

## DOCUMENT RESUME

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Testimony before the House Committee on Interstate and Foreign Commerce: Communications Subcommittee; by Baltas E. Birkle, Deputy Director, Community and Economic Development Div.

Contact: Community and Economic Development Div.  
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Two recent GAO reports evaluated the coordination by agencies of decisionmaking responsibilities and their effectiveness in developing and implementing an international telecommunications facilities policy. Recommendations were made for specific agency actions, changes to the Communications Act of 1934 and Communications Satellite Act of 1962, and repeal of the Cable Landing License Act of 1921. The Federal Communications Commission (FCC), the Department of State, and the National Telecommunications and Information Administration had not effectively coordinated their responsibilities in developing policy. This problem could be resolved through a two-step approach: first, procedures would be developed by FCC for coordinating agency views; and second, procedures would be established to provide FCC with unified executive branch views. Other issues addressed were: shortcomings in FCC's comprehensive plan for North Atlantic telecommunications facilities, the need for policy guidelines for international telecommunications facilities in other parts of the world, the need for providing instructions to the Communications Satellite Corporation, distinctions between decisions on international facilities and domestic facilities, and changes since enactment of the Cable Landing License Act of 1921. The proposed Communications Act of 1978 represents a constructive approach to some of these issues such as: planning for international facilities, coordinating the policymaking process, changing the method of authorizing international facilities, and providing the President with the responsibility for instructing the Communications Satellite Corporation in its role as representative in international satellite organizations. (HTW)

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STATEMENT OF  
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COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE  
SUBCOMMITTEE ON COMMUNICATIONS  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
HOUSE OF REPRESENTATIVES

ON

COORDINATION, POLICY DEVELOPMENT,  
AND IMPLEMENTATION FOR  
INTERNATIONAL TELECOMMUNICATIONS FACILITIES

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE PLEASED TO APPEAR AT YOUR REQUEST TO DISCUSS OUR REPORTS ON INTERNATIONAL TELECOMMUNICATIONS AND TO PROVIDE OUR COMMENTS ON THE RELATED PORTIONS OF H.R. 13015, "THE COMMUNICATIONS ACT OF 1978." INTERNATIONAL TELECOMMUNICATIONS ARE VITALLY IMPORTANT TO THE UNITED STATES AND OTHER NATIONS OF THE WORLD. WHILE THE ENTITIES PROVIDING INTERNATIONAL TELECOMMUNICATIONS DIFFER FROM COUNTRY TO COUNTRY, THEY SHARE A COMMON BOND THROUGH JOINT PROVISION OF SUCH SERVICES AS TELEPHONE AND TELEGRAPH AND JOINT OWNERSHIP OF THE CABLE AND SATELLITE FACILITIES WHICH ENABLE THEM TO PROVIDE THESE SERVICES.

WITHIN THE UNITED STATES, THE FEDERAL COMMUNICATIONS COMMISSION, THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION IN THE DEPARTMENT OF COMMERCE, AND THE DEPARTMENT OF STATE CURRENTLY HAVE THE DECISIONMAKING RESPONSIBILITIES FOR DEVELOPING AND IMPLEMENTING POLICIES FOR EFFECTIVE INTERNATIONAL TELECOMMUNICATIONS FACILITIES. DURING OUR REVIEW THE RESPONSIBILITIES OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION BELONGED TO THE OFFICE OF TELECOMMUNICATIONS POLICY AND THE OFFICE OF TELECOMMUNICATIONS IN THE DEPARTMENT OF COMMERCE. SINCE THE PRESIDENT MERGED THE FUNCTIONS OF THESE TWO AGENCIES ON MARCH 26, 1978, TO CREATE THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, THROUGHOUT OUR TESTIMONY WE WILL REFER TO THE ADMINISTRATION RATHER THAN THE OTHER TWO AGENCIES.

ON SEPTEMBER 29, 1977, AND MARCH 31, 1978, WE SUBMITTED TWO COMPREHENSIVE REPORTS (CED-77-132 AND CED-78-87) TO THIS SUBCOMMITTEE WHICH EVALUATED THE COORDINATION OF DECISION-MAKING RESPONSIBILITIES BY THESE AGENCIES AND THEIR EFFECTIVENESS IN DEVELOPING AND IMPLEMENTING AN INTERNATIONAL TELECOMMUNICATIONS FACILITIES POLICY AND RECOMMENDED

--SPECIFIC AGENCY ACTIONS,

--CHANGES TO THE EXISTING COMMUNICATIONS ACT OF 1934

AND COMMUNICATIONS SATELLITE ACT OF 1962, AND

--REPEAL OF THE CABLE LANDING LICENSE ACT OF 1921.

I WOULD NOW LIKE TO DISCUSS THE HIGHLIGHTS OF OUR REPORTS,  
BEGINNING WITH THE AREA OF COORDINATION.

