

MEMORANDUM
RM-2971-NASA
DECEMBER 1961

FOREIGN PARTICIPATION IN
COMMUNICATION SATELLITE SYSTEMS:
THE IMPLICATIONS OF THE FEDERAL
COMMUNICATIONS ACT

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PREPARED FOR:
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The **RAND** *Corporation*
SANTA MONICA • CALIFORNIA

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PREFACE

This Memorandum is the third and final report of research undertaken by The RAND Corporation for the National Aeronautics and Space Administration on some of the international implications of a communication satellite system [Task Order NASr-21 (01)]. J. M. Goldsen served as RAND project leader. During the preparation of this study, Mr. Schwartz was a resident consultant at RAND. He is Professor of Law, University of California, Los Angeles.

The study was begun in July 1961 in partial response to a request from NASA to explore problems of foreign participation in a communication satellite system that would be essentially U.S.-developed and -organized. Two Memorandums previously have been issued:

RM-2934-NASA, Foreign Participation in a U.S. Communication Satellite System, by M. L. Schwartz in collaboration with J. M. Goldsen, November 1961, (For Official Use Only);

RM-2941-NASA, Communication Satellites and International Frequency Management, by P. O. Proehl, November 1961, (For Official Use Only).

One of the factors bearing upon foreign participation through partial ownership in or control of a U.S.-developed system is the applicability of existing legislation to any

contemplated arrangements. Although proposals advanced by private industry have cited the Federal Communications Act as a basis for the terms of foreign participation, we found no authoritative analysis of those sections of the Act which might determine the modes of such participation. We therefore undertook the analysis which follows to assess the legal eligibility of foreign nations to share in the ownership or control of a U.S.-licensed communication satellite operation. It should be considered as a legal supplement to RM-2934-NASA, cited above, and not as a major independent study.

SUMMARY

No decision has yet been reached as to the precise mode and degree of foreign participation in a U.S. communication satellite system. The Federal Communications Act appears to have a direct bearing on that question. Section 308(c) of the Act, dealing with the terms and conditions under which foreign communications carriers may connect with a U.S. ground station, grants the Federal Communications Commission (FCC) extensive jurisdiction over these terms and conditions. Although originally enacted for the purpose of protecting U.S. interests against foreign submarine cable owners, the power conferred by the Act has been extended by Congress to radio stations as well. The extension seems applicable to radio communications between a U.S. ground terminal and an international communication satellite system.

At the same time, Section 310(a) of the Federal Communications Act, prohibiting the issuance of radio station licenses to aliens, appears to impose restrictions upon the types of arrangements permissible for foreign participation in a U.S. communication satellite system. Under its provisions, no U.S. ground terminal license could be issued to an alien or to an alien-controlled corporation, as defined in the Act. Section 310(a)(4) prohibits the issuance of a ground terminal license to a

corporation of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned by aliens. Section 310(a)(5) extends the prohibition to any corporation, "directly or indirectly controlled" by a corporation, one of whose officers is an alien, one quarter or more of whose board of directors are aliens, or whose capital stock is owned by aliens in an amount greater than one-fourth of the total.

Under the Act, therefore, certain forms of internationally composed corporations would not be eligible to own or operate an American ground terminal or to control a U.S. corporation which owned or operated the terminal. The restriction, however, may extend still further, since the statute precludes even "indirect control." As a result, the Act may be taken to preclude control over the affairs of a satellite or ground terminal corporation by an "alien" corporation through such devices as contracts or leases.

There will obviously be a need for international arrangements for the operation of the satellite system. Foreign agencies will be interested in determining the essential terms and conditions of participation in and operation of the system. Section 310(a) might substantially limit the flexibility with which U.S. interests could negotiate with foreign interests for

the operation of the system, although an "escape" proviso in Section 310(a)(5) may give the FCC the affirmative power to approve a ground terminal license despite a violation of the alien-control provisions of the Section.

Whether the foregoing interpretation is accepted or not, it seems clearly undesirable to base jurisdiction over matters of such national moment as a communication satellite system on two relatively obscure and somewhat ambiguous provisions of the Federal Communications Act. New legislation is surely required. If legislation governing the domestic aspects of communication satellite systems is to be enacted, it should also contain specific provisions governing foreign participation. If such comprehensive legislation is not enacted, the problem of foreign participation should itself be the subject of new legislation.

ACKNOWLEDGMENTS

The author wishes to acknowledge assistance and helpful criticisms he received from J. M. Goldsen and M. J. Moody of the RAND staff; from RAND consultants Professors L. S. Lipson, Yale Law School, and P. O. Proehl, Law School, University of California, Los Angeles; and from Jan Vetter, a student at the U.C.L.A. Law School.

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I. INTRODUCTION

A previous RAND Memorandum has treated the problems of foreign participation in a communication satellite system from the standpoints of policy formulation and of agreement negotiation.¹ That Memorandum points out that foreign involvement in a U.S. communication satellite system is essential to the effective and economic operation of the system, and that foreign governments and agencies, as well as the United States, will attempt to achieve their own national objectives through the system. The attempts to achieve these objectives may range in form from demands for stock ownership in an international satellite corporation, to demands for agreements with a U.S. satellite system owner/operator, in which the foreign agencies are accorded substantial power or control over the management of the system, or over particular policy decisions which will be necessary for the operation and expansion of the system.

At the present writing, U.S. policy as to the proper institutional form for the domestic owner or operator has not yet been resolved. U.S. policy with regard to the institutional

¹M. L. Schwartz with J. M. Goldsen, Foreign Participation in a U.S. Communication Satellite System, RAND Memorandum RM-2934-NASA, November 1961.

forms for foreign participation is even more ambiguous. The question has apparently been deferred until the intra-U.S. problems are worked out and the present developmental program has been successfully completed.

The foreign participation problem cannot, however, be deferred indefinitely. One of the important aspects of any consideration of the problem is the impact of existing legislation upon any contemplated arrangements. This Memorandum is concerned, therefore, with the impact of the Federal Communication Act upon the possible modes and degree of foreign participation in a communication satellite system.

