal Departments--allocation, assignment and regulation of Federal use of the spectrum; guidance and coordination of government systems development, standards, and procurement criteria, interagency and federal-state telecommunication coordination.

Research--studies of the spectrum including scientific and economic research.

Powell says that in the Fall of 1969, the Stans telecommunication agency was slated to have 1500 employees.[37]

Laird realized that the Stans proposal was not in accordance with existing statutes. That is to say, Stans wanted FCC authority that was delegated by the Congress not the President. Laird wrote to Stans:

> [It is unappropriate] for the Executive Branch to propose that Congress transfer responsibility to regulate interstate and foreign commerce, insofar as telecommunications is concerned, from the FCC to the Executive Branch. Congress' delegation of this responsibility to the FCC is, of course, contained in the Communications Act of 1934, as amended. That Act also reflects the intent of Congress that the radio frequency management powers of the FCC and the President be separate rather than in a single organization. Concentration of all radio frequency allocation and assignment authority wholly within the Executive Branch could have led to the President adjudicating frequency disputes between civil claimants in much the same manner, but on a more frequent basis, than he now does in settling air route controversies among international air carriers.[38]

Secretary of Defense Laird did not consider the Stans proposal offered any significant advantage, but presented many disadvantages.[39] Laird felt the

clarification of the status and responsibilities of the OTM, provision of the FCC and OTM with more resources, as well as elevating the OTM to a separate White House Executive Office, would be far more effective than the Stans proposal.[40]

Stans certainly had no mandate to lobby for authority that rested with Congress. Yet, the Stans position was also being considered by Flanigan and Whitehead as workable.

FLANIGAN WAS CALLING THE SHOTS

Stans wrote Flanigan concerning federal telecommunication policy management on June 27, 1969, apparently in response to Flanigan's request for Stans' comment on the BOB plan concerning telecommunication reorganization.[41]

> You [Flanigan] have asked for our comments [Department of Commerce] on a variation of BOB's plan under which the Office of Emergency Preparedness would retain those functions of the Director of Telecommunications Management which relate specifically to the preparedness issue, with the balance being transferred to a Federal Telecommunications Policy agency to be located in the Department of Commerce or the Department of Transportation.
>
> As I [Stans] understand it, this Department would then be responsible for establishing broad policy on all phases of telecommunications, but not including the President's responsibility and authority to take emergency actions...[42]

In addition, Stans wrote the new Department would allocate the frequency spectrum and set broad policies for its use.[43] The new Department would not be responsible for specific assignment of Federal, nor licensing of non-Federal, individual radio channels, nor the regulatory phase of non-Federal use.[44]

Stans suggested to Flanigan that FCC authority should be given to him through either legislation or Presidential Reorganization Plan.[45] The transferred responsibility would include:

> -- the policy making authority of the FCC for the most efficient use of civilian telecommunciation resources;[46]

-- allocation and geographic assignment of the frequency spectrum (but not individual station licensing);[47]

-- authority to set technical standards for communication systems and equipment.[48]

Stans had initiated the question of unified spectrum management effort. Who was Flanigan?

Peter M. Flanigan

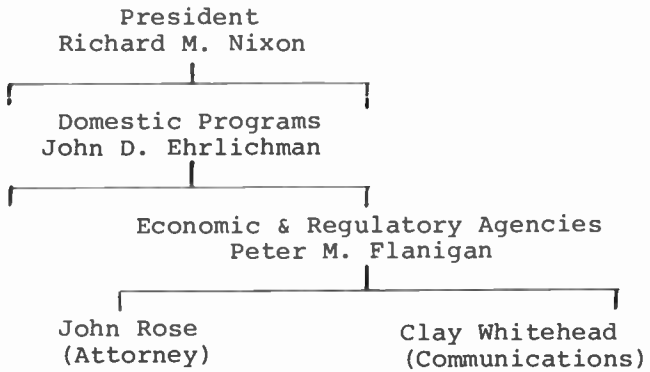
Peter Flanigan, 46 years old, was a well-to-do former Wall Street investment banker and Nixon campaign worker.[49] Flanigan had what he termed a broad mandate in the White House. His roles included personnel officer for top level appointments, White House liaison with Federal regulatory and independent agencies, and liaison with business.[50] The Nixon/Flanigan relationship extended back to the 1960 Presidential campaign and continued through the 1968 campaign. Flanigan was deputy to campaign manager John N. Mitchell.[51] As White House recruiter Flanigan selected 300 appointees for prestige positions, many from within a wide circle of social, political, and business associations.[52] Through such appointments Flanigan helped set the style and tone of the Nixon Administration.[53]

Clark Mollenhoff,[54] Ombudsman in the White House in 1969-1970, has written of Flanigan's potential conflicts of interest:

> Even at quick glance Peter M. Flanigan posed the greatest threat of a 'conflict of interest' in the Nixon White House. His personal fortune was largely in the stock of Anheuser-Busch, Inc. inherited from his mother, but his investments and connections were spread across the whole spectrum of the financial community, with particular emphasis on oil tankers owned by the Barracuda Tanker Corporation. [An oil scandal involving Flanigan in 1969.][55]
>
> As special assistant to the president for commercial and economic matters, Flanigan was Mr. Nixon's ambassador to the business community and the business community's representative to the White House staff. The New York investment banker had been one of the leading fund-raisers in the 1968 campaign, when he served as deputy campaign manager, working with Attorney General John Mitchell and Commerce Secretary Maurice Stans.[56]

Flanigan had several staff assistants to whom he assigned specific telecommunication policymaking tasks. One was Jonathan Rose, a 28 year-old administrative assistant and a graduate of Harvard Law School.[57] The other was Whitehead, a Ph.D. from the Massachusetts Institute of Technology, who was assigned functions in regard to regulatory agencies, communications, space, and atomic energy.[58]

The structure then of responsibility for telecommunication policymaking in 1969, within the White House was:



Flanigan delegated his telecommunication function to Whitehead.[59] Whitehead on June 27, 1969, asked the reaction of OEP Director George A. Lincoln to a telecommunication reorganization plan.[60] The Whitehead plan was dated June 26, 1969, and recommended that a Federal Communications Administration within the Department of Commerce be created.[61] This new office would encompass: the Institute of Telecommunication Sciences (engineers in Boulder, Colorado); the National Electromagnetic Compatibility Analysis Center (engineers and computer analysts, Annapolis, Maryland); government spectrum allocation; and recommendation of policy through the President to the FCC or Congress.[62]

Whitehead wrote that the Federal Communications Administration should be prepared to take on the civilian spectrum management functions then performed by FCC.[63] Also the new executive telecommunication agency would become increasingly vigorous in filing objective analyses on civilian spectrum issues and representing the national interest before the FCC.[64]

Whitehead had suggested to Lincoln that Stans be given the entire spectrum allocation authority of the President and of the FCC. The Whitehead plan was the mirrored image of Stans' own concept.

This book has already reviewed the number of conflicts between IRAC and the FCC. This recommendation of Whitehead to Lincoln, even though only for Lincoln's reaction, suggests a lack of understanding on Whitehead's part of the historical IRAC and FCC allocation problem.

The reaction to this Whitehead proposal was immediate. Wilfrid Dean, of the OTM, wrote a memo to Plummer (Director, IRAC) as to the security risks of the Whitehead memo:

> a) The Department of Justice has served notice in the IRAC that information pertaining to their use of the radio spectrum (frequency usage program) shall not be divulged outside the Executive Office.
>
> b) The military departments consider that the data base...constitutes a most sensitive information source since it contains their entire communications-electronics 'order of battle'. The DoD is extremely careful in the use of this material to ensure that it falls only into the hands of those strictly 'who need to know.' Other government departments such as NASA and the Department of Commerce have been denied such information by the DoD...
>
> c) Of particular sensitivity are telecommunications of the Secret Service in support of their 'guard the President' function.
>
> The foregoing should be weighed carefully in any proposal with respect to telecommunications reorganization.[65]

By July of 1969, Stans' telecommunication plan had been stymied by Laird at Defense. Whitehead would become the focal point for not only telecommunication reorganization but later the Domsat ownership question. Who was Whitehead?

CLAY T. WHITEHEAD

Clay Thomas Whitehead entered the Massachusetts Institute of Technology in 1956, culminating in a Masters Degree in electrical engineering in 1961, and a doctorate in management in 1967.[66] His doctoral studies emphasized policy analysis, economics, and research and development.[67] He had held positions while in school with Bell Telephone Laboratories, taught at MIT in electronics and political science, and consulted for the Rand Corporation and the Bureau of the Budget.[68] After graduation he went to the Rand Corporation to plan and organize a policy research program on health services.[69] His military career, 1964-1965 was working on Army chemical defenses and studying biological warfare.[70]

While he was working as a researcher at Rand in Santa Monica, California, Whitehead was approached by members of the Presidential campaign staff of Hubert H. Humphrey.[71] They wanted studies to help Humphrey, then Vice President, get an early start on budget and policy matters in the event he was elected President. Whitehead decided that he did not want to work for Humphrey; "So I decided to approach the Nixon people to see if they would be interested in this kind of study."[72] A friend introduced him to Robert F. Ellsworth, who was conducting Nixon's 1967 preconvention campaign; through that contact, Whitehead was hired.

When Nixon won the election, Whitehead left Rand to join the President-elect's task force on budget policies to assist in the transition.[73] The Nixon administration took office and Whitehead became an assistant to the President, working under Ellsworth.[74] In April 1969, Ellsworth was named U.S. Ambassador to the North Atlantic Treaty Organization.[75] He was replaced in the White House by Flanigan, who became Whitehead's boss.

THE COMPTROLLER GENERAL REPORT ON TELECOMMUNICATION, JULY 1969

The Government Accounting Office, which contains the Office of Comptroller General, had reviewed the National Communications System (NCS). On July 14, 1969, that office submitted to Congress the report "Review of Status of Development Toward Establishment of a Unified National Communications System."[76]

The Comptroller General recommended a strengthened and reconstituted Office of Telecommunications Management within the Executive Office of the President.[77] This new office would be assigned the roles and functions of the Executive agent and the Manager of NCS.[78]

Possibly Whitehead realizing that the Stans telecommunication initiative was not going anywhere, capitalized on the Comptroller General's analysis. In a draft memorandum written by Whitehead in July and addressed to the President, Whitehead recommended the strengthened and expanded role of the Office of Telecommunications Management.[79] The Department of Commerce would contain a research and analysis center for telecommunication.[80] Whitehead wrote Nixon that:

> The Office of the Director of Telecommunications Management be strengthened and expanded to enable the OTM to serve as the focal point for all Executive Branch telecommunication activities, be the Administration spokesman on national telecommunication policy issues, and be the primary executive branch office for the analysis and formulation for both national communication policy and Federal telecommunications procurement.[81]

Highlighted was an increasingly active role in advocating policy to the FCC, specific recommendations on spectrum management for non-government use, and development of improved spectrum management techniques looking toward eventual unified spectrum management.[82]

A Telecommunications Research and Analysis Center would be established in the Department of Commerce, reporting to the Assistant Secretary for Science and Technology.[83] It would be responsible for technical and economic analysis and research responsive to needs defined by the OTM.

The Whitehead draft memorandum to the President, July 1969, was the outline for what eventually would be called Executive Reorganization Order No. 1.

The draft memorandum stated that the reconstituted executive telecommunication office would advocate specific recommendations to the FCC regarding non-governmental spectrum use and development of improved spectrum management. This Whitehead proposal conflicted directly with the policy that had been customary at the Office of Telecommunications Management: i.e., never to interject itself directly into FCC-regulated non-governmental spectrum issues.

The President as Commander-in-Chief of the Armed Forces is charged with the management of merely the governmental spectrum. It is the Congress, whose arm is the FCC, that is charged with commerce which includes civilian/commercial spectrum utilization. The dual control of the spectrum in the U.S., IRAC-FCC, dated to 1934. The Whitehead draft memorandum therefore could be interpreted to increase Presidential authority.[84] It would seem that initiation of the suggested plan of Whitehead would create a conflict between the statutory authority of the Congress and the President. This point will be clarified further in this book's discussion of the creation of the new executive telecommunication authority, the Office of Telecommunications Policy.

By the Fall of 1969, the Director of the Office of Telecommunications Management, General O'Connell, was inundated by reports concerning the placement of telecommunication authority in the executive. The Rostow Report, the Bureau of the Budget Report, the General Accounting Office Report, the Maurice Stans letters, and the Department of Defense replies, all advocated telecommunication policy placement in the Federal Government. The Whitehead draft memorandum of July 1969, would carry the most weight with the President, if indeed it was sent.

THE OTM ASKS FOR QUIET

The moment the Nixon administration had assumed command in Washington the Office of Telecommunications Management (OTM) became non-functional.[85] The OTM did the government frequency tasks that had been Federal responsibility since the creation of IRAC in 1922; yet all contact with the White House had been lost and was not reestablished by Flanigan or Whitehead.[86] The normal channels for tracing executive branch telecommunication policymaking were confused.

An environment of repeated maneuvering and uncertainty made serious thought and work difficult if not impossible. Accordingly, the Director of Telecommunications Management, on September 11, 1969, wrote to the President in an effort to stop the interminable studies, each of which arrived at varying conclusions and recommendations, thereby creating confusion and delaying vital decisions in the management of telecommunication.[87] The Director recommended, in substance, that:

Telecommunications Management within the executive branch be continued within the Executive Office, preferably as an independent office or alternatively remain as a part of the Office of Emergency Preparedness.

Further efforts toward reorganization be terminated so that an environment is created wherein the Director and the FCC can operate effectively.

Recognition and support be given for reasonable increases in manpower and budget for the FCC and the Director's office, commensurate with the escalating requirements.