COORDINATION IN THE DEVELOPMENT OF  
AN INTERNATIONAL FACILITIES POLICY

WE FOUND THAT THE FEDERAL COMMUNICATIONS COMMISSION, THE  
DEPARTMENT OF STATE, AND THE NATIONAL TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION HAD NOT EFFECTIVELY COORDINATED  
THEIR VARIED RESPONSIBILITIES IN DEVELOPING AN INTERNATIONAL  
FACILITIES POLICY.

THE EXISTING COMMUNICATIONS ACT OF 1934 AND COMMUNICATIONS  
SATELLITE ACT OF 1962 ARE THE STATUTORY BASE FROM WHICH INTER-  
NATIONAL TELECOMMUNICATIONS POLICY HAS EVOLVED. REGULATORY  
RESPONSIBILITIES CONTAINED IN THESE ACTS HAVE PLACED THE PRI-  
MARY AUTHORITY FOR DEVELOPING FACILITIES POLICY WITHIN THE  
FEDERAL COMMUNICATIONS COMMISSION. HOWEVER, THE DEPARTMENT  
OF STATE HAS SPECIFIC RESPONSIBILITY FOR FOREIGN POLICY AND  
RELATIONS WITH OTHER NATIONS. FURTHER, THE NATIONAL TELE-  
COMMUNICATIONS AND INFORMATION ADMINISTRATION HAS BROAD RE-  
SPONSIBILITY TO DEVELOP EXECUTIVE BRANCH TELECOMMUNICATIONS  
POLICIES AND COORDINATE THE TELECOMMUNICATIONS ACTIVITIES OF  
THE EXECUTIVE BRANCH.

WHILE THE COMMISSION NOW HAS PRIMARY RESPONSIBILITY  
FOR DEVELOPING AN INTERNATIONAL FACILITIES POLICY, THE  
ISSUES WITH WHICH THE DEPARTMENT OF STATE AND THE NATIONAL

TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ARE CONCERNED GO BEYOND THOSE FACTORS TRADITIONALLY CONSIDERED BY A REGULATORY COMMISSION. CONSEQUENTLY, THE COMMISSION MUST ENSURE THAT THE POLICY IT DEVELOPS FULLY REFLECTS THE CONCERNS AND VIEWS OF THESE TWO AGENCIES.

WE FOUND THAT THE COMMISSION HAD NOT COORDINATED ITS RESPONSIBILITIES EFFECTIVELY WITH THOSE OF THE DEPARTMENT OF STATE AND THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION.

WE ALSO FOUND THAT THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, IN DEVELOPING AN EXECUTIVE BRANCH POLICY ON INTERNATIONAL TELECOMMUNICATIONS FACILITIES, HAD NOT ADEQUATELY COORDINATED WITH THE DEPARTMENT OF STATE. THIS LACK OF COORDINATION REFLECTED A CONTINUING DISAGREEMENT OVER THE EXTENT OF COORDINATION THE ADMINISTRATION SHOULD ACHIEVE WITH THE DEPARTMENT OF STATE.

WE EXPRESSED THE OPINION THAT A TWO-STEP APPROACH WAS NEEDED TO RESOLVE THESE PROBLEMS. FIRST, THE COMMISSION SHOULD DEVELOP SPECIFIC PROCEDURES FOR RECEIVING, CONSIDERING, AND COORDINATING THE VIEWS OF OTHER FEDERAL AGENCIES IN THE DEVELOPMENT AND IMPLEMENTATION OF REGULATORY POLICY FOR INTERNATIONAL TELECOMMUNICATIONS. THESE PROCEDURES COULD BEST BE DEVELOPED THROUGH A RULEMAKING, THUS SUBJECTING THEIR DEVELOPMENT TO A THOROUGH SCRUTINY BY THE AFFECTED

FEDERAL AGENCIES, AS WELL AS THE PUBLIC, AND THE U.S. CARRIERS.

SECOND, THE DIRECTOR OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AND THE SECRETARY OF STATE SHOULD ESTABLISH SPECIFIC PROCEDURES FOR PROVIDING THE COMMISSION WITH UNIFIED EXECUTIVE BRANCH VIEWS.

IN COMMENTING ON OUR REPORT ALL THREE AGENCIES ACKNOWLEDGED THE COORDINATION PROBLEMS WE IDENTIFIED, AND INDICATED THEIR INTENT TO DEVELOP PROCEDURES AS WE RECOMMENDED.

#### POLICY FOR INTERNATIONAL FACILITIES

TO DATE THE FEDERAL COMMUNICATIONS COMMISSION'S POLICY FOR INTERNATIONAL TELECOMMUNICATIONS FACILITIES HAS BEEN CONFINED TO THE NORTH ATLANTIC. THIS POLICY HAS EVOLVED FROM A FRAMEWORK WITHIN WHICH THE U.S. CARRIERS AND THE EUROPEAN TELECOMMUNICATIONS ENTITIES COULD PLAN TRANSATLANTIC FACILITIES, TO A POLICY UNDER WHICH THE COMMISSION REVIEWS PROPOSALS FOR FACILITIES IN THE CONTEXT OF A COMPREHENSIVE PLAN DEVELOPED BY THE COMMISSION. THIS PLAN SPECIFIES WHICH FACILITIES WILL BE CONSTRUCTED AND HOW THEY WILL BE USED.