This specific inquiry was stimulated by representations made by several U.S. corporations to the Federal Communications Commission concerning the impact of that Act upon their proposals for a communication satellite system.² Thus, it was stated that the Act stands as an absolute bar against particular modes and degrees of foreign participation; it was also stated that the Act accords to the Federal Communications Commission (FCC) extensive power to determine what kinds of non-statutorily

²FCC Docket No. 14024, "In the Matter of An Inquiry Into the Administrative and Regulatory Problems Relating to the Authorization of Commercially Operable Space Communications Systems."

prohibited arrangements for foreign participation may be entered into by the U.S. groups which constitute the domestic part of the system.³

The question of the meaning of the Federal Communications Act is important for several different reasons. If the Act does preclude a particular form of foreign participation, it may require amendment, if that particular form is desired as a matter of U.S. national policy. Attitudes of foreign agencies, which are considering and being considered for foreign participation, may be affected by the existence of absolute bars against particular forms which they may desire. To the extent that the Act accords to the FCC responsibility for the determination of what kinds of arrangements for foreign participation will be approved, an important question of domestic policy may be presented for resolution.

The general approach of this paper is to present the applicable provisions of the Act and to explore their meaning and possible application to foreign participation in a communication satellite system. The usual tools of legislative interpretation are employed: the language of the statute, its legislative history, administrative and judicial interpretations

³See below, pp. 14, 40-41.

of the particular sections, and insights into meaning to be gleaned from other provisions of the Act and its apparent "policy." Following a consideration of the meaning of these sections, their possible application to several proposed modes of foreign participation is discussed. Finally, it is recommended that the matter be the subject of new legislation.

II. THE GENERAL JURISDICTION OF THE FCC

The Federal Communications Act gives to the FCC exclusive jurisdiction to authorize all nongovernment wire and radio operations. This jurisdiction is exercised through control over the issuance of construction permits, station licenses, and certificates of public convenience and necessity, upon a finding that such operations are in the public interest.⁴ It is important to point out, however, that the Act is concerned with two different types of operations, those of common carriers, which are controlled by Title (or Part) II of the Act, and those of broadcasting stations, i.e., the users of radio frequencies, which are controlled by Title (or Part) III of the Act. Because the satellite systems will be common carriers (telephone or telegraph systems available generally to the public) using radio frequencies, it seems clear that they will be subject to the provisions of both Parts of the Act.⁵

The basic jurisdiction of the FCC with regard to the use

⁴See, e.g., 47 U.S.C. ss 1, 214, 218, 303, 308.

⁵With regard to some issues, such as anti-trust policy, these two Titles appear inconsistent. See "Allocating Radio Frequencies Between Common Carriers and Private Users: The Microwave Problem," 70 YALE L. J. 954 (1961); FCC v. RCA Communications, Inc., 346 US 86 (1953). See also American Tel. & Tel. Co., 15 P. & F. RADIO REG. 189 (1957). There appears to be no similar problem of inconsistency with regard to the problems discussed in the Memorandum.

of radio is contained in Section 301 of the Act (27 U.S.C. s. 301):

No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio...(d) from any place in any State, Territory, or Possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel;...or (f) upon any other mobile stations within the jurisdiction of the United States...except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

Several of the phrases of Section 301 are defined in other sections of the statute:

Section 153(b):

"Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

Section 153(d):

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

Section 153(k):

"Radio station" or "station" means a station equipped to engage in radio communication of radio transmission of energy.

Section 153(1):

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

Section 153(bb):

"Station license," "radio station license," or "license" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

It is clear from these definitions that the operator of the U.S. ground terminal of a communication satellite system must be licensed by the FCC. The ground terminal is within Sections 301, and 153(b) and (d), requiring a license as defined in Section 153(bb).

Whether the operator or user of the satellites themselves must obtain a license for that use (independent of the license for the ground terminal) is a more difficult question.⁶ The satellites will be "mobile stations" within the definitions of Section 153(k) and (l). Whether Section 301 is applicable is more uncertain. Section 301(d) would not seem to be applicable.

⁶At one time, I.T. & T. seemed to suggest that such a satellite license would be required. (Docket No. 14024, Response, p. 10.)

It is hard to conceive that the satellites will be in "any place" in the United States. Nor is it much easier to argue that they are "within the jurisdiction of the United States" pursuant to Section 301(f).

This last point may raise the whole problem of the legal "ownership" of space or of objects in space. But for present purposes, it would seem sufficient to point out that if the satellites were "owned" and launched by the British, they would not be "within the jurisdiction of the United States" under any theory. If U.S.-"owned" and -"launched" satellites are to be considered as coming within the jurisdiction of the United States, this must be based either upon the place of launching or the power of the U.S. over its citizens. Without exploring this in detail here, and recognizing that Congress could as a matter of Constitutional power over its domestically located facilities and citizens, seize upon the launching or U.S. ownership as a nexus for regulation, the Federal Communications Act does not seem to do so. Certainly, an American corporation which owns a radio station in a foreign country does not have to obtain an FCC license to operate the station.

Thus, so far as ownership of the satellites alone is concerned, there does not seem to be any basis under the Federal Communications Act to require the owner or user of the satellite

to obtain an FCC license.⁷ Any power exercised by the FCC over the system under the Act must be derived through its regulatory power over the U.S. ground terminal, and, inasmuch as there must be U.S. ground terminals for the effective operation of the system, there will be FCC jurisdiction.

⁷The lack of direct U.S. power over satellites is, of course, based upon an interpretation of the language of the present statute. However, it is obvious that an FCC attempt to obtain statutory regulatory jurisdiction over satellites could well conflict with the policies of other powers, requiring in the final analysis resolution either by treaty or by the International Telecommunication Union. As to the jurisdiction of the ITU, see P. O. Proehl, Communication Satellites and International Frequency Management, RAND Memorandum RM-2941-NASA, November 1961.

III. THE IMPACT OF SECTION 308(c)

Section 308 of the Federal Communications Act deals with applications to the Commission for construction permits and station licenses. Subsection (c) of that Section provides:

The Commission in granting any license for a station⁸ intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 35 of this title.