Current applicable directives be revised as necessary to define with greater clarity the responsibilities of the Director.[88]

The Director emphasized the fact that, notwithstanding certain claims to the contrary, the organizational structure for the guidance of telecommunication activities within the United States had given the Nation the largest and finest telecommunication facilities and services in the world at the lowest cost to the user.[89] Six days later President Nixon commended O'Connell and accepted his resignation which he had submitted in June, effective September 30, when age made his retirement mandatory.[90]

THE DOMESTIC SATELLITE ISSUE IN THE NIXON WHITE HOUSE

As Whitehead was formulating the reorganization of telecommunications policy in the executive branch, an immediate policy issue appeared--domestic satellite (Domsat).

Richard Gabel was an employee of the Department of Transportation and attached to the White House working group on domestic satellite in 1969.[91] He stated that a copy of the FCC "blue book" on domestic satellite was leaked to Flanigan in July of 1969.[92] The FCC blue book was a staff study that indicated the FCC favoritism towards a "pilot" domestic project.[93]

Flanigan, on July 22, 1969, announced that a small working group had been formed to study the Domsat policy issue.[94] He requested that Hyde, FCC Chairman, refrain from making any Domsat decision until the Administration considered the issue.[95]

Flanigan appointed his assistant, Whitehead, to head up the Domsat study group, with staff being Gabel, Rose, and Hinchman (formerly of the Rostow Central staff on Domsat).[96]

The Wall Street Journal summarized the above on July 30, 1969:

> The FCC has been studying the matter [Domsat] for several years. It's understood that an FCC staff report recommends authorizing Communications Satellite Corp. to work out a compromise with other interested parties for beginning an experimental system. Comsat is manager of Intelsat, a 68-nation group that owns the international satellite system, which carries telephone, television and other signals around the world.
>
> It's understood that the White House, through Mr. Whitehead, has been reviewing the FCC report for several weeks, but the mention of a new working group indicates the Administration may have ideas of its own. Former President Johnson appointed a White House task force in 196[7] to study communications policy, and the results of that study, published earlier this year, recommended that Comsat be the principal operator of a pilot domestic satellite system.[97]

Whitehead proceeded to send out correspondence to interested parties and compile information on the domestic satellite issue, August 19, 1969.[98] The Whitehead correspondence was sent to the following:

1. International Business Machines Corporation
2. Hughes Aircraft Corporation
3. TRW Systems
4. Electronic Industries Association
5. Communications Workers of America
6. International Brotherhood of Electrical Workers
7. National Association of Broadcasters
8. National Cable Television Association, Inc.
9. International Telephone and Telegraph World Communications
10. RCA Global Communications
11. Western Union International
12. University Computing Company
13. Columbia Broadcasting System

14. National Broadcasting Company
15. American Broadcasting Company[99]

(It is unknown whether other letters were sent.)

The business groups that Whitehead asked for comments favored Domsat competition; they approached communications as a business. What of the groups that looked upon Domsat in a sociological, cultural, or a technical fashion?

Gabel related his experience on the Flanigan-Whitehead Domsat study as a small staff working continually for about sixty days.[100] He felt that the White House had decided its policy on Domsat before the Working Groups report was finished.[101]

The OTM and the Working Group on Domsat

In 1967, the OTM had decided to support a "pilot" Domsat system.[102] Their rationalization was based on the lack of data available to decide whether a Domsat system should be a monopoly or have a "come one, come all" philosophy. The Rostow Task Force and the FCC had all arrived at the same conclusion as the OTM by 1968.

Plummer, Acting Director of the OTM in late 1969, hand carried the OTM Domsat study to Whitehead's office in the Old Executive Office Building.[103] Plummer told Whitehead that a competitive position for Domsat was not in the public interest; Whitehead retorted (according to Plummer):

> public interest does not seem to be the concern of the White House.[104]

THE REPORT OF FLANIGAN/WHITEHEAD ON DOMESTIC SATELLITE, JANUARY 1970

On January 23, 1970, a memorandum[105] from Presidential Assistant Flanigan to the new FCC Chairman Dean Burch, established the Nixon competitive philosophy in domestic satellite:

> Federal policy on domestic satellite communications has been long delayed...
>
> At this stage of domestic satellite planning, it is not possible to identify major economies of scale. Rather, it appears that a diversity

> of multiple-satellite systems as well as multiple-earth stations will be required to provide a full range of domestic services.
>
> Further we find no public interest grounds for establishing a monopoly in domestic satellite communications....
>
> Government policy should encourage and facilitate the development of commercial domestic satellite communication systems to the extent private enterprise finds them economically and operationally feasible.[106]

A reading of the entire text reveals the apparent differences between the Johnson Task Force and the Nixon Study. In a presentation by Dick Smith of the Philco-Ford Company to the Electronic Industries Association on May 6, 1970, the ramification of the Flanigan-Whitehead Satellite Study were reviewed.[107]

> The policy defined in the report is to encourage competition of certain kinds, under certain conditions, and in certain ways. Mr. Whitehead pointed out that Government policies have drifted away from any of the concepts on which our economic and social structure is founded. The satellite policy being suggested is an attempt to restate in one area the case for both competition and regulations. This policy recommendation cannot be extrapolated to all areas of communications since it was based on analysis of satellite technology and economies.[108]

The differences between the Rostow Report and the Flanigan-Whitehead Report on domestic satellite were:

Rostow Report	Flanigan-Whitehead Report
Mission: "...to assess the extent to which satellites might in the future provide an economically attractive alternative to more conventional terrestrial means..."	Goals: --to determine maximum benefits to the public and immediate implementation with minimum regulatory constraints--
(technical issues)	
1968: Unresolved problems make establishment of domestic system premature.	1970: Problems have been overstated, domestic system feasible now.
(socio/economic issues)	
1968: Potential benefits not clearly established for determining how a domestic system could be shared in public interest.	1970: Competitive rather than monopolistic development will insure - * technical and market innovations * optimum resource use * industry flexibility
(government policy)	
1968: Prime responsibility to Comsat. Carriers and users can invest as trustees.	1970: All entrants afforded equal opportunity to extent it is economically and technically feasible.
(recommendations)	
1968: Implement modest operational program with Comsat leading. Premature to fix policy.	1970: Adopt interim policy to promote vigorous exploration and development of service possibilities.[109]

The variance between the Rostow Report and the Flanigan-Whitehead Study are much more than Democrats versus Republicans, or monopolists versus adherents of competition. This book has shown the Rostow members to be economists and lawyers who were free-marketeers, pro-competition, anti-monopoly, in regard to telecommunication. Why then did the Nixon White

House feel the immediacy to advocate an "open entry" philosophy to the FCC? Possibly there is not one answer; yet the explanations gathered in this book research are confusing--for example the analysis of Whitehead.

Whitehead's Justification for His Actions

Whitehead states two of his goals for "making"[110] Domsat "open entry" were to increase competition in specialized common carriers and terminal (foreign) attachments.

> [The policy review I led in telecommunications in 1969 was two fold]. First, it was becoming clear that the U.S. was [at] a crossroads in telecommunications policy: the new technologies of communications and the services and uses they make possible do not fit the constraints of the 1934 Communications Act. Second, upcoming government and industry decisions on cable television, domestic communications satellite, specialized common carriers, and proliferating electronic terminal devices for use over communications links would set for some time the regulatory framework within which communications technology and services evolve. It seemed important that a new philosophical framework be developed to fit the newer technologies. It was clear that the FCC was headed in the direction of highly monopolistic, tightly regulated industry structure rather than a competitive free market development of the new communications potentials.
> .....The review also was prompted by the very practical considerations that if the new technology of communications satellites could not be made a competitive service, then there was little hope for allowing future competition in specialized common carriers or most importantly in terminal attachments. Unfortunately, at that time the electronics and computer manufacturers really didn't seem to appreciate the importance of communications to the evolution of distributed information networks [i.e., technetronic society].[111]

Whitehead would seem mistaken--the FCC was not "highly monopolistic." The specialized common carrier decision of the FCC was made on August 13, 1969, four months before the Flanigan-Whitehead Domsat policy statement.[112] The Carterfone decision of the FCC allowing "foreign" attachments was twelve months before Whitehead's study.[113]

MCI

1. The FCC/MCI decision allowing licensing of a specialized common carrier was on August 13, 1969.[114]

2. The Flanigan-Whitehead "open skies" satellite policy was sent to the FCC on January 23, 1969.[115]

3. The FCC Docket #18920, prompted by the numerous specialized common carrier licensing requests after the MCI decision, was on July 17, 1970.[116]

4. Therefore, four months before the Flanigan-Whitehead "open skies" policy was given to the FCC, the FCC had already approved the first SCC (specialized common carrier) MCI.[117]

Carterfone. The first erosion of the AT&T common carrier telephone monopoly after 1934, was in equipment interconnection.[118] AT&T's subsidiary Western Electric supplied almost all telephone equipment in the United States through the twenty-three regional Bell systems.[119] The issue of interconnection of non-Bell ('foreign') telephone equipment being attached to the AT&T system arose in the post war period, 1946-1948; telephone recording devices which were used by the Armed Forces gained civilian acceptance.[120] The 'foreign' attachment problem was an FCC regulatory topic for twenty years until the Carterfone decision of 1968. In Carterfone the FCC ruled that:

> a customer desiring to use an interconnecting device to improve utility to him of both a telephone system and a private radio system should be able to do so, so long as the interconnection does not adversely affect the telephone company's operation or the telephone systems' utility for others.[121]

Whitehead's Meaning. The Whitehead statement could be taken to mean that the future viability of MCI and similar companies might hinge on the ability of Domsat to circumvent AT&T cable and microwave land routes and its flexibility in sending messages anywhere in the country there was an earth station. The FCC in its hearings had duly noted the probable hostility of AT&T interconnecting with non-established common carriers and equipment suppliers.

Yet, for Whitehead to imply that the FCC was moving toward a "highly monopolistic" telecommunication policy is not shown by the facts. Part of his justification of Domsat "open entry" thus seems erroneous.

A plausible explanation for Nixon's Domsat policy is that the decision was not based only upon telecommunication policy issues. The Domsat decision might be part of a political judgment that telecommunication business interests, unknowingly, concurred with. The basis for this political judgment might be Nixon's displeasure with the TV networks' news reporting.

Nixon's Hatred of Network News

In May of 1969, Walter Cronkite, before the New York Chapter of the Association of Industrial Advertisers, "condemned government control of Broadcast news."[122] The media were becoming aware that information in the Nixon White House was tightly controlled.[123]

The President of CBS, Frank Stanton, at the convention of the Radio-Television News Director Association, attacked Nixon's curbs on broadcast journalism.[124] On the same platform Frank Shakespeare, Director of the United States Information Agency, charged slanted news coverage by the networks.[125]

On October 15, 1969, 300,000 war protesters converged on Washington.[126] The networks gave them full coverage. The world saw the discontent with Nixon foreign policy--it was an embarrassment to the Nixon White House. The President had suffered a blow from the "Eastern liberal establishment" who ran the media.[127]

Nixon was malcontent with his treatment by both the printed and broadcast press. He had assigned specific tasks to the White House staff to counter the media bias. A list of twenty-one such media assignments were attached to a memorandum from Jeb S. Macgruder to H. R. Haldeman.[128] Haldeman had

been called the President's Chief-of-Staff. In the October 17, 1969, memorandum of Macgruder the name Flanigan appears twice; Flanigan had been told by Nixon to:

a) Counter a news report by Dan Rather of CBS; and

b) Counter Ralph Nader's charge that the President paid little attention to consumer affairs.[129]

Macgruder was not satisfied with the President's supposed piecemeal approach to the press problem. Macgruder suggested more stringent methods of counter-attacking the biased media. Macgruder felt a more effective attack would include:

1. Begin an official monitoring system through the FCC as soon as Dean Burch is officially on board as Chairman. If the monitoring system proves our point, we have then legimate [sic] and legal rights to go to the networks, etc., and make official complaints from the FCC. This will have much more effect than a phone call from Herb Klein or Pat Buchanan.

2. Utilize the anti-trust division to investigate various media relating to anti-trust violations. Even the possible threat of anti-trust action I think would be effective in changing their views in the above matter.

3. Utilizing the Internal Revenue Service as a method to look into the various organizations that we are most concerned about. Just a threat of IRS investigation will probably turn their approach.

4. Begin to show favorites within the media....

5. Utilize Republican National Committee for major letter writing efforts.....[130]

Spiro Agnew as Vice President addressed a Republican Regional Conference in Des Moines, Iowa, November 13, 1969.[131] He warned his audience that network television was on the verge of controlling American minds.

> And he warned the viewer [the speech was televised] that the networks have awesome potential for control - 'a concentration of power over American public opinion unknown in history.' Quiet usurpers, they had built up this power without the people really being aware; the people were at the edge of thought control, and must awaken. 'We would never trust such power over public opinion in the hands of an elected government - it is time we questioned it in the hands of a small and unelected elite;' he concluded. The great networks have dominated Americans airwaves for decades; the people are entitled to a full account of their stewardship.[132]

Nixon might have countered supposed media bias with those tools at his disposal. These anti-media tools were:

1. the White House Staff; and
2. telecommunication policy.

It is possible that Nixon knew prior to assuming office what the fate of the American broadcast media would be. The Nixon hatred of the media went back twenty years. William E. Porter's Assault on the Media: The Nixon Years[133] seems to support the hypothesis that Nixon might have wished to throttle the media prior to his inauguration in 1969. Nixon's deep anti-media feelings erupted after his loss to Edmund (Pat) Brown in the California governor's race, 1962.[134] Nixon had said to the assembled press after that defeat "You won't have Nixon to kick around anymore."[135] Porter believes at this time Nixon's anti-media sentiments peaked.

> Beginning at that point, he was willing to think the unthinkable about the relationship between politics and the press.[136]

Nixon, by advocating a competitive Domsat system in late 1969, might allow a company to build a fourth television network. A new network might siphon power away from the television oligopoly of NBC, CBS, and ABC.

Hughes Interests Benefit from the Flanigan/Whitehead Open Entry Decision

Among the institutions that could benefit immediately from the Flanigan/Whitehead "open skies" domestic satellite policy proposal was the Hughes Aircraft Company. Hughes Aircraft had been attempting since 1964--through ABC and, later, the Ford Foundation satellite network plans--to find a market for its satellite technology.[137] Additional momentum to Hughes Aircraft's desire to build or own a domestic satellite system was the activity of the sole stockholder and President, Howard Hughes.