THERE IS A BASIC DIFFERENCE BETWEEN THESE TWO APPROACHES. A POLICY IN WHICH THE COMMISSION ONLY PROVIDES REGULATORY GUIDANCE LEAVES THE RESPONSIBILITY FOR PLANNING TO THE ENTITIES WHICH CONSTRUCT AND OPERATE THE INTERNATIONAL TELECOMMUNICATIONS NETWORK. BUT A POLICY IN WHICH A COMPREHENSIVE

PLAN IS DEVELOPED BY THE COMMISSION SHIFTS PLANNING RESPONSIBILITIES FOR FACILITIES FROM THE OPERATIONAL ENTITIES TO THE REGULATOR. FURTHER, THE COMMISSION'S COMPREHENSIVE PLAN FOR THE NORTH ATLANTIC DOES NOT PROVIDE AN EFFECTIVE FRAMEWORK FOR DEALING WITH INTERNATIONAL FACILITIES BECAUSE IT, AMONG OTHER THINGS,

--DOES NOT RECOGNIZE THAT FINAL AUTHORITY OVER INTERNATIONAL SATELLITE FACILITIES IS VESTED IN THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION, AND

--IS NOT BASED ON AGREED ON PLANNING PRINCIPLES AND SPECIFIC FACILITIES BETWEEN THE UNITED STATES AND THE EUROPEAN TELECOMMUNICATIONS ENTITIES.

GIVEN THESE CIRCUMSTANCES AN EFFECTIVE POLICY CANNOT BE MAINTAINED WITHIN THE CONTEXT OF A COMMISSION-DEVELOPED COMPREHENSIVE PLAN. THE COMMISSION SHOULD CONTINUE TO EVALUATE FUTURE INTERNATIONAL FACILITIES, HOWEVER, WITHIN POLICY GUIDELINES WHICH ALLOW THE CARRIERS AND FOREIGN ENTITIES TO PLAN FOR FUTURE FACILITIES. IN ADDITION, THE COMMISSION SHOULD ESTABLISH POLICY GUIDELINES FOR INTERNATIONAL TELECOMMUNICATIONS FACILITIES IN OTHER PARTS OF THE WORLD.

IMPLEMENTING A POLICY BY AUTHORIZING  
INTERNATIONAL FACILITIES

IN THIS CONNECTION POLICIES DEVELOPED FOR INTERNATIONAL TELECOMMUNICATIONS FACILITIES ARE IMPLEMENTED THROUGH THE AUTHORIZATION OF THESE FACILITIES. OUR REVIEW IDENTIFIED THREE ISSUES:

- PROVIDING INSTRUCTIONS TO THE COMMUNICATIONS SATELLITE CORPORATION.
- REACHING A DECISION ON INTERNATIONAL FACILITIES UNDER SECTION 214 OF THE EXISTING COMMUNICATIONS ACT OF 1934.
- CARRYING OUT RESPONSIBILITIES UNDER THE CABLE LANDING LICENSE ACT OF 1921.

PROVIDING INSTRUCTIONS TO  
THE COMMUNICATIONS SATELLITE CORPORATION

REGARDING THE FIRST OF THESE ISSUES, WE REPORTED THAT IF THE UNITED STATES IS TO CONTINUE TO PLAY A STRONG ROLE IN INTERNATIONAL SATELLITE TELECOMMUNICATIONS A CLEAR FRAMEWORK MUST BE DEVELOPED FOR THE U.S. GOVERNMENT, UNDER PROVISIONS OF THE EXISTING COMMUNICATIONS SATELLITE ACT OF 1962, TO INSTRUCT THE COMMUNICATIONS SATELLITE CORPORATION REGARDING ITS ROLE AS THE U.S. REPRESENTATIVE IN THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION.

THIS FRAMEWORK SHOULD CLARIFY

- THE RESPONSIBILITIES OF THE PRESIDENT AND THE FEDERAL COMMUNICATIONS COMMISSION FOR INSTRUCTING THE CORPORATION,

- THE BINDING NATURE OF THE U.S. GOVERNMENT'S INSTRUCTIONS TO THE CORPORATION, AND
- THE SPECIFIC AREAS IN WHICH THE GOVERNMENT WILL INSTRUCT THE CORPORATION.