Inasmuch as Section 308(c) refers to the authority with respect to submarine-cable licenses granted by Section 35, it is necessary to refer to Section 35 to ascertain the scope of that authority.

Section 35 is one of six sections in the present Code originally enacted in the Submarine Cable Landing and Operations Act of May 27, 1921 (47 U.S.C.S. ss. 34-39). The most directly significant of these sections are 34 and 35, the text of which is:⁹

⁸This section is undoubtedly applicable to the domestic U.S. terminal of the satellite system. See above, pp. 5-7. As to whether a separate license would be required for the satellites, see above, pp. 7-9.

⁹Section 36 empowers the President to prevent the landing of any cable about to be landed in violation of the other provisions of the Act, by obtaining an injunction against the landing.

34. No person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States....
35. The President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed. The license shall not contain terms and conditions granting to the licensee exclusive rights of landing or of operation in the United States. Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission¹⁰ with respect to the transmission of messages.

The functions vested in the President by this Act have been delegated to the FCC, subject to the approval of the Secretary of State.¹¹ Ex. Ord. No. 10530, s. 5(a), 19 F.R. 2709 (May 11,

¹⁰Originally this Section referred to the Interstate Commerce Commission. It was amended by the Radio Act of 1934 to its present form.

¹¹There is a possible problem of the role of the Secretary of State under Section 308(c) with regard to radio stations. The Executive Order of 1954 which delegated to the FCC the President's power under section 35 with regard to submarine cables made no mention of the comparable radio station license

1954); 3 U.S.C. 301 note:

The Federal Communications Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, all authority vested in the President by the Act of May 27, 1921...including the authority to issue, withhold or revoke licenses to land or operate submarine cables in the United States: Provided, That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment as the Commission may deem necessary. The Commission is authorized and directed to receive all applications for the said licenses.

Thus, the FCC in pursuance of Section 35, could prevent any terminal facility for the satellite system from being located within the United States, although the specific scope of this power is somewhat uncertain. It seems fairly obvious that Section 35 was originally adopted to give the President statutory authority to force foreign corporations to enter into reasonable agreements with American companies, a question about which there was some uncertainty in the early days.¹²

power of Section 308(c). Indeed, since the power under Section 308(c) was granted by Congress directly to the FCC, an independent regulatory commission, the President may not have power to authorize the Secretary of State to disapprove FCC decisions under that Section, a power he had under Section 35. (In Section 35, the authority was originally vested in him personally and the Secretary of State was directly responsible to him.)

¹²See 22 Op. Atty. Gen. 13 (1898); id. 408 (1898); id. 514 (1899); U.S. v. Western Union Telegraph Co. 272 Fed. 311, aff'd., 272 Fed. 893 (1921), reversed "in accordance with stipulation" without opinion, 260 U.S. 754. We have been unable to find any meaningful indication of how the FCC has exercised this power.

Of the various companies responding to the FCC Inquiry in Docket 14024, only A. T. & T. referred to this section as a source of FCC power, and that company maintained that the section was "Declaratory of [the] principle" that the Commission has power to make available to the United States, efficient nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, referring to the purposes of the Act as expressed in Section 151.¹³ A. T. & T. read 308(c), therefore, as granting to the Commission only the power to limit the issuance of licenses by the criterion of adequate service at reasonable rates. But this reading is not necessarily correct. For Section 35 refers specifically to the granting of licenses if such action

will assist in securing [reciprocal rights in foreign countries] or in maintaining the rights or interests of the United States or its citizens in foreign countries, or

will promote the security of the United States.

It thus seems a fair reading to interpret Section 35 as going beyond the normal criteria of public convenience and necessity, to the extent that these criteria merely refer to rates and services. Given the broad international implications of the

¹³Docket No. 14024, A. T. & T. Response, pp. 21-22.

satellite system, Section 35 may be at least as significant, if not more so, in terms of the power of the Commission over the satellite system, than other sections of the Act. For if A. T. & T.'s interpretation were correct, there would be no real need for Section 35. The Commission would have adequate power under its general licensing and regulatory powers.

In sum, the language of Section 308(c) seems to give to the Commission extensive jurisdiction over the terms and conditions (particularly the foreign arrangements) by which ground terminals in the United States are to be licensed, regardless of the type of administration or ownership agreed upon ultimately for the satellites or satellite system.

IV. THE IMPACT OF SECTION 310(a)

Since the adoption of the original Act of 1912, authorizing the Secretary of Commerce to issue licenses, there has been included in the federal regulatory statutes a provision prohibiting issuance of radio station licenses to aliens. The original Act of 1912 limited licenses to "citizens of the United States or Porto Rico or to a domestically incorporated company." The Radio Act of 1927 changed the form of this provision to a more negative style, i.e., instead of specifying who could be issued station licenses, it designated the categories of persons who could not. The restrictions of the Act of 1927 consisted of four sub-paragraphs. These, together with a new fifth sub-paragraph, were re-enacted in the Act of 1934. The result is Section 310(a), which provides:

- (a) The station license required hereby shall not be granted to or held by --
- (1) Any alien or the representative of any alien;
 - (2) Any foreign government or the representative thereof;
 - (3) Any corporation organized under the laws of any foreign government;
 - (4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

- (5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned by record or voted, after June 1, 1935, by aliens, their representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license....¹⁴

Any problem involving the mode of foreign participation must include a consideration of the meaning of Section 310(a). The first four sub-paragraphs seem clear enough. Broadly, no license may be issued to an alien, a foreign government, a foreign-organized corporation or any corporation which has the proscribed alien participation.

It is Section 310(a)(5) which presents the more difficult problem. That subsection prohibits the issuance of a license to a corporation which is "directly or indirectly controlled" by another corporation which in turn has certain alien stock ownership, officers, or directors. The specific question is the meaning of the phrase, "directly or indirectly controlled."

It is of course possible to obtain control over the

¹⁴This restrictive language also appears in Section 222(d), dealing with mergers of telegraph carriers.