The Flanigan/Whitehead "open entry" domestic satellite proposal was sent to Dean Burch on January 23, 1970. By February 4, 1970, Teleprompter and Hughes Aircraft had finished plans for a fourth satellite/cable television network.[138]

> Teleprompter Corp. of New York says it will notify the Federal Communications Commission within sixty days of its plans to take part in a domestic satellite program.
>
> Irving B. Kahn, chairman and president, told a cable television symposium here yesterday that Hughes Aircraft Co., which owns 17 percent of Teleprompter, has developed a 'relatively inexpensive' earth station with a 32-foot disk that makes possible the use of a satellite for a small cable system.
>
> The low-cost earth stations, Kahn said could be tied via cable and microwave with a satellite into a system that would be 'practical and economically feasible.' He said the satellite could bring a signal-ranging from television to computer data-to the cable system and then be carried on short-haul microwave systems to distribute it in a radius of 20 miles.[139]

In March of 1970, the FCC opened a new inquiry on Domsat in which Hughes Aircraft outlined its proposal:

> The domestic satellite system proposed by Hughes Aircraft Company will provide for distribution of multiple channels of high quality broadband TV signals throughout the United States. Hughes Aircraft Company proposes to use this system for the distribution of television programs to cable television systems.[140]

The "open entry" proposal of Flanigan/Whitehead, if the FCC concurred, would allow Howard Hughes to own his television network, give Hughes Aircraft an outlet for its satellite technology, and permit Irving Kahn to unite isolated cable systems into a compact cable network.

The Other Uses of Domsat Besides Broadcasting

Nixon-Flanigan-Whitehead had recommended a policy of "open entry" for Domsat; what course the FCC would take was yet to be seen. The White House Study Group realized that satellite could be used for other than TV distribution. The Study Group knew that uses of communication satellites in the foreseeable future might include:

a. relay of bulk communications such as multi-channel voice/record trunks, high speed computer data, and video programs among a limited number of points;[141]

b. networking of specialized communications such as voice, data, and graphics among dispersed or mobile users, such as aircraft, ships, computer information centers;[142] and

c. various scientific and meteorological data collection, distribution and exchange services.[143]

Satellites might, therefore, open new horizons in the dissemination and exchange of economic, medical, scientific, and educational information among businessmen, doctors, students, teachers and others, and forge progress in a myriad of fields.[144]

The White House Study Group had shifted Domsat policy in the executive branch from a "pilot" to "open entry"; they had simultaneously shifted the ownership of Domsat from a consortium of public and industrial interests to strictly industrial.

Why Domsat "Open entry"

The purpose of this book is to review the struture and management of telecommunication in the executive branch; therefore this research will not judge the validity of the Nixon "open entry" decision. Rather the issue to be explored is what affect the Nixon White House structure had on telecommunication management.

By 1969, a subtle shift of telecommunication management in the executive had been felt. The Rostow Task Force had recommended an increased telecommunication presence by the President and advocation of competitive telecommunication services wherever possible.[145]

Huge conglomerates, such as the Hughes Aircraft Company and the AT&T, pressured the President to influence the telecommunication policy process in their behalf. The make-up of the Nixon White House was business oriented, as exemplified by Peter Flanigan; thus monopoly telecommunication would seem to have been disadvantaged.

The normal executive telecommunication structure that seemed to favor integrated communication systems was excluded from the Nixon analysis process.[146]

It seems obvious that Nixon was attempting through Stans, Flanigan, and Whitehead to gather additional Presidential authority in spectrum allocation. By having increased control of non-governmental telecommunication Nixon could harass and possibly decrease the influence of civilian spectrum users. Domestic satellite could have been the initiation of Nixon's attempt to affect non-governmental telecommunication; specifically the television networks.

Nixon, suffering from what he believed to be a liberal network bias in the news, might have seen in the escalation of executive branch telecommunication jurisdiction a potential solution. Nixon might advocate Domsat "open entry" as much to create immediate "fourth networks" as to espouse the Rostow Task Force's pro-competitive recommendations.

Which of these factors influenced the Domsat "open entry" decision the most is unknown. According to Flanigan there were no outside influences during the White House policy review of 1969.

> I am confident that in no way did the President's relationship with the American media influence the "open entry satellite" review.
>
> There were no particular "outside influences" that affected the Telecommunications Policy

Review. All interested parties contacted us to make their views known, but none had any special influence.[147]

PRESIDENTIAL POWER AND THE FCC

Regardless of White House policy it is the FCC which has the statutory responsibility of determining public interest in private telecommunication. Therefore, the assumption would be that the FCC would consider the Nixon Domsat policy as any other submitted in the administrative decision making process. The FCC staff after five years of study had already determined a "pilot" Domsat was the most rational approach. The Domsat matter seemed already settled.

Yet, as this research has pointed out on occasion, the FCC is not exempt from White House influence and pressure. As Krasnow and Longley state in The Politics of Broadcast Regulation[148] the President can influence the FCC through--FCC appointments, the FCC budget, and the Department of Justice.[149]

The FCC in March of 1970, reopened Domsat hearings;[150] and by 1972, the FCC permitted all qualified applicants to provide Domsat service, but restricted the markets of AT&T, COMSAT, and GTE.[151]

The following is the complete chronology of Domsat policy, both in the executive branch and in the FCC from 1965-1972.

1965 American Broadcasting Company, Inc. (ABC) submits proposal to FCC for a domestic TV-distribution satellite.

1966 FCC opens inquiry on domestic satellites, and asks broad policy questions regarding establishment of systems by non-government entities.

1966 Ford Foundation submits counterproposal for a multipurpose domestic satellite, with profits to be used to support educational television.

1967 COMSAT proposes "pilot demonstration program," with two satellites to be operated by COMSAT as trustee until FCC decides ownership issue.

1967 President Johnson appoints Task Force on Communications Policy to study domestic satellites and other issues; FCC suspends action in its domestic satellite inquiry pending receipt of Task Force recommendations.

1968 President's Task Force submits report recommending approval of a single "pilot" domestic satellite program, with COMSAT having primary responsibility.

1969 As FCC prepares to approve a pilot domestic system substantially as recommended by President Johnson's

Task Force, the White House requests a delay until President Nixon's staff can study the matter and submit recommendations.

1970 White House sends memo to FCC urging approval of all financially and technically qualified applicants for common carrier or private domestic satellite systems - instead of a single pilot system as contemplated by FCC.

1971 Before its deadline, FCC received eight applicants for satellite systems.

1971 FCC receives comments and reply comments from the applicants and other interested parties regarding the eight applications.

1971 NASA performs technical evaluation of the applications for FCC.

1972 FCC's Common Carrier Bureau recommends policy of "limited open entry," consolidating in a common space segment those applicants proposing use of the same satellite technology.

1972 Oral argument before the Commission regarding the Bureau's recommendations.

1972 FCC issues ruling permitting MCI qualified applicants to provide domestic communications-satellite service, but restricts the markets that AT&T, COMSAT, and GTE satellite systems are authorized to serve.

How could the executive branch attain the momentum to so affect FCC policy? The answer is that Nixon envisioned the most powerful executive agency ever to hold telecommunication authority--the Office of Telecommunications Policy--in December of 1969.[152]

THE NIXON ATTEMPT TO INCREASE EXECUTIVE INVOLVEMENT IN NON-GOVERNMENTAL TELECOMMUNICATION POLICY ISSUES

This book has analyzed speculative political data that indicate some attempt in the Nixon administration to alter telecommunication policy outcomes. If indeed the case, the Nixon administration could not hope to attack telecommunication policy problems on a case by case basis. The multitude of interests in both governmental and civilian frequency issues, intersecting at various points and in several agencies (Executive-FCC-Congress) required a reorganized approach to telecommunication policy planning.

The cry for telecommunication reorganization was not new. This book has documented the seventy years of the aborted organizations of telecommunication policy management in the executive. The difference between the seventy year chronology and the Nixon

telecommunication reorganization, was the venture by the Nixon administration into non-governmental telecommunication issues. Stans, after only six working days as Secretary of Commerce had written to the President. Stans desired to capture not only the authority of the Office of Telecommunications Management, but also the frequency management functions of the FCC. Stans continued in his quest for telecommunication authority until October 1969, when Secretary of the Department of Defense, Melvin Laird, stopped Stans "cold in his tracks." Laird wrote to Stans:

> Thank you for your letters of September 2nd and July 31st and their attachments outlining your views on how the Department of Commerce would effect leadership in the telecommunications management area. As you can appreciate, the character and source of national telecommunications policy and radio frequency spectrum management are of vital concern to the Department of Defense.
>
> In comparing the September 2nd proposal with the correspondence and study previously provided on July 31st, I find it significant that your Department no longer proposes transfer of certain statutory responsibilities of the FCC to the Executive Branch. I am gratified by this change since I did not consider it appropriate for the Executive Branch to propose that Congress transfer responsibility to regulate interstate and foreign commerce, insofar as telecommunications is concerned, from the FCC to the Executive Branch.[153]

Whitehead was also analyzing the telecommunication reorganization problem. In a letter to General Lincoln of the Office of Emergency Preparedness, later in a draft memorandum to President Nixon, Whitehead stated the intent of the President to increase executive policy in non-governmental frequency matters:

> A number of organizational arrangements that have been suggested in the Congress or the press can be rejected immediately as impractical or politically infeasible. These include establishment of a Department of Communications, transfer of all DTM functions to an existing cabinet department, and significant expansion

> with the Executive Office of the President by creation of a new Office. Determination of emergency communications requirements clearly must remain in OEP. However, major involvement by the executive branch in nongovernmental communications policy matters before the FCC and the Congress could be centered in one of the Cabinet departments -- probably Commerce -- or in the Executive Offices.[154]

Other studies and the Rostow Task Force had suggested increased executive participation and coordination in radio frequency problems--but their recommendations were not to circumvent established Congressional and FCC authority in civilian communications. Laird appears accurate in his interpretation of the Communications Act of 1934: the President does not have the authority that rests with Congress in the regulaton of interstate and foreign commerce. The persistence of the Secretary of Defense in denying the Secretary of Commerce his interpretation of the Communications Act of 1934 could have forced Flanigan and Whitehead to formulate a reorganization of telecommunication in the only place not susceptible to intercabinet rivalry, the Executive Office of the President.

REORGANIZATION PLAN NO. 1 AND THE CREATION OF THE OFFICE OF TELECOMMUNICATIONS POLICY

Flanigan and Whitehead had submitted a report, "Executive Branch Organization for Telecommunications,"[155] to Congress on December 6, 1969. This study was published on February 3, 1970, in the Report of the Subcommittee on Space and Science Applications, House Committee on Science and Astronautics.[156]

The report was the basis for what the executive entitled "Reorganization Plan No. 1 of 1970."[157] The first two pages of the Reorganization Plan were a letter of transmittal from President Richard Nixon, signed February 9, 1970.[158] The President's letter speaks of the executive need for management of its internal communications. The President requests the establishment of an Office of Telecommunications Policy whose three essential roles would include:

a. It would serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities. The speed of economic and technological advance in our time means that new questions concerning communications are constantly arising, questions on which the government must be well informed and well advised. The new Office will enable the President and all government officials to share more fully in the experience, the insights, and the forecasts of government and non-government experts.

b. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the Federal Government's own vast communications systems. It would, for example, set guidelines for the various departments and agencies concerning their communications equipment and services. It would regularly review the ability of government communications systems to meet the security needs of the nation and to perform effectively in time of emergency. The Office would direct the assignment of those portions of the radio spectrum which are reserved for government use, carry out responsibilities conferred on the President by the Communications Satellite Act, advise policy direction for the National Communications System.

c. Finally, the new Office would enable the Executive Branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress.[159]

In addition to the functions transferred to this new Office by the Reorganization Plan, the Department of Commerce would later be assigned research and analysis responsibilities in support of the Office of Telecommunications Policy.[160]

The President stated that:

> The Public interest requires that government policies concerning telecommunications be formulated with as much sophistication and vision as possible. This reorganization plan--and the executive order which would follow--are necessary instruments if the government is to respond adequately to the challenges and opportunities presented by the rapid pace of change in communications. I urge that the Congress allow this plan to become effective so that these necessary reforms can be accomplished.[161]

The Reorganization Plan itself was brief, establishing a new Office of Telecommunications Policy within the Executive Branch;[162] transferred to the Director of the new office the frequency assigning functions conferred upon the President by the provisions of section 305(a) of the Communications Act of 1934;[163] and abolished the position of Assistant Director of the Office of Emergency Preparedness held by the Director of Telecommunications Management under Executive Order No. 10995 of February 16, 1962.[164]

THE HOUSE REVIEW OF THE REORGANIZATION PLAN

The Executive and Legislative Reorganization Subcommittee, House Committee on Government Operations, Chaired by Representative Holifield, held hearings on the Plan March 9-10.[165] Two issues were stressed by the Committee members and others. The first concerned the intent of the Administration and possible impact on the FCC, its role and resources, and thereby impact on Congressional jurisdiction over interstate and foreign commerce.[166] The second issue was alleged "torture" of the reorganization plan authority instead of using legislation.[167]

On the first issue, OTP impact on the FCC, Clarence J. Brown (R., Ohio) raised the question. Representative Brown was a former newspaper publisher and radio station manager. Brown referred to a statement in the February 16, 1970, issue of Broadcasting, that stated:

> Dr. Whitehead, who drafted the memorandum on satellites as well as on the need for reorganizing the Executive's telecommunications policy-making machinery, made it clear last week the White House has no qualms about seeking to influence the Commission or other so-called independent agencies.
>
> He noted that the Executive Branch, through the Department of Interior, has made its views on oil and gas policy known to the Federal Power Commission. And the Justice Department, which also speaks for the President, he added, has entered into a number of FCC proceedings, adjudicatory as well as policy making.[168]

Such a statement bothered Brown as a member of the Communications and Power Subcommittee of the Interstate and Foreign Commerce Committee which had direct jurisdiction of the FCC.