THE CURRENT FRAMEWORK, HOWEVER, RESULTED FROM A DISAGREEMENT BETWEEN THE COMMISSION AND THE DEPARTMENT OF STATE, WHICH HAD BEEN DELEGATED THE PRESIDENT'S RESPONSIBILITIES, OVER THEIR RESPECTIVE AUTHORITIES TO INSTRUCT THE CORPORATION ON SATELLITE FACILITIES DECISIONS. CONSEQUENTLY, THIS FRAMEWORK MERELY ESTABLISHED A PROCEDURAL METHOD FOR PROVIDING INSTRUCTIONS TO THE CORPORATION. THIS FRAMEWORK DID NOT

- ANTICIPATE THE QUESTIONS REGARDING THE BINDING NATURE OF A U.S. GOVERNMENT INSTRUCTION WHICH AROSE WHEN THE CORPORATION RECEIVED AN INSTRUCTION ON THE CONSTRUCTION OF A NEW SATELLITE FACILITY PRIOR TO THE COMMISSION'S COMPLETION OF ITS REGULATORY RESPONSIBILITIES, OR
- CLARIFY THE AREAS ON WHICH THE U.S. GOVERNMENT WOULD PROVIDE INSTRUCTIONS.

TO CLARIFY THIS DISAGREEMENT AND PROVIDE THE PROPER FRAMEWORK FOR INSTRUCTING THE CORPORATION, WE RECOMMENDED THAT THE EXISTING COMMUNICATIONS SATELLITE ACT OF 1962 BE AMENDED TO REFLECT THAT:

- THE COMMISSION HAS FINAL AUTHORITY TO INSTRUCT THE CORPORATION ON REGULATORY MATTERS.
- THE PRESIDENT HAS FINAL INSTRUCTIONAL AUTHORITY FOR FOREIGN POLICY MATTERS.
- THE PRESIDENT HAS FINAL INSTRUCTIONAL AUTHORITY ON A REGULATORY MATTER IN WHICH HE DETERMINES THAT A CLEAR OVERRIDING NATIONAL INTEREST CONCERN EXISTS. IN SUCH A CASE, THE PRESIDENT WOULD PROVIDE A SEPARATE INSTRUCTION TO THE CORPORATION.
- A FINAL INSTRUCTION TO PARTICIPATE IN THE CONSTRUCTION OF A FACILITY WILL NOT BE ISSUED TO THE CORPORATION BEFORE THE COMMISSION HAS ISSUED A LICENSE FOR THAT FACILITY TO THE CORPORATION.

SECTION 382 OF THE PROPOSED COMMUNICATIONS ACT OF 1978 ALSO ADDRESSES THE PROBLEMS OF INSTRUCTING THE COMMUNICATIONS SATELLITE CORPORATION.

#### INTERNATIONAL FACILITIES DECISIONS

THE SECOND ISSUE WE IDENTIFIED RELATED TO SECTION 214 OF THE EXISTING COMMUNICATIONS ACT--THE PRINCIPAL STATUTE WITH WHICH THE COMMISSION NOW IMPLEMENTS INTERNATIONAL FACILITIES POLICY. SECTION 214 DOES NOT REQUIRE THE COMMISSION TO AUTHORIZE INTERNATIONAL FACILITIES IN ANY MANNER DIFFERENT FROM DOMESTIC FACILITIES AND MAKES NO SPECIFIC PROVISION FOR CONSIDERING THE VIEWS OF THE FOREIGN ENTITIES. SECTION 214 ONLY REQUIRES THE COMMISSION TO CERTIFY THAT A

FACILITY IS REQUIRED BY THE PUBLIC CONVENIENCE AND NECESSITY. THEREFORE, THE COMMISSION HAS DETERMINED THAT THE VIEWS OF FOREIGN ENTITIES MAY NOT BE SUBSTITUTED FOR, OR GIVEN PRECEDENCE OVER, THE COMMISSION'S DETERMINATIONS OF THE NATIONAL PUBLIC INTEREST.

WHILE THE COMMISSION'S INTERPRETATION IS WITHIN THE STATUTORY FRAMEWORK, ITS INTERPRETATION INCREASES THE RISK OF A U.S. INTERNATIONAL TELECOMMUNICATIONS FACILITIES POLICY WHICH CANNOT BE IMPLEMENTED BECAUSE IT CONFLICTS WITH THE POLICY OF THE FOREIGN TELECOMMUNICATIONS ENTITIES. THEREFORE, WE RECOMMENDED THAT SECTION 214 OF THE EXISTING COMMUNICATIONS ACT OF 1934 BE AMENDED TO RECOGNIZE, AS A MATTER OF POLICY, THAT DECISIONS ON INTERNATIONAL FACILITIES ARE DISTINCT FROM DECISIONS ON DOMESTIC FACILITIES.

IN THIS REGARD WE NOTE THAT SECTION 381 OF THE PROPOSED ACT PROVIDES A METHOD FOR AUTHORIZING INTERNATIONAL FACILITIES DIFFERENT FROM THAT PROPOSED FOR DOMESTIC FACILITIES.