The text of the 1958 amendment exempting noncitizen licensed pilots is omitted. See below, p. 29.

affairs of a corporation without ownership of the stock. Indeed, control over the voting rights of the stock can be achieved without ownership, as, for example, through proxies or voting trusts. But control over the affairs or particular aspects of the affairs of a corporation can be achieved through contractual arrangements, leases, and the like. Thus, "directly or indirectly controlled" could be interpreted to apply only to ownership of the stock of the licensee or of intermediate corporations in the fashion of Insull "empire," or it could be interpreted to include the broader reaches of control.¹⁵

A. THE MEANING OF THE PROHIBITIONS OF SECTION 310(a)(5)

1. Aids to Interpretation

a. Legislative History. The precursor of the Radio Act of 1934 (the present statute, as amended in the intervening years) was H.R. 7716, which was passed by both Houses in the 1932-1933 Congress, but pocket-vetoed by President Roosevelt. In reporting to the Senate on the meaning of its alien

¹⁵Although the point is developed more fully subsequently below (pp. 41-44), it is important to point out here that ownership does not necessarily mean actual control, nor, correspondingly, does control necessarily depend upon ownership.

exclusion provision, the Senate Committee stated:¹⁶

Section 8 limits the prohibition in s. 12 of the [1927] Act against granting licenses to aliens by permitting such grant when radio facilities are required by Act of Congress or a treaty to which the United States is a party. This amendment is necessary because certain vessels of American registry, which are required by other provisions of the radio laws to be equipped by radio, are owned by aliens or by corporations over 20 per cent of the stock of which is owned by aliens. This amendment will remedy the present inconsistency in the laws.

On page 10, line 7, after the word "which" the committee has struck out the words "any officer or director is an alien" and inserted the words "more than one-fifth of the officers or directors are aliens." The purpose of this amendment is to make the provision regarding directors or officers of any corporation that might directly or indirectly control licenses conform to the provision of the present law that provides that not more than one-fifth of the capital stock of the corporation may be voted by aliens or their representatives.

Your committee held hearings on this provision, at which representatives of the Navy Department and representatives of the International Telephone and Telegraph Co. appeared and discussed the matter quite fully. While it is the belief of the committee that radio communications should be kept strictly under the control of American citizens and American corporations, it is believed no serious injury or handicap will result from permitting not to exceed one-fifth of the officers to be aliens or one-fifth of the capital stock to be voted by aliens. Whatever apparent objection there might be to this provision from the standpoint of war or emergency leading to war becomes of little importance when it is

¹⁶S. REP. 1045, 72d. Cong., 2d. Sess., (1932) on H.R. 7716. The text of these earlier provisions has not been included. However, the reports seem to make their provisions self-evident.

remembered that under the Radio Law of 1927 the President has full power to seize all radio stations in the United States in case of war or threat of war. To prohibit a corporation from having any alien representation whatsoever among its officers or in the ownership of its stock would probably seriously handicap the operation of those organizations that carry on international communications and have large international communications. Your committee believes such a restriction is entirely unnecessary. This amendment further restricts alienation by transfer of control of corporations.

As has been previously indicated, H.R. 7716, to which the above report was addressed, was pocket-vetoed by President Roosevelt. However, the next session of Congress saw the passage of the Radio Act of 1934. Because of their significance, the reports of the appropriate committees are reproduced here, insofar as they are relevant to alien ownership.

The Senate Committee Report stated as follows:¹⁷

Section 310, dealing with limitations on foreign holding and transfer of licenses, is adopted from s. 12 of the Radio Act as modified by H.R. 7716, which additional limitations as to foreign ownership.

Section 310(a)(4) modifies the present law by (1) refusing a station license to a company more than one-fifth of whose capital stock is owned of record by aliens, and (2) by changing the words "may be voted by aliens" in the present law to "its voted by aliens." The purpose of this is to guard against alien control and not the mere possibility of alien control.

¹⁷S. REP. No. 781, 73d Cong., 2d Sess. (1934).

Section 310(a)(5) seeks to insure the American character of holding companies whose subsidiaries operate under radio licenses granted by the Commission. The provision has been made effective after June 1, 1935, in order to give the companies affected an opportunity to bring their organization into harmony with the provisions of the paragraph. Whatever apparent objection there might be to one-fourth foreign ownership from the standpoint of war or emergency leading to war, becomes less important when it is remembered that the President has full power to seize all radio stations in the United States in case of war or threat of war.

To prohibit a holding company from having any alien representation or owners whatsoever would probably seriously handicap the operation of those organizations that carry on international communications and have large interests in foreign countries in connection with their international communications. Such a rigid restriction seems unnecessary.

The Senate and the House passed different versions of the Radio Act. To reconcile the difference between the two bills, a Conference Committee was appointed, and filed its report.¹⁸

Section 310(a) dealing with limitation of foreign holding and transfer of licenses, is adapted from s. 12 of the Radio Act as proposed to be modified by H.R. 7716, with additional limitations as to foreign ownership.

Section 12 of the Radio Act provides that radio station licenses may not be granted or transferred to any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock may be voted by aliens, their representatives, a foreign government or a company

¹⁸H. REP. No. 1918, 73d Cong., 2d Sess. (1934).

organized under the laws of a foreign country. The Senate bill changes this provision by making the restriction apply also where the stock is owned of record by the designated persons and altering the words "may be voted" to "is voted." The substituted s. 310(a)(4) adopts the language of the Senate bill.

Section 12 of the Radio Act restricting alien control of radio station licenses does not apply to holding companies. The Senate bill, adapted from H.R. 7716, provides that such licenses might not be granted to or held by any corporation controlled by another corporation of which any officer or more than one-fourth of the directors are aliens or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, a foreign government or a corporation organized under the laws of a foreign country. The substitute s. 310(a)(5) adopts the Senate provision with an addition stating that the license may not be granted to or held by such a corporation if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

The bill was then passed by both Houses of Congress and signed by the President.

In these somewhat lengthy excerpts from the various committee reports, several points stand out:

1. In Section 310(a)(4) the committees seem to have been more concerned with actual control than with potential control.
2. The purpose of Section 310(a)(5) was to include "holding companies" within the prohibition.
3. There is no explanation of the final proviso of Section 310(a)(5) ("if the Commission finds that the public interest will be served by the refusal or the revocation of such license"),

which, albeit in a negative fashion, seems to permit the FCC to issue a license to the subsidiary of a "holding company" which otherwise violates the alien-holding restrictions.