To squelch any doubts about his alleged statement, Whitehead submitted, the following day, a White House memorandum dated May 21, 1969, that stated no White House personnel would in any way try to influence independent regulatory agencies.[169] This memorandum was written and signed by Peter Flanigan.[170]

In testimony on the same day, FCC Chairman Dean Burch told the Subcommittee:

> The Commission is subject to influence in the literal sense, not as meddling, I might add, from a number of sources--the executive, the general public, the affected industry, the Congress. And I think we welcome influence of that sort because we have to consider in reaching our decisions the best information available to us.
>
> I have absolutely no fear of either an actual or possible undue influence by the White House on the Commission by virtue of this office. I just don't think there is any fear there.[171]

A point on which Chairman Burch did hedge was the influence of OTP by virtue of its research capacity. Rep. Benjamin S. Rosenthal pointed out that Reorganization Plan No. 1 would give the White House a significantly greater research capacity than the FCC.[172] "You will suffer by comparison," Rosenthal told Burch, "in that their research capacity would

overwhelm you."[173] He added that there would be a void in the FCC's own ability and that the FCC would therefore be influenced by OTP through their research capacity.[174] "What bothers me," Rosenthal concluded, "is that they are gaining an edge in terms of this independent decision making power that Congress intended you to have."[175]

Chairman Burch replied:

> Well, I am on the horns of a dilemma here. I would be tempted to say I agree with you. I think I have to make this statement. Although we recently organized this particular Office (the Policy Planning Office with responsibility to consider long-range FCC problems), a specific Office with a title and organization chart, we do have throughout the Commission, considerable resources in terms of analyzing any proposal that comes from any source. We do that every day.
>
> The difficulty with our present setup is that these same individuals have operating responsibilities which, in my opinion, deter their ability to concentrate solely on analysis. That is the reason for the creation of a new office with an overview function.[176]

While Chairman Burch's reply was unconvincing on this issue, his testimony made clear that he had no intention of being pushed around by the Office of Telecommunications Policy.

The alleged torture of the Reorganization Plan instead of Congressional legislation was raised by Herbert Roback.[177]

> Concerning the point that Mr. Brown raised about the reorganization plan transferring functions to a new office, I wonder, for the record, if you could amplify in this sense: No. 1, why could not this plan have been effected by Executive order alone; and secondly, if it could not, is it consistent with the basic purpose of the Reorganization Act, which apparently contemplates that a reorganization will transfer functions to other existing offices rather than to an office yet to be created?[178]

Mr. Schnoor [from BOB]:

The reorganization plan was necessitated because of the limitations in the McCormack Act, which contains the President's basic authority to delegate his functions. The McCormack Act limits those delegations to agency heads or to officers who are confirmed by the Senate.

By Executive order, the President could not have created an agency within the meaning of the McCormack Act and by Executive order he could not have created an officer confirmed by the Senate. Hence, there was a need to establish a lawful agency within the meaning of the McCormack Act and that is what the plan does. It creates an agency that is recognized in law.

Then there will follow, by Executive order, the delegation and assignment of the other Presidential functions that have currently been given to the OTM.

As to your second point, all I can say again is that there are precedents for the creation of offices and agencies and the vesting of functions in them by a reorganization plan. I am at a loss now for the exact name, but the bureau that was created in the Department of Justice, for example, to handle narcotics did not exist at the time the plan went up. It was created by the plan and functions were vested in it.[179]

Congressional Oversight

This Congressional testimony had established that:

1. Congress was signing "a blank check" and did not know what the duties of the OTP would be; and
2. The OTP would have more research ability than the FCC.

In hindsight it seems that the Congressional review of the OTP was not sufficient. The right questions were asked but the explanations were weak. The beginning of the Nixon influence on the FCC had been questioned and then sanctioned by Congress.

Other Congressional committees were interested in the new Office of Telecommunications Policy. On April 23rd, 1970, the Subcommittee on National Security and Scientific Developments, House Committee on Foreign Affairs, continued the investigation it began into "Satellite Broadcasting: Implications for Foreign Policy" in May 1969.[180] Chairman Zablocki was especially interested to learn how the Office would be equipped to assist the Department of State in international negotiations.[181] He concentrated on the qualifications stated for the director, OTP, in the Flanigan/Whitehead Report, and the rumored selection for the position. Mr. Zablocki's questions made it clear that he thought that the director should have considerable expertise in telecommunication.[182]

Plan Becomes Effective

Reorganization Plan No. 1 of 1970 became effective and the position of Assistant Director, OEP, held by the Director of Telecommunications Management, was abolished April 20, 1970.[183]

On June 26, 1970, the President nominated Dr. Clay T. Whitehead to the position of Director of the Office of Telecommunications Policy.[184] Whitehead was heard by the Senate Commerce Committee, Senator John O. Pastore presiding, and affirmed July 16, 1970.[185]

The Executive Order No. 11556 assigning communications functions was not signed until September 4, 1970.[186]

THE DIRECTORSHIP OF THE OTP

Although Whitehead was appointed the Director of the OTP, he was not in fact the first choice for the position. Dr. William Niskanen, an economist, who was director of program analysis with the Institute for Defense Analysis was considered.[187] His research company was under contract to the Defense Department and he had formerly been with the Rand Corporation.

> Observers immediately noted that Dr. Clay T. Whitehead, White House Aide specializing in communications matters, is also a product of Rand. And, like Dr. Niskanen, he was with the Santa Monica, Calif., think tank in the early 1960s.[188]

According to Nicholas Zapple,[189] formerly of Senator Pastore's staff, and Fred Morris,[190] a candidate for the OTP Directorship, the names of Niskanen and Whitehead were the only names submitted for Senate review. Dr. Niskanen, well educated at Harvard and the University of Chicago School of Economics, had little or no experience in telecommunication policy analysis.[191] A possible explanation of the Niskanen appointment would be the philosophy on telecommunication as stated to the Armed Forces Communication and Electronic Association in June of 1970, by Whitehead:

> Considering the audience here today, one is tempted toward a variety of an old saw: 'Communications is too important to be left to the communicators.' There is much truth here, largely because communicators have done such a good job; the better you do, the more people expect and the more important to other concerns communications becomes. But more important: Communications is too important for the policy generalist to continue to ignore.
>
> We must recognize that government policy and industry efforts are not independent. The concept of government regulation simply slowing or speeding what industry wants to do is overly simplistic: Innovation will head into new directions or not, depending on policy, and policy takes its cues from industry potentials.[192]

Although the Niskanen appointment as a "generalist" was explained by Whitehead, some of the telecommunications industry did not agree with this approach. On June 22, 1970, Broadcasting reported the Niskanen appointment dead due to the flack members of Congress had taken from the communications industry.[193]

A new name was substituted for Niskanen, Clay T. Whitehead. Zapple believed that Senator Pastore only requested an OTP Director that could speak for the President.[194] The Senator was assured Whitehead could and would. Whitehead became Director of the OTP on July 16, 1970. Flanigan stated that in his opinion Clay Whitehead could do the job, and thus supported him for the OTP position.[195]

EXECUTIVE ORDER 11556 CREATED THE OFFICE OF TELECOMMUNICATIONS POLICY

Executive Order 11556 was signed by Richard Nixon on September 4, 1970. The multitude of executive responsibilities that are derived from the Communications Act of 1934, the Communications Satellite Act of 1962, formulation of policy and standards, executive branch telecommunication coordination, and IRAC, make any order lumping all these duties together a powerful document.

Yet, executive order 11556 is more than a laundry list of Presidential telecommunication responsibilities. It reflects a policy designed to affect the communication establishment in the United States.

Executive Order 11556, Part (i):

> Develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.[196]

Part (i) of this order is a major deviation from the O'Connell and Plummer era in the OTM. Through the Office of Telecommunications Policy Nixon would help the FCC direct total, civilian and governmental, spectrum management.

As Spievack (an FCC lawyer) so observantly wrote in 1970:

> Behind all this movement [Reorganization Plan No. 1] there seems a clear intent for the Executive Branch to have "primary...responsibility for both national telecommunications policies and Federal administrative telecommunications operations," including the economic, social and technical analysis which serves as a logistical prop for the formulation of national policy....
>
> There is a fundamental difference between entering adjudicatory or rule making proceedings and issuing carte blanche letters of policy designed to "assist" the "so-called independent" agency. In the former case administrative regularity is preserved; for the Executive comes under the scrutiny of an administrative process where it must so battle like any other claimant. In the latter, there is no similar commitment to equal protection, or like conformity to due process.[197]

Part (i) of Executive Order 11556 would also allow the Office of Telecommunications Policy to investigate those areas that would improve management of the scarce spectrum resource in the civilian sector. Therefore, issues such as cable television, a technology that was an alternative to spectrum utilization could be researched by the OTP.

Since part (j)[198] of the order allows the OTP to conduct economic, technical, and systems analyses of telecommunication policy, activities, and opportunities--in support of part (b),[199] "promotion of the public interest,"--there is no telecommunication issue not in the OTP purview.

The jurisdiction contained in the new Office of Telecommunications Policy, or executive order 11556, did not go unnoticed. Joseph Keller, a Washington attorney wrote:

> There is a new 'Big Brother' watching Washington these days.
>
> This time however, the Big Brother is watching not the citizen but other established arms of government, which is novel indeed.
>
> And the novelty is the Office of Telecommunications Policy headed by Director Clay T. Whitehead.
>
> A table of organization is spreading its tentacles into many sacrosanct levels of governmental activity--including the Office of Management and Budget, numerous smaller federal departments and agencies, public industry, state and local government and the Congress itself.[200]

The Radio Act of 1927 assigned to the President the responsibilities of appointing Commissioners to the Federal Radio Commission; allocating governmental radio frequencies; war emergency powers; and assistance to American citizens in countries without commercial radio facilities.

The duties of the President in 1927 were incorporated in the Communications Act of 1934. The spirit and demarcation of Presidential telecommunication authority ended where non-governmental telecommunication began.

Executive order 11556 was an extension of the substance of the Acts of 1927 and 1934. The OTP was created to develop, in cooperation with the FCC, comprehensive long-range planning for improved management of all electromagnetic spectrum resources.

Certainly the OTP authority could be interpreted as an expansion of its telecommunication mandate--yet without legislative approval.

The Outside Group

An indication that the OTP might go into areas never approached by its predecessor, the OTM, might be contained in a confidential Haldeman/Macgruder memorandum, February 4, 1970.[201] Haldeman tells Mr. Macgruder that the Silent Majority should be organized to "pound" the magazines and networks in counterattacking their negative shift in Vietnam. He wants Macgruder to concentrate on the few places that count, NBC, Time, Newsweek and Life, the New York Times, and the Washington Post.

> This is the kind of thing our Outside Group should automatically pick up for us once we get them; but until we have them, we have to fill the gap ourselves, and it's terribly important to move quickly on this. Perhaps the National Committee can help you with editorial and lay-out facilities, but hold them to very high standards and make it come out good.[202]

The "Outside Group" that Haldeman alludes to has not been analyzed. Anthony Lucus, in his history of the Nixon administration, shows that what has become known as the "Plumbers" were not formed until the summer of 1971. Haldeman's own memo indicated the Group he refers to is not in the Republican National Committee. It might be argued that since the Office of Telecommunications Policy organizational plan was sent to Congress, February 9, 1970, and the formulation of the OTP was completed by December 6, 1969, the Haldeman (February 4, 1970) Outside Group is the Office of Telecommunications Policy.

Further evidence seems to indicate that Whitehead did indeed receive suggestions on network television issues. A reliable OTP employee has stated that Whitehead would walk over to the West Wing of the White House and receive "for eyes only" material from a White House attorney. The material would be brought back, logged in, and placed in Whitehead's private office safe.[203] One of those folders contained the title, "network problems."[204] The author of this material sent to Whitehead was John Ehrlichman, Nixon's Director of Domestic Programs.[205]

SUMMARY

Responsible executive branch personnel charged with telecommunication tasks do not arrive at policy through capricious reasoning. During the period 1969-1970 normal telecommunication structure, management, and policy authority had been circumvented by Nixon appointees.

Stans and Flanigan, in 1969, had advocated:

1. that the placement of telecommunication authority be in the Department of Commerce;
2. that those in their employ circumvent the normal channels for telecommunication making; and
3. that misrepresentation of the true telecommunication motives of Nixon be kept from the other executive offices, the Congress, the FCC, and the American public.

The minatory motive of Nixon toward telecommunication policy making and Domsat policy in particular was: His hatred of the established media. Nixon, under the guise of liberal thought, might have used Domsat policy as a means of affecting existing media economically.

The executive branch prior to Nixon had failed in exercising a more authoritative telecommunication leadership, but a number of factors had acted to inhibit the assumption of that role.

a. Until the Nixon administration no President had been willing to apply a reasonable level of resources to the task of managing, guiding and regulating the telecommunication activities of the Nation.

b. The resources available to telecommunication activities in the private sector (Hughes, AT&T, IT&T, RCA) dwarfed the resources of the executive branch.

c. Telecommunication issues are complex; technological, constitutional, economic, military, political, and social considerations are tied up in nearly every issue. Telecommunication policy affects the survivability of the Nation, the general welfare of the people, the profitability, and sometimes the existence of powerful corporate entities of the civil

sector. Therefore, what may seem delay is in reality highly institutionalized regulatory and judicial process. Simply assuming the Presidency and attempting to force policy is not a totally satisfactory answer.

d. Powerful interest groups pressure the Presidency to influence the telecommunication policy process, to speed it and to resolve telecommunication issues in favor of the intercederers.

e. Presidential desires to attain social, economic, diplomatic, and security goals are also affected by the slow pace of policy decisions in the regulatory process.

f. The mechanism to resolve issues which affect the general public and the private sector of the economy in telecommunication is the prerogative of the FCC and is not truly part of the executive branch and should not be responsive to Presidential action.