#### CABLE LANDING LICENSE ACT OF 1921

THE LAST ISSUE WE IDENTIFIED RELATED TO THE CABLE LANDING LICENSE ACT OF 1921. THIS ACT WAS ENACTED BY THE CONGRESS WHEN ONLY ONE TELECOMMUNICATIONS ENTITY, EITHER FOREIGN OR U.S., OWNED EACH INTERNATIONAL CABLE FACILITY. THE ACT ALLOWED THE PRESIDENT TO CONTROL THE LANDING OF CABLES BY FOREIGN ENTITIES IN THE UNITED STATES. SUBSEQUENTLY,

THE PRESIDENT, BY EXECUTIVE ORDER, DELEGATED HIS RESPONSIBILITY TO THE COMMISSION SUBJECT TO DEPARTMENT OF STATE CONCURRENCE.

SINCE INTERNATIONAL TELECOMMUNICATIONS HAVE EVOLVED INTO A JOINT VENTURE AMONG NATIONS, THERE IS NO LONGER A NEED FOR A SEPARATE ACT TO CONTROL THE LANDING OF CABLE FACILITIES BY FOREIGN ENTITIES. THEREFORE, WE AGREE WITH SECTION 804(c) OF THE PROPOSED ACT WHICH REPEALS THE CABLE LANDING LICENSE ACT OF 1921.

OBSERVATIONS ON OTHER AREAS

ALTHOUGH OUR REPORTS FOCUSED ON COORDINATING THE DECISIONMAKING RESPONSIBILITIES OF VARIOUS FEDERAL AGENCIES AS WELL AS THEIR DEVELOPMENT AND IMPLEMENTATION OF FACILITIES POLICIES, WE DID PROVIDE OUR OBSERVATIONS ON OTHER AREAS.

IN PARTICULAR, WE OBSERVED THAT (1) ESTABLISHING A FOCAL POINT FOR THE PLANNING OF INTERNATIONAL FACILITIES COULD IMPROVE THE PLANNING PROCESS BY INCREASING THE INTERACTION BETWEEN THE CARRIERS AND THE COMMISSION AND (2) CONTINUING RATE OF RETURN REGULATION COULD STRENGTHEN THE IMPLEMENTATION OF AN INTERNATIONAL FACILITIES POLICY BECAUSE THROUGH THIS REGULATION THE COMMISSION COULD CONTROL THE INCLUSION OF INVESTMENT IN THE CARRIER'S RATE BASE.

## THE PROPOSED COMMUNICATIONS ACT OF 1978

WHILE WE HAVE NOT YET FULLY ANALYZED ALL OF THE INTERNATIONAL COMMON CARRIER PROVISIONS OF THE PROPOSED COMMUNICATIONS ACT OF 1978, I WOULD LIKE TO OFFER OUR OBSERVATIONS ON THOSE PROVISIONS WHICH ADDRESS THE PROBLEMS DISCUSSED IN OUR REPORTS OF FACILITIES PLANNING, COORDINATION AND AUTHORIZATION, AND INSTRUCTING THE COMMUNICATIONS SATELLITE CORPORATION. WE BELIEVE THE PROPOSED ACT'S RESPONSE TO THESE PROBLEMS REFLECTS THE BROADER PERSPECTIVE IMPLICIT IN THE COMPLETE REVISION OF THE NATION'S COMMUNICATIONS LEGISLATION AND REPRESENTS A CONSTRUCTIVE APPROACH.

### FACILITIES PLANNING

SECTION 371 ADDRESSES THE PROBLEM OF PLANNING FOR INTERNATIONAL FACILITIES BY ESTABLISHING A TASK FORCE TO ENGAGE IN LONG-RANGE PLANNING FOR THE CONSTRUCTION AND IMPLEMENTATION OF THESE FACILITIES. THIS TASK FORCE IS COMPOSED OF REPRESENTATIVES OF THE INTERNATIONAL AND DOMESTIC SERVICE CARRIERS; THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION'S PROPOSED REPLACEMENT, THE NATIONAL TELECOMMUNICATIONS AGENCY; THE DEPARTMENT OF STATE; AND THE FEDERAL COMMUNICATIONS COMMISSION'S PROPOSED REPLACEMENT, THE COMMUNICATIONS REGULATORY COMMISSION. THE PROPOSED ACT ALSO INCLUDES AS MEMBERS OF THE TASK FORCE TWO AGENCIES PREVIOUSLY NOT DIRECTLY INVOLVED IN FACILITIES PLANNING--THE DEPARTMENT OF DEFENSE AND THE U.S. INTERNATIONAL COMMUNICATIONS AGENCY. THIS TASK FORCE

IS TO BE CHAIRED BY THE DIRECTOR OF THE NATIONAL TELECOMMUNICATIONS AGENCY.

WHILE THE TASK FORCE WOULD PROVIDE A NEEDED FOCAL POINT FOR INTERNATIONAL FACILITIES PLANNING, WE BELIEVE SOME OF THE AUTHORITIES AND RESPONSIBILITIES OF THE TASK FORCE CHAIRMAN SHOULD BE CLARIFIED AND BROADENED.