Insofar as the interpretation of Section 310(a)(5) is concerned, one question is whether that subsection is intended to govern only the situation where one corporation holds the controlling shares of stock in another, or whether the phrase, "directly or indirectly controlled," is intended to include other types of control, as illustrated above.

The various Congressional committee reports refer to "holding company." Was it Congress's intention to limit this subsection, then, to the stock-ownership situation? There are several arguments militating against this interpretation.

In the first place, there are specific references in the Section 310(a) to stock-ownership. The use of the phrase "directly or indirectly controlled" would be an awkward method to refer to the same concept in the same section if that had been Congress's intention.

Second, although the Committee reports refer to "holding company," it is not at all clear that the phrase was used in any limited sense. Other statutes, adopted during the same period, are clearly broad in scope. For example, the Public Utility Holding Company Act of 1935 (49 Stat. 804, 15 U.S.C. s.

77 et. seq.) defines "holding company" as follows:

15 U.S.C. s. 79b(a)(7):

"Holding company" means --

- (A) Any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public utility company or of a public utility holding company..., unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and
- (B) Any person which the Commission determines...directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties and liabilities imposed in this chapter upon holding companies....¹⁹

Although the above definition is applicable in terms only to the Public Utility Holding Company Act, which was passed one year after the Radio Act of 1934, it is some evidence that

¹⁹Indeed, the remainder of sub-paragraph (7) provides a method by which companies which fall within the literal definition of "holding company" under clause (A) may be exempt from the definition if they can show that despite the ownership of 10 per centum of the stock, they do not satisfy the "control" criteria of subsection (B).

Congress, which was concerned with holding companies at least as early as 1932, did not think of the specific phrase, "holding company," in a stock-ownership sense only.

Finally, as will be developed more fully subsequently, if alien control of U.S. broadcasting facilities was the reason for the general restriction upon alien licensing, it makes little sense to interpret subsection (a)(5) narrowly. For clearly control can be obtained in a variety of ways of which stock ownership is only one. Contractual arrangements, long-term leases, and the like are common ways of transferring control over the operations of a corporation without the transfer of ownership of its stock.

b. Other Interpretations of the Section. There appear to have been no cases in which Section 310(a)(5)'s 25 per cent maximum alien stock ownership of the allegedly "controlling" corporation has been found to be violated. The cases where this became an issue resulted in a decision that the 25 per cent ceiling had not been reached.²⁰ Thus, the question whether

²⁰Westinghouse Radio Stations, Inc., 10 P. & F. RADIO REG. 878 (1955); WKAT, Inc., 10 id. 471 (1954); ABC-Paramount Merger Case, 8 id. 541, 588 (1953); Powel Crosley, Jr., 3 id. 6, 11-12 (1948).

the parent company "controlled" the subsidiary was not at issue. Nor, consequently, was there a consideration of the question whether the FCC would issue the license under the "escape" proviso of Section 310(a)(5), despite the presence of the prohibited degree of ownership.

There have been several cases construing other subsections of Section 310(a). Thus, under 310(a)(4) a broadcast license was refused the Reorganized Church of Latter Day Saints because a member of the sect's governing board was an Australian citizen, and a large number of church members lived outside the United States.²¹ The only case which appears to have been appealed to the courts from a Commission decision under Section 310(a)(4) involved an application by Loyola University of New Orleans²² In that case, Loyola University of New Orleans secured a television license despite the fact that the university was, and the station was to be, operated by members of the Society of Jesus. Many of the brothers lived outside the United States, and the power of appointment to and removal from positions in the order lay at the time of the application in a Belgian

²¹Kansas City Broadcasting Co., Inc., 5 P. & F. RADIO REG. 1057 (1952). See also Palm Springs Translator Station, Inc., 17 id. 1263 (1959).

²²Noe v. FCC, 260 F. 2d 739 (D.C. Cir. 1958), certiorari denied, 359 U.S. 924.

citizen. However, all of the brothers at the university were American citizens, and their immediate superior was an American citizen as well. The power of appointment and removal was regarded as less significant in the case of an educational institution than for a profit-making organization. The case developed two possibly important points: (1) the prohibitions of the Section were interpreted as directed at the actual exercise of control and not the existence of unused power to influence or direct action (with reliance for this conclusion placed upon the language of the Congressional committee reports cited earlier); and (2) the court implied that the national security, which it inferred was a basis of the restrictions in 310(a), would not be adversely affected by issuance of the license to the university.²³

The "religious" cases under 310(a)(4) establish one other important point.²⁴ Although the language of 310(a) seems to be restricted to corporations, the Commission had no difficulty in

²³This interpretation of the statutory language is criticized in a note in the Harvard Law Review, 72 HARV L. REV. 1172 (1959).

²⁴One case under section 310(a)(1) is worth mentioning. In Joe Tom Easley, 13 P. & F. RADIO REG. 1246b (1956), 15 *id.* 926 (1957), an application was denied because the applicant, who wished to transmit programs to Mexico for broadcast to the United States, had not sufficiently shown that he was not the "representative" under 310(a)(1) of the Mexican station owner.

applying the section to non-corporate forms. This conclusion, however, is quite consistent, if not required by, Section 153(j) of the Act which defines "corporation" as including "any corporation, joint-stock company, or association."

c. Other Provisions of the Act. Is it possible to derive the meaning of Section 310(a) through some kind of analogy, i.e., reference to other sections of the Federal Communications Act?

(i) The broad application of the prohibition against alien ownership of licenses has necessitated several statutory exemptions from its operations. Thus, since the original Act of 1927, the statute has contained an exception for two-way transmission of signals to foreign ships in U.S. ports.²⁵ In 1958, the statute was amended to permit two-way transmission of signals from aircraft by alien pilots who had been licensed to fly aircraft within the United States by the Federal Aviation Agency, but were not permitted to use the essential two-way radio because of their inability to obtain the necessary FCC license.²⁶ These provisions serve to illustrate the need for statutory amendment when licensing of aliens was desired, rather than by an administrative dispensation by the Commission.