When viewed together, the factors create a pattern. The regulatory decision process is slow. The Presidency--and those who advise it--feel frustrated in their attempt to mold matters as they believe desirable, and to speed the process. By law, the Presidency cannot direct the FCC in matters which are not international in nature; leaving leadership as the only approach available to the Presidency.

Nixon by attempting and then succeeding at consolidating the responsibilities, authorities, and capabilities of the entire executive branch into one office--the Office of Telecommunications Policy--created sufficient weight to accelerate the telecommunication policy process. That is to say, Nixon reorganized the structure, revitalized the management, and attacked telecommunication policy with such force that ultimate decisions anywhere in Washington (FCC, Congress, the Courts) would fall into Nixon's step.

Nixon had endeavored to place the policy and allocation of the entire spectrum under his authority. Once captured, Nixon would use this authority to the advantage of himself. The telecommunication perspective of Nixon would not be in the interest of established telecommunication systems: AT&T and the three television networks.

Although the Nixon telecommunication coup had been recognized, it had not been stopped.

a. Laird at Defense had inhibited Stans from assuming authority in Commerce; but he could not hinder Flanigan and Whitehead.

b. The Office of Telecommunications Management wrote to the President asking for rationality and had gotten the acceptance of O'Connell's resignation.

c. In the Congressional hearings on Reorganization Plan No. 1, Burch of the FCC had vowed not to be subverted by OTP pressure. Then conceded that the FCC policy research ability would be overwhelmed by the resources of the President.

d. Congress had asked about the suspect nature of creating an office, the OTP, without listing its authority. Yet, Congress approved the plan.

The Nixon Domsat policy might have been designed to support his own anti-media motives. In the process Nixon had collected the support of all those industries that could immediately benefit from a competitive satellite system. Nixon had aligned himself with the aerospace industry, specialized common carriers, and cable-TV systems.

Notes

CHAPTER I

[1]Sidney W. Head, Broadcasting in America, Houghton-Mifflin Company, 1972, p. 116.

[2]Erik Barnouw, A Tower in Babel, Oxford University Press, 1966, p. 13.

[3]Ibid., p. 16.

[4]Ibid., p. 17.

[5]Bureau of Ships and Office of Naval History, History of Communications - Electronics in the United States Navy, U.S. Government Printing Office, Washington, D.C., 1963, p. 71.

[6]Ibid.

[7]Ibid., The executive sent representatives to the First International Radio Conference because its authority seemed to be derived by Supreme Court decision. "Wireless transmissions were in the nature of commerce and therefore within the plenary and paramount authority of the Federal Government to regulate."--From a letter from Ambassador C. Tower to the Secretary of State, November 17, 1906.

[8]Ibid., p. 74.

[9]Ibid.

[10]Ibid.: An international incident had been created when the London Times and New York Times financed a British correspondent to radio information on the Russo-Japanese from inside Russia, January 1904.

[11]Ibid.

[12]Ibid.

[13]Ibid., p. 76.

[14]Ibid.

[15]Ibid., p. 81.

[16]Ibid., p. 113. The communications mid-shipman Hooper on the U.S.S. Chicago, who coordinated the San Francisco communications effort will reemerge 15 years later as Captain Hooper in the creation of the American radio monopoly, RCA.

[17]Ibid.

[18]Ibid., p. 119.

[19]Ibid. The United States did not ratify this treaty until six years later, 1912. Since Theodore Roosevelt had already alienated big business with anti-trust actions, the Republican Congress was not about to do the same in an election year. Such lack of radio initiative by Congress simply entrenched American Marconi interests. (Public Law 264, 62nd Congress.)

[20]S. 7021, PL 61-262.

[21]"Chronological Resume of Some Significant Incidents in U.S. Telecommunications From 1866", OEP, January, 1962, Part 1, p. 1.

[22]Op. cit., Barnouw, pp. 43, 77.

[23]Op. cit., "Chronological Resume", July 7, 1912.

[24]Head, op. cit., p. 155 (August 13, 1912, PL 62-264).

[25]Vol. 4, U.S. Compiled Statutes of 1913, Chapter 287, para. 1-5. The law provided for the licensing of operators on forms furnished by the Department of Commerce, were limited to U.S. citizens, penalties were listed for violations, included the regulation of wave lengths, malicious interference was penalized, and false or fraudulent signals meant fine or prison.

[26]Ibid.

[27]Ibid.

[28]Ibid.

[29]Op. cit., History of Communications/Navy, p. 156.

[30]Ibid.

[31]Ibid., p. 237.

[32]Ibid.

[33]Ibid., p. 313.

[34]Gleason L. Archer, History of Radio to 1926 (N.Y.: The American Historical Society, 1938), p. 137.

[35]Ibid.

[36]Public Resolution No. 38 (H.J. Res. 309, July 16, 1918).

[37]Op. cit., Archer, p. 142.

[38]Ibid., p. 144.

[39]Ibid., p. 157.

[40]Ibid.

[41]Alvin F. Harlow, Old Wires and New Waves (N.Y.: D. Appleton-Century Company, 1936), pp. 330, 331, 338 & 339.

a. The Postmaster General Montgomery Blair, 1865, favored Government ownership of telegraph as an alternative to giving aid to Western Union's faltering competitors.

b. The Congress in 1866 failed to incorporate a National Telegraph Company.

c. The years 1845-1896 found 17 committees of the Senate or House that expressed opinions favorable to Government telegraph ownership.

[42]Op. cit., Archer, History of Radio to 1926, p. 158.

[43]Ibid.

[44]Gleason L. Archer, Big Business and Radio (N.Y.: The American Historical Company, 1939), p. 5.

[45]Ibid.

[46]Ibid.

[47]Op. cit., Archer, Big Business and Radio, p. 5.

[48]Op. cit., Archer, History of Radio to 1926, pp. 167-197.

[49]Ibid.

[50]Ibid.

[51]The Secretary of State was authorized by Executive Order to advise the President on cable licenses.

[52]Op. cit., Archer, History of Radio to 1926, p. 248.

[53]Ibid., p. 249.

[54]Office of Telecommunications Policy, "The Interdepartmental Radio Advisory Committee: 50 Years of Service," June, 1972, p. 4.

[55]Op. cit., Archer, History of Radio to 1926, p. 249.

[56]Ibid., p. 250, "Resolved, That the Conference on Radio Telephony recommend that the radio laws be amended so as to give the Secretary of Commerce adequate legal authority for the effective control of--(1) The establishment of all radio transmitting stations except amateur, experimental and governmental stations; (2) The operation of non-governmental radio transmitting stations. "Resolved, That it is the sense of the conference that radio communication is a public utility and as such should be regulated and controlled by the Federal Government in the public interest. "Resolved, That the types of radio apparatus most effective in reducing interference should be made freely available to the public without restrictions."

[57]Ibid.

[58]Ibid., p. 281.

[59]Walter B. Emery, Broadcasting and Government, 1971, p. 27.

[60]Ibid.

[61]Ibid.

[62]Herbert I. Schiller, Mass Communications and American Empire, A. M. Kelley, 1969, p. 35.

[63]Ibid.

[64]"50 Years of Service," (IRAC), Office of Telecommunications Policy, June, 1972, p. 5.

[65]Ibid.

[66]Op. cit., Archer, History of Radio to 1926, p. 318, and R. H. Coase, "The Federal Communications Commission," The Journal of Law and Economics, 2 (October, 1959), pp. 2-3.

[67]Ibid.

[68]Ibid.

[69]Ibid., p. 317.

[70]Ibid.

[71]Ibid.

[72]Ibid., p. 318.

[73]Ibid., pp. 325-327.

[74]Personal Notes from University of Wisconsin Course on Film History, 1974.

[75]Danielian, AT&T, (New York: The Vanguard Press, 1939), and John Brooks, Telephone: The First Hundred Years, 1975, pp. 165-166:

> The telephone business, in the early 1920s, was booming along with most of the rest of American business. The count of Bell telephones in service was rising rapidly. In 1921, the directors established the nine-dollar-per-share dividend rate that was to endure through thick and thin for more than a generation, and to become the hallmark of the company's status as the bluest of blue-chip investments. Wide public holding of securities was a new American phenomenon, arising to a great extent out of the popularity of Liberty bonds during the most widely held of all stocks, and its stockholders count was rising wildly, from 140,000 in 1920, it jumped in 1921 to 186,000 and in 1922 to 250,000, of whom 236,000 held fewer than one hundred shares. This extraordinary proliferation of small stockholders was actively promoted by the company, which in 1921 began offering stock to its employees on the installment plan, and established a new entity, the Bell Telephone Securities Company, to acquire new capital and expand ownership by promoting the sale of the securities of AT&T and of the various Bell operating companies. The salesmen used were employees of the Bell companies, and so successful were they that in 1925, more than 43 percent of all new AT&T stockholders added to the ledgers for that year had been corralled through the efforts of the Securities Company. (Such a systematic promotion by a company of its own stock might now be considered illegal under the Securities Exchange Act of 1934. However, it was unquestionably legal in the 1920s, and--in those days of almost constantly rising prices of AT&T stock--was little criticized. Nor is there any question that it had the salutary effect of helping to break up the earlier concentration of AT&T stock ownership in the Northeast, and distribute it widely through the South, Mid-west, and Far West.)

[76]Ibid.

[77]Personal notes from University of Wisconsin Course on Film History, 1974.

[78]Ibid.

[79]Ibid.

[80]Ibid.

[81]Op. cit., Archer, History of Radio to 1926, pp. 350-351.

[82]Third National Radio Conference, "Recommendations For Regulation of Radio," pp. 1-2.

[83]Op. cit., Archer, Big Business and Radio, pp. 271-272.

[84]Ibid.

[85]Ibid.

[86]Ibid. The Attorney General ruled in 1926 that the Secretary of Commerce had no administrative discretion in assigning wave lengths or hours of operation or limitations of power. Op. Atty. Gen./126: see, in accord, unreported opinion in Chicago Co. (Circuit Court of Cook County, Ill., 1926).

[87]Ibid.

[88]H.R. 5589, 65th Congress, PL 632, 44 Stat. 1162-1174.

[89]Op. cit., Head, pp. 160-161.

[90]Frank J. Kahn, (Ed.) Documents of American Broadcasting, Appleton-Century-Crofts, 1972, pp. 35-51.

[91]Ibid.

[92]Op. cit., Emery, p. 30.

[93]Ibid.

[94]Sec. 3, Act of 1927.

[95]Sec. 6, Act of 1927.

[96]Sec. 7, Act of 1927.

[97]Sec. 30, Act of 1927.

[98]Op. cit., Bureau of Ships History, p. 217.

[99]Ibid.

[100]Federal Radio Commission, Annual Report of 1927, (Washington, D.C.: Government Printing Office, 1927), p. 2.

[101]Ibid.

[102]Ibid.

[103]Op. cit., "50 Years of Service," p. 5.

[104]Ibid., p. 6.

[105]Ibid.

[106]Ibid.

[107]Ibid.

[108]Ibid.

[109]Ibid.

[110]Ibid., p. 7.

[111]Proceedings of the Institute of Radio Engineers, 1928, W. D. Terrell, "The International Radio Telegraph Conference of Washington 1927," p. 409.

[112]Op. cit., "Chronological Resume," p. 3.

[113]Ibid., p. 7.

[114]These beginnings of regional radio frequency interests became important in the understanding of Pan American international telecommunication policy interests as members of the International Telecommunications Union (ITU).

[115]Ira Sharkansky, The Politics of Taxation and Spending, Bobbs Merrill, 1969.

[116]Louis Fischer, President and Congress: Power and Policy, (N.Y.: MacMillan Publishers, Inc., 1972), p. 104.

[117]Ibid.

[118]Senate Committee Print, S. Doc. 144, "Study of Communications by an Interdepartmental Committee, (73rd Congress, 2nd Session, 1934).

[119]Ibid.

[120]Ibid.

[121]Hearings before the Committee on Interstate and Foreign Commerce, H.R. 1273, 73rd Cong. 2nd Sess., April 18, 1934, p. XXXI.

[122]Walter B. Emery, Broadcasting and Government: Responsibilities and Regulations, Michigan State University Press, 1971, p. 32.

[123]Ibid.

[124]Ibid.

[125]Hearings before the Committee on Interstate and Foreign Commerce, H.R., (H.R. 8301, 73rd Congress, April 10, 1934).

[126]48 Stat., 1064, June 19, 1934.

[127]The Mann-Elkins Act of 1910, authorized the Interstate Commerce Commission to regulate the accounting procedures of wire carriers and certain operations of radio-telegraph carriers.

[128]The Radio Act of 1927.

[129]Sec. 305, Communications Act of 1934.

[130]Sec. 4, Communications Act of 1934.

[131]Sec. 305, Communications Act of 1934.

[132]Sec. 305(d), Communications Act of 1934.

[133]Sec. 606(a), (c), Communications Act of 1934.

[134]"Final Report," Presidents Task Force on Communications Policy, December 7, 1968, Chapter 9, p. 4.

[135]Ibid.

[136]Hoover Report on the FCC, Part III, 1949, p. 42.

[137]Roger Noll, Reforming Regulation, (Washington, D.C.: Brookings Institution), 1971, p. 43. Also see Erwin G. Krasnow/ Lawrence D. Longley, The Politics of Broadcast Regulation, St. Martins Press, 1973, pp. 44-49.

[138]Quoted in Hearings, Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives, 86th Congress, 1st Session, June 8, 9, 1959, p. 131.

[139]Op. cit., "50 Years of Service," p. 7.

[140]Ibid., p. 8.

[141]Ibid.

[142]Ibid.

[143]Ibid.

[144]Ibid.

[145]Executive Order 8546, 1940, and 9183, 1942. MacQuivey, as quoted in Duquesne University Law Review, "Radio Frequency Allocation in the Public Interest: Federal Government and Civilian Use," Stanley D. Metzger & Bernie R. Burrus, Vol. 4, 1965-1966, No. 1, p. 14.