FIRST, THE PROPOSED ACT DIRECTS THE CHAIRMAN OF THE TASK FORCE TOGETHER WITH THE TASK FORCE MEMBERS TO ENGAGE IN LONG-RANGE PLANNING OF INTERNATIONAL FACILITIES IN A MANNER DESIGNED TO ALLOW THE OWNERS OF SUCH FACILITIES MAXIMUM FLEXIBILITY IN NEGOTIATING WITH THEIR FOREIGN CORRESPONDENTS, WHILE AT THE SAME TIME RESULTING IN MINIMUM RESTRICTIONS ESTABLISHED BY THE UNITED STATES. WE BELIEVE THIS SECTION OF THE ACT IN ITS PRESENT FORM CONSTITUTES ONLY A GENERAL GOAL WITH NO REQUIREMENT THAT THE TASK FORCE DEVELOP A DEFINITE PLAN. IF THE SUBCOMMITTEE EXPECTS THE TASK FORCE TO DEVELOP A PLAN TO GUIDE THE CARRIERS IN THEIR NEGOTIATIONS--AN EXPECTATION WE BELIEVE IS APPROPRIATE--THEN SECTION 371(d)(3) SHOULD BE AMENDED TO REQUIRE THE TASK FORCE TO "DEVELOP A PLAN FOR THE CONSTRUCTION AND IMPLEMENTATION OF ALL INTERNATIONAL TELECOMMUNICATIONS FACILITIES WHICH REPRESENTS A CONSENSUS OF THE TASK FORCE PARTICIPANTS." THE REQUIREMENT TO PRODUCE AN AGREED-ON PLAN WOULD PROVIDE A NEEDED CHECK ON THE CIRCUIT UTILIZATION DATA THE CARRIERS ARE REQUIRED BY SECTION 381(b) TO SUBMIT TO THE COMMISSION.

SUCH AN APPROACH WOULD ALSO REQUIRE THE SUBCOMMITTEE TO ADDRESS THE RELATED QUESTIONS OF:

--HOW OFTEN SHOULD THE PLAN BE UPDATED?

--WOULD THE PROVISIONS OF THE PLAN REGARDING CONSTRUCTION OR IMPLEMENTATION OF FACILITIES BE CONSIDERED RESTRICTIONS?

--WHAT WOULD BE THE RELATIONSHIP OF ANY RESTRICTIONS IN THE PLAN TO THE AUTHORITIES OF THE PRESIDENT OR THE COMMUNICATIONS REGULATORY COMMISSION REGARDING INTERNATIONAL FACILITIES?

SECOND, AS PART OF THE PLANNING PROCESS THE CHAIRMAN OF THE TASK FORCE IS DIRECTED TO COLLECT INFORMATION ON INTERNATIONAL TELECOMMUNICATIONS TRAFFIC PROJECTIONS. REFLECTING PAST DIFFICULTIES IN EXCHANGING AND AGREEING ON TRAFFIC PROJECTIONS, WHICH WE DISCUSSED IN OUR REPORTS, THE ACT DIRECTS THE CARRIERS AND GOVERNMENT AGENCIES TO EXCHANGE THIS INFORMATION TO THE FULLEST EXTENT POSSIBLE. WHILE THE PROPOSED ACT ONLY REQUIRES THE COLLECTION AND EXCHANGE OF TRAFFIC PROJECTIONS, COMPREHENSIVE LONG-RANGE PLANNING REQUIRES INFORMATION IN OTHER AREAS, FOR EXAMPLE, THE PRESENT AND FUTURE USE OF EXISTING FACILITIES OR THE REDUNDANCY NEEDED TO ENSURE SERVICE RELIABILITY. TO AVOID THE POSSIBILITY THAT THE CHAIRMAN OF THE TASK FORCE WOULD BE UNABLE TO DEVELOP A LONG-RANGE PLAN BECAUSE HE LACKED THE AUTHORITY TO COLLECT ALL NECESSARY INFORMATION, THE SUBCOMMITTEE MAY

WISH TO BROADEN HIS AUTHORITY AND ALLOW HIM TO "COLLECT SUCH INFORMATION AS HE MAY REQUIRE TO CARRY OUT HIS RESPONSIBILITIES."

FINALLY, WE ARE UNCERTAIN FROM OUR READING OF SECTIONS 371(a)(1) AND 382(b)(5) WHETHER THE COMMUNICATIONS SATELLITE CORPORATION, IN ITS ROLE AS THE DESIGNATED ENTITY OF THE UNITED STATES IN THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION, IS A MEMBER OF THE PLANNING TASK FORCE. WE BELIEVE THAT THE CORPORATION AS THE MONOPOLY PROVIDER OF INTERNATIONAL SATELLITE FACILITIES SHOULD BE A MEMBER OF THE TASK FORCE; THEREFORE, THE SUBCOMMITTEE SHOULD CONSIDER AMENDING SECTION 371(a)(1) TO EXPLICITLY INCLUDE THE CORPORATION.