²⁵47 U.S.C. s. 58; see also 47 U.S.C. s. 306.

²⁶47 U.S.C. 303(1), 310(a); see 1958 U.S. Code, Cong. and Admin. News, Vol. 3, p. 4101.

(ii) Perhaps the closest reference is to Section 310(b), immediately following 310(a), dealing with the prohibition against transfer of a license without prior Commission approval, Section 310(b) provides:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby....

This section, which again deals with control over licenses, uses similar language to 310(a)(5), transfer of "control." How has this language been interpreted?

It is fair to say that in applying 310(b) the Commission has adopted a very practical attitude toward control. Thus the Commission has found a transfer of control where a lease of broadcasting facilities accompanying the license transfer reserved to the transferor a share in the transferee's gross profits derived from operating the station. The Commission felt that the reservation of a share in gross profits left in the transferor opportunities to influence the transferee's policy perhaps too subtle to be detected by the Commission.²⁷

²⁷Yankee Network, Inc., 5 P. & F. RADIO REG. 216 (1949).

So, too, any transfer arrangement by which control over program content is not in the licensee offends the Act, even if this is accomplished by contractual arrangements.²⁸

Typical expressions of the Commission's attitude towards "control" for the purposes of Section 310(b) are:

Nothing in the Act restricts "control" to a majority of stock or to any definite percentage of stock. We believe that a realistic definition of this term includes any act which vests in a new entity or individual the rights to determine the manner or means of operating the license and determining the policy that the licensee will pursue.²⁹

"Control," as used in its multiple ownership rules, as well as in Sections 310(b) and 2(b)(2) of the Communications Act, is not a narrow, legalistic concept but one which must be applied realistically and broadly....In connection with the problem of control of corporations, the courts have consistently held, in construing the term as used in other regulatory statutes, that corporate control may exist in the absence of ownership of a majority of stock....Control broadly used "may embrace every form of control, actual or legal, direct or indirect, negative or affirmative," even though it be exercised through ownership of a small percentage of the voting stock.³⁰

This is not to say that any particular contractual arrangement will, per se, come within the prohibited control requirements.

²⁸See U.S. Broadcasting Corporation (WARD), 2 FCC 208, 224-225 (1935); Brooklyn Broadcasting Corp. (WBBC), 4 FCC 521 (1937); "Planned Music" Broadcasts, 7 P. & F. RADIO REG. 66 (1951).

²⁹Powel Crosley, Jr., 3 P. & F. RADIO REG. 6, 23 (1948).

³⁰ABC-Paramount Merger Case, 8 P. & F. RADIO REG. 541, 616-617 (1953).

For example, the specific ownership of the physical equipment of a radio broadcasting station is not of itself a prohibited form of control.³¹ What is of significance is the locus of the direction and supervision of the policies of the licensee.³²

In sum, if the standards applied by the Commission under Section 310(b) were to be utilized for Section 310(a)(5), every arrangement -- stock ownership, lease, contract -- whereby control over the management and policies of the licensee were delegated would be subject to an examination of the question whether the nonlicensee exercised "too much" control over the policies of the licensee.³³

(iii) Section 201(b) of the Act (which appears in the "Common Carrier" Part) provides:

All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawfulProvided further, That nothing in this chapter

³¹Fannie I. Leese, 5 FCC 364 (1938); Sunland Broadcasting Co., 6 P. & F. RADIO REG. 1053 (1950). For a discussion of ownership of satellites as a form of control, see below, pp. 41-44.

³²Radio Enterprises, Inc., 7 FCC 169 (1939).

³³There would, however, be a different burden of proof. Section 310(b) implies that the arrangement will be condemned unless the Commission makes an affirmative finding that the public interest, convenience and necessity will be served. Section 310(a)(5) implies that the arrangement will be approved unless the Commission makes an adverse finding. See below, pp. 36-38.

or in any other provision of law shall be construed to prevent a common carrier subject to this chapter from entering into or operating under any contract with any common carrier not subject to this chapter, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest....

Obviously, this section conditionally permits a common carrier, i.e., telephone or telegraph, which is subject to the regulatory jurisdiction of the Commission, to enter into agreements with other common carriers which are not subject to its jurisdiction, for example, a telephone company regulated by a state regulatory commission or by a foreign government. But it is unlikely that this provision is intended to supersede Section 310 so as to permit a licensee, through contractual arrangements with a foreign carrier not subject to the Act, to transfer control to the foreign carrier. It would merely seem to assure that all common carriers -- both regulated and un-regulated -- could exchange their services so as to make it possible to furnish the widest possible service.

Moreover, this section was derived from Sections 1(5) and 1(6) of the Interstate Commerce Act,³⁴ which reads:³⁵

Nothing in this chapter...shall be construed to prevent any common carrier subject to this chapter...

³⁴S. REP. No. 781, 73d Cong., 2d Sess. (1934).

³⁵U.S.C. s. 1, par. (5 1/2).

from entering into or operating under any contract with any telephone, telegraph, or cable company, for the exchange of their services.

It seems improbable that Congress, in an Act regulating railroads (even as Congress in the Act regulating radio stations) intended to permit regulated railroads to transfer control over their operations to a non-regulated carrier through the guise of a contract for the exchange of services.

Finally, Section 201(b) of the Radio Act contains a proviso which is absent from the Interstate Commerce Act, namely, that the contracts for the exchange of services are subject to the approval of the FCC.

2. The Interpretation of the Prohibitions of Section 310(a)(5).

The foregoing discussion of the various methods of analyzing the meaning of Section 310(a)(5) may not come to an unequivocal answer. However, it seems to point to an interpretation which would not be limited to stock ownership of the licensee by the allegedly "alien" corporation, but to a more expanded concept, under which the realities of "control" by the allegedly alien corporation over the licensee were examined.

In this connection, too, it would not seem necessary to show that the allegedly alien corporation exercises complete control over the licensee in all of its management and operational aspects. Indeed, the Commission itself, in interpreting the

parallel Section 310(b), appears to have looked to control over the program content as the dominant factor, rather than control over the entire corporation. If the Commission can use one aspect of control for its determination of control under 310(b), it would seem that it can use a single or several significant factors in determining the issue of control under 310(a)(5).