[146]Op. cit., "50 Years of Service," p. 8.

[147]Op. cit., Hearings H.R., (June 8, 9, 1959) Committee on Interstate and Foreign Commerce, p. 131.

[148]Ibid.

[149]Ibid.

[150]W. E. Plummer, Telecommunications, A Time for Decision, Chapter II, 1960, p. 4, unpublished. (Also, Report Subcommittee of the Committee on Government Operations, October 1964 (Subcommittee Print), p. 17.)

[151]Ibid.

[152]Ibid.

[153]Ibid.

[154]Seidman and Moore, Budget Bureau Study, "Allocation of Radio Frequencies to Government Agencies--Final Report--Project 46-40," 1946.

[155]Op. cit., Hearings H.R. Interstate and Foreign Commerce Committee, (June 8, 9, 1959), p. 132.

[156]60 Stat. 237.

[157]Ibid., Administrative Procedure Act, pp. 4, 5, 7, 8 & 10.

[158]Op. cit., "Chronological Resume," Part I, pp. 5-6.

FCC ordered hearing in Docket 6651, "In the Matter of the Allocation of Frequencies to the Various Classes of non-Government Services in the Radio Spectrum from 10 kilocycles to 30,000,000 kilocycles" scheduled for September 28, 1944.

The FCC in November 1942 had invited the radio industry to organize to deal with problems of frequency allocation and system standards. The Radio Technical Planning Board (RTPB) was established by the Radio Manufacturers Association (now Electronic Industries Association--EIA) in collaboration with the Institute of Radio Engineers. The RTPB reviewed postwar needs of all radio services and submitted a report October 1944. Meanwhile FCC staff worked closely with the IRAC.

Hearing in Docket 6651 lasted from September 28 to November 2; FCC proposed allocation plan was issued January 15, 1945; further hearing was held from February 28 to March 3, 1945; FCC Table (25-44 and 108-30,000 MHz) issued May 25 and Table (44-108 MHz) issued June 27, 1945.

The U.S. proposals, formulated as a result of the IRAC/FCC work, embraced two important new concepts; (1) an international frequency registration board which would examine proposed uses of frequencies for technical freedom from harmful interference before they were accorded status in an international frequency list, and (2) international fixed circuits would be engineered. The Atlantic City Conference, 1947, adopted the first and established the International Frequency Registration Board (IFRB). The Conference failed because of too great demands for frequencies. The Provisional Frequency Board (PFB) was created to engineer the circuits.

[159]Ibid.

[160]Ibid.

[161]Ibid.

CHAPTER II

[1]Hearings H.R., Subcommittee of the Committee on Interstate and Foreign Commerce, 86th Congress, June 8-9, 1952, p. 132.

The Board adjourned February 28, 1950, without having achieved its main objective of drafting a frequency list for all frequency uses between 4 and 27.5 Mc/s. It failed because the demand for frequencies far exceed the supply and countries, including the U.S., could not or would not reduce their demands.

The United States Delegation to the PFB was assisted at home by the Washington Provisional Frequency Board Liaison Committee. The Chairman of the U.S. Delegation, in a confidential report dated March 27, 1950, was critical of the Committee's failure to function because of member agency reluctance to revise requirements on a realistic basis. However, his main report dated March 25 and one by an RCA Adviser to the Delegation, dated December 14, 1950, indicated that other countries would not follow the U.S. lead in revising requirements.

[2]Ibid.

[3]Ibid.

[4]Harvey J. Levine, The Invisible Resource, Resources for the Future, John Hopkins Press, 1971, pp. 32-33.

[5]Stanley D. Metzger and Bernie R. Burrus, "Radio Frequency Allocation in the Public Interest: Federal Government and Civilian Use," Duquesne University Law Review, Vol. 4, 1965-1966, p. 18.

[6]Ibid.

[7]15 F. R. 909.

[8]Op. cit., Duquesne Law Review.

[9]President's Communication Policy Board, "Telecommunications, A Program for Progress," Report, Washington, March, 1951, pp. 1-2.

> ...The Executive Order establishing this Board states that the Board shall study the present and potential use of radio and wire communications facilities by governmental and nongovernmental agencies. The Order further states that the Board shall make recommendations in the national

interest concerning (a) policies for the most effective use of radio frequencies by governmental and nongovernmental users and alternative administrative arrangements in the Federal Government for the sound effectuation of such policies, (b) policies with respect to international radio and wire communications, (c) the relationship of government communications to non-government communications, and (d) such related policy matters as the Board may determine.

[10]"Chronological Resume of Some Significant Incidents in U.S. Telecommunication From 1866," Office of the Director of Telecommunications, Office of Emergency Planning, January 1962, Part I, p. 6. (OTP Library - TP 1045)

[11]Ibid.

[12]Ibid.

[13]Ibid.

[14]Ibid.

[15]Ibid., p. 7.

[16]Ibid.

[17]Ibid.

[18]Ibid.

[19]Ibid.

[20]Ibid.

[21]Ibid.

[22]Op. cit., PCPB Report, pp. 8-9.

[23]TCC Document No. 11, Organization, April 8, 1946.

[24]Ibid.

[25]Op. cit., PCPB Report, pp. 202-203.

[26]Ibid.

[27]Ibid.

[28]Ibid.

[29]Ibid., pp. 203-204.

[30]Ibid., pp. 205-206.

[31]Ibid.

[32]Ibid., pp. 206-209.

[33]The Telecommunications Advisory Board - Detailed Functions and Powers. The Telecommunications Advisory Board should be established preferably by Executive Order. This agency should:

A. Act for the President in carrying out his responsibilities arising from:

(1) Section 305 of the Communications Act of 1934, as amended. (Assignment of frequencies by the President to Government stations or classes of stations.)

(2) Section 606 of the Communications Act of 1934, as amended. (Emergency and war powers over telecommunications common carriers, and protection for telecommunications activities.)

The Telecommunications Advisory Board should carry on such planning functions as are necessary to the discharge of its duties under this Order.

B. Stimulate and correlate the formulation and publication of plans and policies by appropriate existing agencies to insure:

(1) Maximum contribution of telecommunications to the national interest.

(2) Maximum effectiveness of U.S. participation in international negotiations.

C. Recommend to the President and advise him on proposed legislation in the telecommunications field.

D. As preliminary and preparatory steps in the discharge of the duties specified above:

(1) Approve and promulgate engineering standards for allocations and assignments to Government users.

(2) Provide for adequate initial justification and periodic rejustification and reassignment of frequencies assigned to Government users.

[34]Interview with Ralph Clark, June 18, 1976.

[35]Ibid.

[36]Memorandum to the Director, National Security Council, from Walter B. Smith, January 25, 1951, 6 pages.

[37]Ibid., p. 2.

[38]Op. cit., Clark interview.

[39]Ray S. Cline, Secrets Spies and Scholars, Acropolis Books Ltd., 1976, p. 200.

[40]Op. cit., "Chronological Resume," p. 11.

[41]Ibid.

[42]Ibid.

[43]Ibid.

[44]Ibid.

[45]OTP Library File -- TP 1681.

[46]Ibid.

[47]Louis Fisher, President and Congress, The Free Press, 1972, p. 29.

[48]Ibid., p. 42.

[49]Ibid., pp. 42-54.

[50]Ibid., p. 52.

[51]Ibid.

[52]Ibid., p. 78.

[53]Ibid.

[54]Ibid.

[55]Ibid.

[56]Ibid.

[57]U.S. v. Grimaud, 220 U.S. 506, 516 (1911).

[58]Ibid.

[59]Sunshine Coal Co. v. Adkins, 310 U.S. 381, 398 (1940).

[60]Ibid.

[61]Letter, May 21, 1953, Horadin Pratt to President Dwight D. Eisenhower, OTP File No. TP 1182.

[62]Ibid., Attachment (a), p. 1.

[63]Ibid., Attachment (a), pp. 2-3.

[64]Letter, June 16, 1953, President Eisenhower to Horadin Pratt, OTP Library File No. TP 1182.

[65]Executive Order 10460, June 16, 1953.

[66]ODM General Administrative Order IX-I, 1953.

[67]Ibid.

[68]Op. cit., Chronology, p. 10.

[69]Ibid.

[70]Herbert I. Schiller, Mass Communications and American Empire, Augustus M. Kelley, 1969.

[71]Ibid., pp. 36-37.

[72]Victor G. Rosenblum, "Low Visability Decision-Making by Administrative Agencies: The Problem of Spectrum Allocation," Administrative Law Review, Vol. 18, Fall, 1965, pp. 19-54.

[73]W. E. Plummer, "Telecommunications - A Time for Decision," November 10, 1960, Chapter 2, pp. 15-16, OTP Library No. TP 1176-1698 (unpublished).

[74]Report, "Satellite Communications," Military Operations Subcommittee of the Committee on Government Operations, October 1964 (Subcommittee Print), p. 78.

[75]Ibid.

[76]JTAC, Radio Spectrum Conservation, IEEE, 1952.

[77]Ibid., p. 3.

[78]Ibid., p. 12.

[79]Ibid., p. 40.

[80]Ibid., p. 51.

[81]Ibid., p. 69.

[82]Ibid., p. 72.

[83]See diversity of ownership in television: Gilmor and Baron, Communications Law, West Pub. Company, 1974, pp. 915-934 and Sidney W. Head, Broadcasting in America, Houghton-Mifflin, 1970, pp. 374-376.

[84]Op. cit., "Chronological Resume," p. 16. On May 6, 1955, ad hoc Advisory Committee was appointed by the Senate Committee on Interstate and Foreign Commerce.

[85]Ibid.

[86]Ibid.

[87]Ibid., p. 17.

[88]Ibid.

[89]Ibid.

[90]Ibid.

[91]Letter from Senator Charles E. Potter to Gordon Gray, Director, ODM, March 25, 1957, OTP Library, File No. TP 1684.

[92]Letter from Gordon Gray to Senator Charles E. Potter, April 2, 1957, OTP Library File No. TP 1684.

[93]Senate Joint Resolution 106, June 18, 1957, OTP Library, File No. 1684.

[94]Ibid.

[95]Report of the ad hoc Advisory Committee on Allocations (Bowles Committee) to the Senate Committee on Interstate and foreign Commerce, "Allocation of TV Channels", submitted: 85th Congress, 2d Session. (ad hoc Committee established June 21, 1955), Report No. 2355, August 2, 1958.

[96]Op. cit., Hearings, June 8-9, 1959, p. 138. An independent audit of the UHF-VHF allocation problem. (In his letter he wrote that an expenditure of $1 to $2 million might not lead to an answer).

[97]Ibid. An objective review of the Commission's mandate, management, operation and budget: (Dr. Bowles commented that a review would not guarantee against future errors of judgment).

[98]Ibid. The establishment of a Communications Office or Authority as part of the Executive structure. (Dr. Bowles overlooked the Presidential assignment of responsibility for telecommunications to OCDM, existing coordination between OCDM/FCC, and OCDM/FCC study of allocations in preparation for the 1959 Geneva Radio Conference).

[99]Ibid. An authoritative classified review of the radio spectrum requirements of the nation as a whole, conducted at Executive level. (Such a review was completed 4/11/58 and adopted by the FCC 4/16/58).

[100]Op. cit., Senate J. Res. 106.

[101]Letter from President Eisenhower to Sam Rayburn, July 28, 1958, OTP Library, File No. TP 1865.

[102]Op. cit., "Chronological Resume," p. 26.

[103]Ibid., also Stanley D. Metzger and Bernie R. Burrus, "Radio Frequency Allocation in the Public Interest: Federal Government and Civilian Use," Duquesne University Law Review, Vol. 4, 1965-1966, No. 1, p. 30.

[104]Ibid.

[105]Op. cit., Levine, pp. 76-77.

[106]Ibid.

[107]Ibid.

[108]Ibid.

[109]Ibid.

[110]FCDA and ODM merged into one office which later became the Office of Civil and Defense Mobilization (OCDM). The telecommunication function formerly assigned to the Director, ODM, by Executive 10460 was assigned to the Director, OCDM, by Executive Order 10773 of July 1, 1958, as amended. September 5, 1958, the ODM Telecommunications Area was directed to report to the Associate Director for Resources, who reported to the Assistant Director for Resources and Production, who reported to the Director, OCDM.

[111]Op. cit., Chronology, p. 27. Report of Special Advisory Committee on Telecommunications (Cooley Committee), December 29, 1958.

[112]Ibid.

[113]Ibid.

[114]Ibid.

[115]Ibid.

[116]Ibid., p. 28.

[117]Ibid.

[118]Ibid.

[119]Ibid.

[120]Ibid.

[121]H.R. 7057, May 11, 1959 and H.R. 8426, July 28, 1959. The most comprehensive bill was H.R. 8426 which proposed the creation of an independent agency in the executive branch to be known as the Frequency Allocation Board. The Board to consist of three members confirmed by the Senate for terms of nine years on a three-year staggered basis. The Board to be responsible for long-range planning, for use of the spectrum, including division between government and non-government; allocation of frequencies to government and non-government; advice to the President on foreign relations with respect to frequency matters. The President, for reasons of national security or foreign relations, would have veto power over the Board and could direct such allocations as he deemed necessary, and in an emergency, to make such allocations as he deems necessary without regard to the division between government and non-government.

The bill also proposed the establishment of a Government Frequency Administrator to assist the President. Subject to the authority, supervision and control of the President, the Administrator would: (1) study government use of frequencies; (2) allocate frequencies to government agencies and modify or cancel such allocations; and modify or cancel such assignments.

Both bills failed of enactment.

[122]Committee Print, "Radio Frequency Control in Space Telecommunications," prepared at the request of Lyndon B. Johnson, Chairman, for the use of the Committee on Aeronautical and Space Sciences, United States Senate, by Edward Wenk, Jr., Senior Specialist in Science and Technology, Legislative Research Service, March 19, 1960, GPO.

[123]Ibid., p. 92, as quoted from C. W. Loeber, "Regulations and Administration of Telecommunications in the United States," Industrial College of the Armed Forces, C 1.02L78.