#### COORDINATION

ALTHOUGH SECTION 371 OF THE PROPOSED ACT DIRECTS THE CHAIRMAN OF THE TASK FORCE TO DEVELOP SPECIFIC PROCEDURES FOR COORDINATING THE INTERNATIONAL FACILITIES POLICYMAKING PROCESS, THE PROPOSED ACT CONTAINS NO PROVISION FOR A FINAL DECISIONMAKER ON FACILITIES POLICY. WE BELIEVE THAT THE VARIED INTERESTS REPRESENTED BY THE GOVERNMENT AGENCIES AND INDUSTRY REPRESENTATIVES INVOLVED IN FACILITIES PLANNING COULD RESULT IN A NONUNIFIED POLICY, SIMILAR TO THAT IDENTIFIED IN OUR REPORTS. SINCE THE ACT DIRECTS THE PRESIDENT TO ENSURE THAT THE OVERALL ACTIVITIES OF GOVERNMENT AGENCIES

ARE COORDINATED BY THE CHAIRMAN OF THE TASK FORCE AND PROVIDES THE PRESIDENT WITH PRIMARY AUTHORITY ON INTERNATIONAL FACILITIES, THE SUBCOMMITTEE MAY WISH TO EXPLICITLY DESIGNATE THE PRESIDENT "THE FINAL ARBITER OF INTERNATIONAL FACILITIES POLICY DISAGREEMENTS."

AUTHORIZING INTERNATIONAL FACILITIES

SECTION 381 OF THE PROPOSED ACT AND SUPPORTING PROVISIONS OF SECTION 382 PROVIDE A SIGNIFICANT DEPARTURE FROM THE CURRENT METHOD OF AUTHORIZING INTERNATIONAL FACILITIES. REPLACING APPROVAL OF THE CONSTRUCTION AND USE OF INTERNATIONAL FACILITIES BY THE FEDERAL COMMUNICATIONS COMMISSION UNDER THE PROVISIONS OF SECTION 214 OF THE EXISTING COMMUNICATIONS ACT OF 1934, SECTION 381(a) OF THE PROPOSED COMMUNICATIONS ACT OF 1978 SUBSTITUTES A SYSTEM WHERE THE CARRIERS MAY CONSTRUCT FACILITIES IF

- THEY NOTIFY THE CHAIRMAN OF THE TASK FORCE PRIOR TO THE CONCLUSION OF ANY BUSINESS NEGOTIATIONS ON THE CONSTRUCTION OF THE FACILITY,
- THE PRESIDENT DOES NOT DISAPPROVE, WITHIN 90 DAYS AFTER SUCH NOTIFICATION IS RECEIVED, THE CONSTRUCTION FOR REASONS OF NATIONAL SECURITY OR FOREIGN POLICY, OR BOTH, AND
- THE CARRIER IS AUTHORIZED BY THE COMMUNICATIONS REGULATORY COMMISSION UNDER SECTION 382(b)(5) TO ENTER INTO AGREEMENTS WITH FOREIGN NATIONS.

IN ADDITION, THE COMMUNICATIONS REGULATORY COMMISSION, UNDER SECTIONS 381(b) and (c), IS REQUIRED TO REVIEW THE UTILIZATION OF A FACILITY WITHIN 5 YEARS. IF UTILIZATION CRITERIA IN THE PROPOSED ACT ARE NOT MET, THE COMMISSION MUST DISALLOW A PORTION OF THE FACILITY'S COST FOR RATE-MAKING PURPOSES.

HAVING THE COMMUNICATIONS REGULATORY COMMISSION AUTHORIZE THE CARRIERS TO ENTER INTO AGREEMENTS WITH FOREIGN NATIONS, AS REQUIRED BY SECTION 382(b)(5), RAISES A NUMBER OF QUESTIONS AND ISSUES WHICH WE BELIEVE THE SUBCOMMITTEE SHOULD ADDRESS. IN PARTICULAR:

--IS THE PROVISION INTENDED TO REGULATE INTERNATIONAL INDUSTRY STRUCTURE? WE BELIEVE THE WORDING OF SECTION 382(b)(5) IMPLIES COMMISSION APPROVAL WOULD BE OF A "ONE-TIME" NATURE. THIS TYPE OF APPROVAL, HOWEVER, WOULD NOT ALLOW THE COMMISSION TO RESPOND TO CHANGES IN TECHNOLOGY OR MARKET SIZE WHICH MIGHT REQUIRE ALTERING INDUSTRY STRUCTURE. SECTION 311, WHICH ALLOWS THE COMMISSION TO REGULATE INDUSTRY STRUCTURE THROUGH THE CLASSIFICATION OF TELECOMMUNICATIONS SERVICES INTO COMPETITIVE AND NONCOMPETITIVE SECTORS, MAY BE BETTER SUITED FOR REGULATING INTERNATIONAL INDUSTRY STRUCTURE. HOWEVER, AS CURRENTLY PROPOSED SECTION 311 INCLUDES ONLY "INTERSTATE" AND NOT INTERNATIONAL TELECOMMUNICATIONS SERVICES.