It is also worth discussing a second argument: that the control requirements of Section 310(a)(5) should be interpreted narrowly, for the Commission retains jurisdiction over the important functions of the licensee, i.e., rates and services, and therefore there is no need to limit narrowly alien ownership of the control over the licensee. But this argument would defeat the purposes of Section 310(a), i.e., even were the license to be issued to an individual alien, in direct violation of 310(a)(1), the Commission would still have jurisdiction to regulate rates and services. In other words, this argument may prove too much; it may prove that Section 310(a) is superfluous.

Finally, although it is true that the Section 310(a) cases have involved radio station broadcasting licenses, which present peculiar problems, it is clear from the Congressional reports referring to discussions with I.T. & T. that Congress intended this section to apply to the common carriers as well. And while control over programs may be the touchstone for

broadcasting, it does not follow that other criteria are not the touchstones for common carrier control.

B. FCC POWER TO ISSUE A LICENSE TO CORPORATIONS WHICH FALL WITHIN SECTION 310(a)(5)

It has been previously stated, that the language of subsection (5) of Section 310(a) appears to give the FCC a unique power which it does not possess under the other subsections,³⁶ namely, the power to issue the licenses "nevertheless." Thus, Section 310(a)(5) provides that, "The station license required shall not be granted to or held by... (5) Any corporation directly or indirectly controlled by any other [alien] corporation, ...if the Commission finds that the public interest will be served by the refusal or the revocation of such license."

(Emphasis added.)

This proviso appears never to have been considered by the Commission or the courts. Nor is it clear why it is limited to subsection (5) and does not apply to all the other subsections. Conceivably, it is because it first made its appearance in the statute in the Act of 1934, which retained the first four subparagraphs of the Act of 1927, and added sub-paragraph (5), and

³⁶See *Kansas City Broadcasting Co., Inc.*, 5 P. & F. RADIO REG. 1057, 1094 (1952).

that proviso, as a result of fortuitous positioning in the new sub-paragraph (5) simply did not, as a matter of style, refer to the previous subsections. On the other hand, it is possible that Congress, which was concerned with the impact of the Section upon U.S. international communications carriers, particularly I. T. & T., might have wished to assure that licenses could be issued to them, despite a technical violation of subsection (5) resulting from their international relations with foreign carriers.³⁷ Be that as it may, the proviso as enacted does seem to give the Commission power to issue a license to a corporation which violates the subsection.³⁸ The situations in

³⁷As a matter of speculation, the Congress may have intended to give the Commission power to disapprove licensing holding company subsidiaries, where the degree of control was less than the required minimum, but the Commission nevertheless decided that issuance of the license would be adverse to the public interest. There is no evidence to support this theory, and, in any even, the statutory language simply does not lend itself to this construction.

³⁸In this connection, a peculiar problem of burden of proof is presented by the language used in the subsection. It is phrased in the negative, i.e., the license is not to be granted to an [alien] corporation "if the Commission finds that the public interest will be served by the refusal or revocation of such license." This seems to place the burden on the Commission to find affirmatively that the public interest would be served by the denial. This is quite inconsistent with the absolute prohibitions of the other subsections, and it would be anticipated that this special power of the Commission would be a dispensatory one, i.e., that it could issue a license only under special circumstances, with the burden on the alien-controlled applicant to persuade the Commission that it was "in

which the use of this power will become an issue will, of course, depend upon how rigidly the prohibitory provisions of subsection (a)(5) are interpreted.

C. THE IMPACT OF SECTION 310(a) ON VARIOUS FORMS OF FOREIGN PARTICIPATION

U.S. regulatory control under the Federal Communications Act over a communication satellite system owner or operator will be based upon its control over the ground terminal licensee. That licensee will be subject to the alien limitations of Section 310(a). What effect will those limitations have upon the possible modes and degree of foreign participation in a communication satellite system?

Obviously, any U.S. ground terminal licensee will be required to enter agreements with the satellite system operator, regardless of whether the satellite owner satisfies the requirements of Section 310(a). Indeed, Section 201(b) of the Communications Act clearly recognizes that American licensees will enter into arrangements for the exchange of services with alien companies (although those arrangements are subject to the

the public interest" to issue the license. The form of the language, however, seems to suggest the other result. Since the Commission has never considered this exemption power, it is difficult to predict how it would be interpreted were the issue to arise.

approval of the Commission.³⁹ Between arrangements for the exchange of services on the one hand, and ownership of the licensee on the other, there is a wide variety of possible relationships between the U.S. licensee and foreign communications agencies, be they governmental or private. Can a meaningful line be drawn between permissible and impermissible relationships?

To focus upon the major problem, several preliminary points will be briefly made.

1. The ground terminal license must be issued to a U.S. citizen (including a U.S. corporation) which must satisfy the FCC's general licensing requirements.
2. That corporation cannot have an officer or a director who is an alien; nor may it have more than 20 per cent of its stock owned by aliens.
3. The license cannot be issued to an American corporation set up for that purpose by an internationally-composed group, the foreign elements of which own more than 25 per cent of the stock, if the FCC finds it contrary to the public

³⁹See above, pp. 32-34.

interest.

4. Whether the license can be issued to an American corporation which has entered into a comprehensive agreement giving to foreign groups the power to make or veto operating or policy decisions, or whether the license can be issued to an American corporation, although other physical assets of the system, e.g., the satellites, are owned by foreign governments or communications agencies, depends upon the meaning of "directly or indirectly controlled" as to both quantity and quality.

At present writing there is great uncertainty as to the kind and degree of foreign participation in a U.S. communication satellite system.⁴⁰ A. T. & T. stated⁴¹ that the original General Electric proposal -- that the satellite system be owned and operated by an internationally composed corporation in which foreign agencies would have an ownership interest⁴² -- would violate Section 310(a)(5). The previous discussion of Section

⁴⁰See M. L. Schwartz, op. cit.

⁴¹Docket No. 14024, A. T. & T. Reply, fn. 4.

⁴²Ibid., General Electric Response, p. 10.