[124]Allocation of Microwave Frequencies Above 890 MHz, 27 FCC 359 (1959).

[125]John Brooks, Telephone: The First Hundred Years. Harper and Row, 1975, p. 215.

[126]Ibid., pp. 102-126.

[127]Ibid., p. 111.

[128]Ibid., pp. 145, 189.

[129]Ibid.

[130]Edward M. Greenberg, "The Federal Communications Commission in the Telephone Industry: An Analysis of the Specialized Common Carrier Case," M.A., University of Wisconsin, 1976, pp. 54-55.

[131]FCC, Report and Order, In Matter of Allocation of Frequencies Above 890 MC, November 16, 1956.

[132]Op. cit., Greenberg, p. 55.

[133]Op. cit., Brooks, p. 136.

> The compromise took the form of a letter dated December 19, 1913, from an AT&T Vice-President, Nathan C. Kingsbury, to James McReynolds, Wickersham's successor as Attorney General...agreed to three separate actions: First, to dispose of its holding of Western Union stock..; second, to purchase no more independent telephone companies except with the approval of the Interstate Commerce Commission; third - and perhaps most momentous - to make 'arrangements...promptly under which all other telephone companies may secure for their subscribers toll service over the lines of the companies in the Bell System.'

CHAPTER III

[1]Bendix Aviation Corp. v. FCC, 272 F.2d 533 (D.C. Cir. 1959), cert. denied sub nom. Aeronautical Radio, Inc. v. United States, 361 U.S. 965 (1960).

[2]"Chronological Resume of Some Significant Incidents in U.S. Telecommunications From 1866," Prepared by the Office of the Director of Telecommunications, Office of Emergency Planning, January 1962, Part I, P. 31E.

The United States Court of Appeals for the District of Columbia issued two decisions upholding FCC Order Nos. 14650 and 14693. These decisions were issued in Bendix Aviation Corporation, Bendix Radio Division, Appellant v. FCC, Appellee, Aeronautical Radio, Inc. and Air Transport Association of America, Intervenors; and Aeronautical Radio, Inc., a corporation, et al., Petitioners v. United States of America, FCC, Respondent, November 13, 1959.

[3]Ibid.

[4]Allocation of Microwave Frequencies Above 890 MHz, 27 FCC 359 (1959).

[5]Position Paper, Office of Telecommunications Policy, May 21, 1976.

[6]James Landis, "Report on Regulatory Agencies to President-Elect," 1960.

[7]Report, "Satellite Communications," of Military Operations Subcommittee of the Committee on Government Operations, October 1964, (Subcommittee Print), p. 75.

[8]Op. cit., Landis, p. 1.

[9]Ibid., pp. 2-25.

[10]Ibid.

[11]Ibid.

[12]Ibid., p. 26.

[13]Ibid., pp. 66-67.

[14]Ibid., p. 86.

[15]Executive Order (EO) 10995, signed February 16, 1962, assigned telecommunication functions to the new Director of Telecommunications Management (DTM); this office to be held by an Assistant Director of the Office of Emergency Planning; EO 10995 also delegated to the Director, OEP, authority under Section 305 of the Communications Act to assign, amend, modify or revoke frequency assignments; and authorized Director OEP, to redelegate section 305 authority and EO 10705 authority to the DTM; and revoked EO 10460.

[16]Name of Office of Civil Defense Mobilization changed to Office of Emergency Planning, (H.R. 8406) Public Law 87-296, 87th Congress, 1st Session, September 22, 1961.

[17]Op. cit., EO 10995, also Report "Satellite Communications", p. 80.

[18]Ibid.

[19]Ibid.

[20]Ibid.

[21]Ibid.

[22]Ibid.

[23]William E. Plummer, "United States Response to Its Telecommunication Management Responsibilities," November 23, 1970, pp. 14-15 (unpublished), OTP Library.

[24]Ibid., p. 15.

[25]Ibid.

[26]On August 21, 1963, pending the appointment of a new DTM, the President directed that on an interim basis his Special Assistant for Science and Technology shall perform the functions assigned the DTM, Dr. Jerome B. Wiesner.

[27]Op. cit., "Chronological Resume," Part III, p. 9.

[28]Op. cit., William E. Plummer, p. 16 (Wiesner memorandum, December 9, 1963).

[29]The Communications Satellite Act of 1962, H.R. 11040, enacted August 31, 1962 -- Public Law 87-624, 87th Congress, 2nd Session.

[30]Michael E. Kinsley, Outer Space and Inner Sanctums (New York: John Wiley and Sons, 1976), p. 1.

[31]Public Law 87-624, Satellite Act of 1962, Sec. 102(a), (b).

[32]Ibid.

[33]Ibid.

[34]Jonathan F. Galloway, The Politics and Technology of Satellite Communicarions (Lexington, Mass.: D. C. Heath and Company, 1972), pp. 47-48.

[35]Ibid.

[36]Ibid.

[37]Robert S. Magnant, "Domestic Satellite: An FCC Giant Step," M.A. Thesis, University of Colorado, 1976, p. 59.

[38]Public Law 87-624, Satellite Act of 1962, Sec. 201(a)(1)-(6).

[39]Ibid., 201(a)(7).

[40]Ibid., Sec. 201(a)(1)-(7).

[41]Op. cit., Report "Satellite Communications," p. 81.

[42]Ibid., Kennedy established committee to review issue - Deputy Under Secretary of State Orrick, Chairman, pt. 1, app. 4B, p. 592.

[43]Ibid.

[44]Interview with David L. Soloman, Deputy Director Telecommunication, Department of Defense, July 1976.

[45]Ibid.

[46]28 F.R. 9413, August 28, 1963.

[47]Op. cit., "Chronological Resume," Part III, p. 9. (Memorandum from John F. Kennedy to Heads of Executive Departments and Agencies, August 21, 1963.)

[48]Ibid.

[49]Ibid.

[50]Op. cit., Report "Satellite Communications," p. 82.

[51]On June 19, 1961, the Director, Bureau of the Budget, announced the establishment of the Federal Telecommunications System (FTS) to serve the civil agencies of the government on a day-to-day basis and to provide engineering features of value during an emergency. The FTS was to be administered by the General Services Administration Office of Telecommunications, (ADM 5450.16).

[52]Op. cit., Soloman interview.

[53]Op. cit., Kennedy memorandum, August 21, 1963; also Report "Satellite Communications," 1964, pp. 81-83.

[54]"Confirmation and Other Hearings" before the Committee on Commerce, Senate, 88th Congress, 2nd Session, May 5, 1964, pp. 32-33.

[55]Interview with General James D. O'Connell by telephone, Boca Raton, Fla., March 1976.

[56]Ibid.

[57]Ibid.

[58]Ibid.

[59]Op. cit., Report "Satellite Communications," pp. 77-87.

[60]Ibid.

[61]Ibid.

[62]Report, "Government Use of Satellite Communications," Committee on Government Operations, 89th Congress, 2nd Session, House Report No. 2318, October 19, 1966, pp. 78-79.

[63]Executive Order 11191, January 4, 1965, provided for the "Carrying Out of Certain Provisions of the Communications Satellite Act of 1962." The President assigned the DTM the functions conferred upon the President by Section 201(a) of the Act (see also Presidential memorandum, August 21, 1963, establishing the National Communications System); and to the Secretary of State the responsibility for supervision provided for in Section 201(a) (4) of the Act. (30 F.R. 29, January 5, 1965)

[64]Ibid.

[65]Op. cit. Hearings "Government Use of Satellite Communications," p. 81.

[66]Ibid.

[67]President's Communications Policy Board, Telecommunications, "A Program for Progress," 1951.

[68]Memorandum from Walter B. Smith to the Executive Secretary of the National Security Council, January 25, 1951.

[69]Ray S. Cline, Secrets, Spies and Scholars (Washington, D.C.: Acropolis Books LTD, 1976), p. 200.

[70]Ibid.

[71]Ibid.

[72]Op. cit., O'Connell interview.

[73]Op. cit., Kinsley.

[74]Ibid., p. 2.

[75]Op. cit., O'Connell interview; also op. cit. "Chronological Resume," Part V, p. 2.; also (Military-Civil Roles and Relationships) Report, prepared by the Military Operations Subcommittee of the Committee on Government Operations, October, 1964.

[76]Ibid.

[77]Ibid.

[78]Ibid.

[79]Ibid., O'Connell interview.

[80]Op. cit., "Chronological Resume," Part V, p. 2.

[81]Interview with William E. Plummer, Washington, D.C., February 5, 1976.

[82]Op. cit., O'Connell interview.

[83]"Electromagnetic Spectrum Utilization -- The Silent Crisis," A Report on Telecommunications Science and the Federal Government by the Telecommunication Science Panel of the Commerce Technical Advisory Board, U.S. Department of Commerce, October 1966.

This Telecommunication Science Panel was established by the Commerce Technical Advisory Board on the recommendation of its Chairman, Dr. J. Herbert Hollomon, Assistant Secretary of Commerce for Science and Technology. The study was undertaken with the cooperation of the Director of Telecommunications Management in the Executive Office of the President, The Federal Communications Commission, and the Department of Defense. Thirty-two Government,

industrial and university telecommunications authorities contributed papers at the panel's meetings. Many others were consulted by panel's staff.

Dr. James Hillier, Vice President, RCA Laboratories, was Chairman of the Telecommunication Science Panel. Members of the panel serving with Dr. Hillier were Ross Bateman, Telcom, Inc.; Dr. L. Berkner, Southwest Center for Advanced Studies; Professor H. G. Booker, University of California; Dr. Cullen M. Crain, the RAND Corporation; Dr. W. L. Everitt, University of Illinois; R. P. Gifford, General Electric Co.; Dean W. H. Meckling, University of Rochester; Prof. P. M. Morse, Massachusetts Institute of Technology; Prof. W. R. Rambo, Stanford University; Siegfried Reiger, Communication Satellite Corporation; Dr. Ernst Weber, Polytechnical Institute of Brooklyn; and Prof. H. J. Zimmermann, Massachusetts Institute of Technology. Richard C. Kirby, Department of Commerce, was Secretary.

[84]Ibid., pp. 35-39.

[85]Ibid., pp. 39-42.

[86]Ibid.

[87]Ibid., p. v.

[88]Ibid., p. 2.

[89]Ibid.

[90]Ibid., pp. 12-13.

[91]Ibid., pp. 38-39.

[92]Ibid., p. 35.

[93]Ibid.

[94]Ibid.

[95]Ibid.

[96]Ibid.

[97]Ibid.

[98]Ibid.

[99]Ibid., p. 39.

[100]Ibid.

[101]Ibid.

[102]Ibid.

[103]Ibid.

[104]Ibid.

[105]"A Report on Frequency Management," Office of Telecommunication Management, Executive Office of the President, October 1966.

[106]Ibid., p. 9.

[107]Ibid.

[108]Ibid., pp. 9-10.

[109]Ibid., p. 20.

[110]Ibid.

[111]Ibid.

[112]Ibid.

[113]Ibid.

[114]Ibid.

[115]Ibid.

[116]Ibid.

[117]Ibid.

[118]Ibid., pp. 20-21.

[119]Ibid., p. 26.

[120]Ibid.

[121]Ibid.

[122]Ibid.

[123]Ibid., pp. 23-24.

[124]Ibid., p. 26.

[125]Ibid.

[126]Ibid.

[127]Ibid.

[128]Ibid., p. 30.

[129]Op. cit., William E. Plummer interview.

[130]Both the Department of Commerce Report and the Office of Telecommunications Management Report listed as alternatives to spectrum scarcity-coaxial cable. Cable-TV uses coaxial cable to carry information to individual homes. (Commerce Report, p. 30; OTM Report, p. 20.)

[131]Don R. LeDuc, Cable Television and the FCC: A Crisis in Media Control, Temple University Press, 1973.

[132]Ibid., p. 6.

[133]Ibid., p. 7.

[134]Ibid.

[135]Subscriber-supported--cable-TV is a wired system that interconnects individual homes to a central system. For the interconnection service to the main cable-TV system the home subscriber pays a set fee.

[136]Ibid., p. 9.

[137]Ibid., pp. 9-10.

[138]Ibid., p. 10.

[139]"Appointments to the Regulatory Agencies: The Federal Communications Commission and the Federal Trade Commission" (1949-1974) Committee on Commerce (Committee Print) April, 1976, p. 239.

[140]Hearings before the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, H.R., 91st Congress, 1st Session, May 13, 14, 15, and 22, 1969, pp. 1970-1971. (Testimony and charts presented by Fred W. Morris, former Assistant Director, OTM, 1966.)

[141]Ibid.

[142]Op. cit., Committee on Commerce report, April, 1976.

[143]Ibid.

[144]Ibid.

[145]Ibid.

[146]Ibid.

[147]Ibid.

[148]Ibid., pp. 240-241.

[149]Memorandum For: The President, From: J. D. O'Connell, May 17, 1965.

[150]President Johnson sent to Congress a "Message on Global Communications System," and announced the appointment of a Task Force on Communications Policy. Document No. 157, H.R., 90th Congress, 1st Session, August 14, 1967.

[151]Ibid.

[152]Lawrence Lichty, "The Impact of FRC and FCC Commissioners' Backgrounds on the Regulation of Broadcasting," Journal of Broadcasting, VI (Spring 1962), pp. 97-110.

[153]Op. cit., Hearings on National Security Policy, 1969.

CHAPTER IV

[1]Message from the President of the United States, "Recommendations Relative to World Communications," August 14, 1967 - 90th Congress, 1st Session, House of Representatives, Doc. No. 157 - Referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.

[2]Ibid., p. 16.

[3]Ibid., pp. 16-17.

[4]Interview with Alan Novak, May 12, 1976, McLean, Va.

[5]Op. cit., Message from the President, p. 17.

[6]President's Task Force on Communications Policy, "Final Report," established pursuant to the President's message on communications policy, August 14, 1967, issued December 7, 1968, pp. 4-6.

[7]Ibid., p. 6.