--IS THE PROVISION INTENDED TO CONTROL THE CARRIER'S INVOLVEMENT WITH POTENTIALLY UNFRIENDLY FOREIGN NATIONS, SIMILAR TO THE CABLE LANDING LICENSE ACT OF 1921 WHICH THIS ACT REPEALS? IF SO, WE BELIEVE IT IS A FUNCTION MORE PROPERLY SUITED TO THE PRESIDENT OR THE DEPARTMENT OF STATE AND NOT THE COMMISSION.

REGARDING COMMISSION REVIEW OF THE UTILIZATION OF INTERNATIONAL FACILITIES, IN OUR SECOND REPORT WE OBSERVED THAT THE FEDERAL COMMUNICATIONS COMMISSION HAS NOT CONDUCTED PERIODIC RATE OF RETURN REGULATION OF THE INTERNATIONAL CARRIERS. WE EXPRESSED THE VIEW THAT EFFECTIVE RATE OF RETURN REGULATION CONDUCTED ON A CONTINUING BASIS COULD STRENGTHEN THE IMPLEMENTATION OF AN INTERNATIONAL FACILITIES POLICY BECAUSE THROUGH THIS REGULATION THE COMMISSION COULD CONTROL THE INCLUSION OF INVESTMENT IN THE CARRIER'S RATE BASE. BY REQUIRING THE COMMUNICATIONS REGULATORY COMMISSION TO REVIEW THE UTILIZATION OF FACILITIES AND MAKE ADJUSTMENTS TO A CARRIER'S RATE BASE, SECTION 381(c) PROVIDES A NEEDED STEP IN THIS DIRECTION. HOWEVER, TO STRENGTHEN THIS SECTION THE SUBCOMMITTEE SHOULD CONSIDER REQUIRING THE COMMISSION TO IMPLEMENT THIS PROVISION WITHIN A SPECIFIC PERIOD OF TIME AFTER MAKING ITS REVIEW UNDER SECTION 381(c).

INSTRUCTING THE COMMUNICATIONS  
SATELLITE CORPORATION

SECTION 382 PROVIDES THE PRESIDENT WITH THE RESPONSIBILITY FOR INSTRUCTING THE COMMUNICATIONS SATELLITE CORPORATION IN ITS ROLE AS REPRESENTATIVE IN THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION AND OTHER INTERNATIONAL SATELLITE ORGANIZATIONS. THE COMMUNICATIONS REGULATORY COMMISSION IS INSTRUCTED BY THIS SECTION TO ESTABLISH PROCEDURES FOR REVIEWING THE CORPORATION'S TELECOMMUNICATIONS ACTIVITIES IN THESE ORGANIZATIONS AND TO MAKE RECOMMENDATIONS TO THE PRESIDENT TO ASSIST HIM IN ISSUING INSTRUCTIONS TO THE CORPORATION.

BECAUSE THE PROPOSED ACT (1) CHANGES THE REGULATORY RESPONSIBILITIES OF THE COMMISSION AND (2) RESTRUCTURES THE CORPORATION SO THAT IT SUPPLIES COMMON CARRIER SERVICES THROUGH A SEPARATE SUBSIDIARY, WE ARE UNCERTAIN UNDER WHAT CONDITIONS THE COMMISSION WOULD MAKE RECOMMENDATIONS TO THE PRESIDENT ON INSTRUCTIONS TO THE CORPORATION IN ITS ROLE AS REPRESENTATIVE IN INTERNATIONAL SATELLITE ORGANIZATIONS. HOWEVER, IF THE COMMISSION IS TO PROVIDE RECOMMENDATIONS WHICH REFLECT ITS REGULATORY RESPONSIBILITIES THEN THESE RECOMMENDATIONS SHOULD BE CONSIDERED BINDING UNLESS THE PRESIDENT DEFINITELY REJECTS THEM FOR REASONS OF NATIONAL INTEREST OR FOREIGN POLICY.

WE ALSO BELIEVE THAT INTERAGENCY DISAGREEMENTS SIMILAR TO THOSE WE REVIEWED COULD RESULT FROM THE DELEGATION BY THE PRESIDENT OF HIS AUTHORITY TO ANOTHER AGENCY. CONSEQUENTLY WE WOULD SUGGEST THAT THE PROPOSED ACT REQUIRE THE RETENTION OF FINAL INSTRUCTIONAL AUTHORITY IN THE OFFICE OF THE PRESIDENT.

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THIS CONCLUDES MY PREPARED STATEMENT. WE WOULD LIKE TO PROVIDE FOR THE RECORD AT A LATER DATE A MORE DETAILED RESPONSE ON THE INTERNATIONAL TELECOMMUNICATIONS PROVISIONS OF THIS PROPOSED ACT. I WILL BE GLAD TO RESPOND TO ANY QUESTIONS.