310(a)(5) supports this A. T. & T. position. On the other hand, A. T. & T. itself originally proposed that foreign interests would be accorded an ownership interest in the satellites on the basis of their pro rata contributions, which in turn would be based upon their anticipated use of the system (subsequently adjusted to actual use).⁴³ But if the "control" criterion of Section 319(a)(5) is broader than stock ownership in the ground terminal owner/operator (as is suggested by the preceding analysis of that Section), the mere fact that a foreign agency does not own the prohibited percentage of stock in the ground terminal corporation does not answer the problem. "Ownership" of the satellites could be a method of achieving control.

It is true that the Commission has decided, for the purposes of the transfer of control provision in Section 310(b), that transfer of mere ownership of the physical equipment of a broadcast station does not per se constitute transfer of control over the licensee. But it is important to state that "ownership" may refer to a whole cluster of interests or any part of them, or indeed, may include none of the usual connotations of ownership. The seller under a conditional sales

⁴³Ibid., A. T. & T. Response, pp. 4-9; Reply, p. 4 and note.

agreement retains ownership in the sense of "legal title." But this is a security interest only, intended to preserve his right to repossess in the event that the financial conditions of the agreement are not met. The lessor under a 999 year lease may retain "ownership" of the property; but clearly the lessee obtains all of the normal incidents of ownership save that of conveying the "title" to a third party.

So, too, an owner of property may convey, assign or donate to another the power to make certain decisions with regard to the property -- who may use it, the character of the use, and the like -- for an extended period of time.

If, therefore, ownership of the satellites is intended to mean simply "legal title" or, arguably, simply the right to participate in the profits deriving from the use of the satellites, that ownership would not seem to amount to "direct or indirect control" over the licensee.⁴⁴

But it is not so clear that foreign interests will be content either with "naked title" to the satellites or with merely participating in the economic return. Even as the United States in part seems to be considering the satellite system as an instrument of foreign relations, so may other governments.

⁴⁴Cf. Yankee Network, Inc., 5 P. & F. RADIO REG. 216 (1949).

There will be important questions about rates and services, and agreements will have to be entered into on these matters and approved by the FCC. There are other questions for decision, and the locus of the control over these decisions may loom significant. A partial list of such questions would include:

1. For what uses shall the satellites be employed?
2. Who will decide when they shall be used for television or radio broadcasting?
3. To what extent shall the satellites be utilized for experimental purposes?
4. Who will decide on the nature of technological changes to be effected in the system?
5. Who will have the responsibility for determining whether, to what extent, and on what terms the research and development are carried on?
6. Who will decide, and on what criteria, the technical-political problem of the locations of ground terminals?
7. Who will decide, and on what criteria, the technical-economic-political questions arising out of the extension of the uses of the system to new countries and areas?

A consideration of the answers to these and other questions of similar character is beyond the scope of this paper.⁴⁵ However, the Presidential policy that all foreign agreements on communication satellites be conducted by or under the supervision of the U.S. Government serves to show the importance of these questions to the United States. It is foreseeable that other governments will adopt a similar attitude and demand a voice in their resolution.

Thus, it is possible that the American ground terminal licensee (and satellite owner or part owner) may be forced to concede a voice in the policy decisions of the system to foreign interests. This could be achieved by the foreign interests through the device of ownership in the satellites and/or through contractual arrangements. Section 310(a)(5) therefore may become highly relevant in the regulation by the FCC of the international arrangements of the American licensee, with the ultimate power of refusing to issue the license in the event the FCC decides that too much control over the policy decisions of the system -- and thereby the U.S. ground terminal licensee -- has been granted to alien interests.

⁴⁵See, for a general discussion of some of these problems, M. L. Schwartz, op. cit.

V. RECOMMENDATIONS

In addition to its general regulatory power, the FCC now has two statutory controls over the relation of foreign interests to a U.S. communication satellite system: Section 308(c) and Section 310(a). So far as the former is concerned, the power seems extensive. So far as the latter is concerned, the FCC is faced with a choice of interpretation:

1. If it were to interpret the restrictions against alien "control" over the American licensee narrowly, e.g., as being limited to stock-voting control, it would be forced to rely upon its general regulatory powers and Section 308(c) for authority over the international arrangements.

2. If it were to interpret the restrictions against "alien control" over the American licensee broadly, e.g., as including alien contractual control over essential policy decisions with regard to such matters as the operations and extensions of the system, it could then preserve to itself the ultimate power to issue or deny the license depending upon its determination of the "public interest."

Whether the foregoing analysis of the particular statutory provisions is accepted or not, official control over matters of such national moment as an international communication satellite system should not rest upon two relatively obscure

provisions of the Federal Communications Act. The difficulties of deducing the meaning of Sections 308(c) and 310(a) of the Federal Communications Act may or may not have been persuasively overcome in this Memorandum. Rather clearly, the original purposes of these sections were quite limited and were aimed at particular situations: in the case of Section 308(c), at requiring foreign cable companies to enter into reasonable arrangements with domestic communications companies; and, in the case of Section 310(a), at prohibiting alien ownership over U.S. communication facilities, while leaving some leeway for U.S. international carriers which were in fact partially owned by foreign interests. That the original purpose of these sections may have been limited does not, of course, mean that they are not to be interpreted as has been set forth in this paper. Indeed, in the absence of any other control power, it would be necessary for the Government to rely upon just such interpretations as have been suggested here in order to exercise the necessary control.

However, there is time to enact legislation which can unequivocally and particularly deal with the problems of foreign participation involved in a communications satellite system. Such legislation should be enacted. It should include provisions dealing with at least these problems:

1. Limitations upon the character of foreign participants;
2. Limitations upon the degree of control over the system accorded foreign participants;
3. Responsibility for the negotiation of arrangements for foreign participation;
4. Location within the U.S. Government of the power to determine the suitability of particular forms of foreign participation or of compliance with the other foreign participation requirements.

Whether this legislation should be part of a broader Act which would treat such matters as domestic participation in the system depends upon the policy decisions with regard to that and similar issues. But at the least, the foreign participation problems should be the subject of new legislation, clarifying the present ambiguities and settling the jurisdictional and substantive problems discussed in this Memorandum.