[8]Ibid., pp. 6-7.

[9]Ibid., p. 7.

[10]Ibid., p. 8.

[11]Ibid., p. 9.

[12]Ibid.

[13]Ibid., p. 12.

[14]Interview with W. Devier Pierson, May 28, 1976, Washington, D.C.

[15]Op. cit., interview with Novak.

[16]Op. cit., interview with Pierson.

[17]Ibid.

[18]Interview with George Reedy, by telephone, September 10, 1976, Milwaukee, Wisconsin.

[19]Ibid.

[20]Ibid.

[21]Ibid.

[22]Interview with General James D. O'Connell, by telephone, January 20, 1976, Boca Raton, Fla.

[23]Presidential Task Force on Communications Policy, Minutes of First Meeting, September 8, 1967, 3:30 p.m., from Robert Powell, Department of Commerce.

[24]Op. cit., interview with Novak.

[25]Ibid.

[26]Ibid.

[27]Zbigniew Brzezinski, "America in the Technetronic Age," School of International Affairs/Columbia University, 1967, (one of a series of occasional papers).

[28]Robert Powell, a Task Force participant, untitled notebook, contains all Rostow Task Force statements of work--Powell is former employee of the Department of Commerce.

[29]Op. cit., Brzezinski, p. 4.

[30]Ibid., p. 6.

[31]Ibid.

[32]Ibid.

[33]Ibid., pp. 7-8.

[34]The Aspen Institute for Humanistic Studies Series on Communications, "Refocusing Government Communications Policy," (presentation by Ithiel de Sola Pool), 1976, p. 3.

[35]See App. T.

[36]Op. cit., President's Task Force - "Final Report," Chapter 7, pp. 9, 17, 36.

[37]Ibid., Chapter 6, pp. 16-37.

[38]Work Statement for President's Task Force on Communications Policy, distributed October 28, 1967, to Task Force members, Task State No. 1., pp. 5-6.

[39]Ibid., Task Statement No. 2., pp. 7-8.

[40]Ibid., Task Statement No. 3., pp. 9-10.

[41]Ibid., Task Statement No. 4., pp. 11-12.

[42]Ibid., Task Statement No. 5., p. 13.

[43]Ibid., Task Statement No. 6., pp. 14-15.

[44]Op. cit., President's Task Force - "Final Report," Chapter 5, pp. 17-46.

[45]Op. cit., Task Statement No. 5.

[46]Op. cit., interview with Novak.

[47]Op. cit., Task Statement No. 5., p. 13.

[48]Op. cit., interview with Novak.

[49]Presidential Task Force on Communications Policy, Minutes of the Second Meeting, October 13, 1967, 4:00 p.m., at Department of State, p. 4.

[50]Op. cit., interview with Novak.

[51]Ibid.

[52]Ibid.

[53]Michael E. Kinsley, Outer Space and Inner Sanctums: Government, Business and Satellite Communications, Wiley Pub., 1976, p. 138.

[54]Ibid.

[55]Ibid.

[56]Henry Geller, "Domestic Satellites," The Antitrust Bulletin, Fall, 1968, Vol. 13, p. 871.

[57]Ibid.

[58]Robert S. Magnant, Domestic Satellite: An FCC Giant Step, M.A. Thesis, University of Colorado, 1976, p. 92 (296 pages).

[59]Notice of Inquiry, 31 F.R. 3507, March 2, 1966; Supp. Notice of Inquiry, 31 F.R. 13763, October 20, 1966.

[60]FCC, Report and Order, Docket No. 16495, March 24, 1970, p. 1.

[61]Op. cit., Magnant, p. 102.

[62]Ibid., pp. 102-103.

[63]Op. cit., Kinsley, p. 140.

[64]Ibid.

[65]Op. cit., Magnant, pp. 100-108.

[66]Ibid.

[67]22 FCC 2nd 111.

[68]Op. cit., Magnant, p. 106.

[69]Ibid.

[70]Op. cit., Kinsley, p. 18.

[71]Rosel H. Hyde, "The Role of Competition and Monopoly in the Communications Industries," The Antitrust Bulletin, Fall, 1968, Vol. 13, p. 908.

[72]Ibid.

[73]Telecommunications Reports, August 8, 1966, pp. 3, 22-29, August 23, 1966, pp. 5-10--Industrial Communications, September 2, p. 16,--Telecommunications Reports, September 6, pp. 1-6 and 15-19, 21.

[74]Office of Telecommunications Management, "Discussion of Studies of Domestic Satellite Communications for the United States," July 1967, (42 pages).

[75]Ibid., pp. 14-15.

[76]Ibid.

[77]Ibid.

[78]Ibid.

[79]Ibid., p. 16.

[80]Ibid., p. 38.

[81]Ibid., p. 42.

[82]Op. cit., President's Task Force - "Final Report" (See App. T.)

[83]Op. cit., interview with Novak.

[84]Memorandum For: Communications Task Force Staff Representatives and Members of Working Groups on Tasks 4 and 5, dated December 1, 1967.

[85]Letter to all Task Force Members and Staff Representatives from Alan Novak, January 11, 1968.

[86]Ibid., pp. 1-3.

[87]Memorandum For: Presidential Task Force on Communications Policy, From: The Central Staff, and signed by Alan Novak, April 29, 1968, 16 pages.

[88]Ibid., pp. 1-2.

[89]Ibid., p. 2.

[90]Ibid.

[91]Ibid., p. 3.

[92]Ibid.

[93]Ibid., p. 4.

[94]Ibid., p. 5.

[95]Ibid.

[96]Ibid., p. 11.

[97]Ibid., p. 15.

[98]Ibid.

[99]Ibid., p. 16.

[100]Op. cit., President's Task Force--"Final Report," Appendices A,B,C, and D.

[101]Ibid.

[102]Ibid., Appendices Letter from Joseph W. Bartlett to Eugene V. Rostow, December 18, 1968.

[103]Op. cit., interview with Pierson.

[104]Op. cit., interview with Reedy.

[105]U.S. Congress, Subcommittee on Communications and Power, H.R., On the Jurisdiction and Activities of the Federal Communications Commission," 1st Session, 91st Congress, March 6, 1969, pp. 3-4.

[106]Interview with Dr. Albert D. Wheelon, August 31, 1976, at Madison Hotel, Washington, D.C.; also Ray S. Cline, Secrets, Spies, and Scholars, Acropolis Books LTD, 1976, p. 200.

[107]Op. cit., interview with Wheelon.

[108]Ibid.

[109]Ibid.

[110]Ibid.

[111]Ibid.

[112]Ibid.

[113]Ibid.

[114]Ibid.

[115]Interview with Ray S. Cline, by telephone, January 21, 1977, Washington, D.C.

[116]Ibid.

[117]Ibid.

[118]Interview with William Stump, July 21, 1976, Washington, D.C.

[119]Ibid.

[120]Ibid.

[121]Op. cit., Novak Letter, January 11, 1968.

[122]Op. cit., Novak memorandum, April 29, 1968.

[123]Op. cit., Kinsley, pp. 18-19.

[124]Thomas W. Moore, "The Day Howard Hughes Almost Bought ABC," TV Guide, September 25, 1976, pp. 33-36.

[125]Ibid., p. 33.

[126]Ibid., p. 36.

[127]Title III, Sec. 301, Communications Act of 1934.

[128]Interview with Henry Geller, by telephone, May 24, 1976, Washington, D.C.

[129]Ibid.

[130]Ibid.

[131]Ibid.

[132]Op. cit., Moore.

[133]FCC Report and Order (22 FCC 2d 86) and Notice of Proposed Rule Making (22 FCC 2d 810) issued in March 1970--in Docket No. 16495, "Establishment of Domestic Communications - Satellite Facilities by Non-Government Entities."

[134]Ibid.

[135]Op. cit., interview with Wheelon.

[136]Abstract obtained from the Hughes Aircraft Company, "Cable Interconnection by Satellite," by P. C. Dougherty, undated.

[137]Ibid.

[138]Op. cit., Kinsley, p. 163.

[139]Ibid.

CHAPTER V

[1]Interview with Robert C. Powell, Washington, D.C., August 10, 1976, (former employee of the National Bureau of Standards).

[2]Ibid.

[3]Ibid.

[4]J. Anthony Lucas, Nightmare: The Underside of the Nixon Years, (Viking Press, 1973), pp. 138-139.

[5]Op. cit., interview with Powell.

[6]He proposed February 3, 1969 that he be given responsibility for telecommunication policy formulation and management. When that proposal was not immediately approved he tried again on June 27 when he proposed a Federal Telecommunications Policy Agency in his department, with all of the OTM functions except assignment of frequencies to Government agencies and emergency preparedness; and legislation to transfer FCC policy and spectrum allocation functions to Commerce. Next, on July 24, 1969, he sought to enlist the support of Secretary of Defense Laird in taking over the telecommunication functions; following up a meeting with a 'Dear Mel' letter on September 2, wherein he proposed a new Federal 'Electrospace' Administration with responsibility for allocation, assignment, standards, and regulation of Federal uses of the 'electrospace.' The Interdepartment Radio Advisory Committee was to be retained to oversee the process.

[7]Roland Evans and Robert Novak, "Empire Builder Stans," The Washington Post, March 30, 1969, p. 60.

[8]Ibid.

[9]Ibid.

[10]Memorandum For: The President, From: Maurice H. Stans, Subject: Federal Telecommunications Policy Management, February 3, 1969, 2 pages.

[11]Ibid.

[12]Ibid., pp. 1-2.

[13]Op. cit., interview with Powell.

[14]Ibid.

[15]Bureau of the Budget, Executive Office of the President, "Study of Federal Communications Organization," December, 1968, included in Appendix of Hearings before a Subcommittee of the Committee on Government Operations, H.R., 91st Congress, 2d Session, March 9, 10, 1970, Reorganization Plan No. 1 of 1970 (Office of Telecommunications Policy), pp. 79-133).

[16]President's Task Force on Communications Policy, "Final Report," GPO, December 7, 1968.

[17]Ibid., p. 61.

[18]FCC Chairman Hyde, Letter of September 29, 1968, to Eugene V. Rostow, Chairman President's Task Force on Communications Policy.

[19]Ibid.

[20]Ibid.

[21]Op. cit., Bureau of the Budget Study, 1968, p. 34.

[22]Ibid., p. 40.

[23]Ibid., p. 41.

[24]Ibid., p. 43.

[25]Ibid.

[26]Ibid., p. 44.

[27]Ibid., p. 45.

[28]Fredrick Charles Esplin, "The Office of Telecommunications Policy: The Growing Role of the Executive Branch in Broadcasting," Masters Thesis, University of Utah, 1974, p. 39.

[29]Ibid. Also Lawrence Laurent, "Nixon Urged to Release Communications Report," The Washington Post, April 6, 1969.

[30]Robert J. Samuelson. "Communications Policy Plans Finally Released," The Washington Post, May 21, 1969.

[31]Op. cit., Bureau of the Budget Study, 1968, p. 34.

[32]Assistant Secretary of Science and Technology, Department of Commerce, "Federal Telecommunications Management," March, 1969.

[33]Letter For: Melvin R. Laird, From: Maurice H. Stans, September 2, 1969.

[34]Ibid., p. 3.

[35]Ibid.

[36]Ibid., pp. 3-4.

[37]Op. cit., interview with Powell.

[38]Letter For: Maurice Stans, From: Melvin Laird, October 1, 1969, pp. 1-2.

[39]Ibid., p. 4.

[40]Ibid.

[41]Memorandum For: Peter M. Flanigan, From: Maurice H. Stans, Subject: Federal Telecommunications Policy Management, June 27, 1969, 5 pages.

[42]Ibid., p. 1.

[43]Ibid.

[44]Ibid.

[45]Ibid., p. 3.

[46]Ibid.

[47]Ibid.

[48]Ibid.

[49]Dom Bonafede, "Men Behind Nixon/Peter M. Flanigan: Generalist at the White House," CPR Journal, February 28, 1970, Vol. 2, No. 9, p. 422.

[50]Ibid.

[51]Ibid.

[52]Ibid.

[53]Ibid.

[54]Clark Mollenhoff, Game Plan for Disaster (New York: W. W. Norton & Company, Inc., 1976).

[55]Ibid., pp. 95-96.

"Flanigan had been with Dillon, Read & Company since 1947, and had served as vice president since 1954. His father, Horace C. Flanigan, had been a director and chairman of the board of Manufacturers Hanover Trust Company and a director of the Union Oil Company. A brother, John Flanigan, was a vice president and member of the board of directors of Anheuser-Busch, Inc., in charge of its West Coast operations.

Senator William Proxmire (D., Wis.) raised some questions about the possibility that the oil industry was using Flanigan as a means of approaching "the back door of the White House" to influence the Task Force on Oil Import Control, but his remarks did not specify Flanigan's and Nixon's links to the big oil contributors or the fact that Dillon, Read & Company had served as an investment firm for Union Oil Company, or that Flanigan's tanker firm, Barracuda Tanker Corporation, had long-term contracts with Union Oil. I was not surprised when, in the first week of March, I received a call from a White House liaison man at the Capitol saying that Senate and House committees were investigating Treasury Department decisions which would give the Barracuda Tanker Corporation millions of dollars in windfall profits. My caller feared a scandal which would be damaging to the president, yet he was eager to avoid identification with any complaint involving Flanigan. Although Haldeman and Ehrlichman wielded more direct power, it was recognized that Peter Flanigan had more influence with President Nixon for a number of reasons. The primary one was that Flanigan had some real expertise in the New York financial world, in international economics, and in the real world of Washington politics, where Haldeman and Ehrlichman were simply inexperienced meddlers pulling power levers. The congressional liaison man wanted to be assured of anonymity in connection with the investigation of possible favoritism toward the Barracuda Tanker Corporation."

[56]Ibid., p. 95.

[57]Op. cit., Bonafede, p. 424.

[58]Ibid.

[59]Letter For: Thomas E. Will, From: Peter M. Flanigan, November 26, 1976.

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