

ACTION

JOLL 84-0931/001

**Office of Legislative Liaison
Routing Slip**

TO:

	ACTION	INFO
1. D/OLL		X
3. DD/OLL		X
3. Admin Officer		
4. Liaison		
5. Legislation	X	X
6.		
7.		
8.		
9.		
10.		

SUSPENSE

Date

Action Officer:

Remarks:

5 March 84

Name/Date

84-0931/001



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

March 2, 1984

LEGISLATIVE REFERRAL MEMORANDUM

*CJA has
"no objection"
per phone call
to Bill Maxwell
OMB on
3/5/84
RDB*

TO: **Legislative Liaison Officer**
Department of Defense
Department of State
Office of Science and Technology Policy
Federal Communications Commission
General Services Administration
Department of Justice
Department of Agriculture
Central Intelligence Agency ✓
National Aeronautics and Space Administration
National Security Council
Department of Transportation
Department of the Interior

SUBJECT: Commerce proposed testimony for 3/6/84 on H.R. 4836/Land Remote-Sensing Commercialization Act of 1984

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than NOON MONDAY, MARCH 5, 1984. ORAL COMMENTS ARE ACCEPTABLE.

Direct your questions to William A. Maxwell (395-3890), the legislative analyst in this office.

[Signature]
James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: J. Dyer T. Sprehe J. Struthers B. Hughes
 D. Taft A. Donahue P. Szervo

SECRET

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEES:

MY NAME IS WILLIAM P. BISHOP. I AM THE CHAIRMAN OF THE DEPARTMENT OF COMMERCE'S SOURCE EVALUATION BOARD ON CIVIL SPACE REMOTE SENSING (THE "SEB"). I AM PLEASED TO BE HERE TODAY TO TESTIFY ON BEHALF OF THE ADMINISTRATION CONCERNING H.R. 4836, "THE LAND REMOTE SENSING COMMERCIALIZATION ACT OF 1984."

SINCE SECRETARY BALDRIGE AND MY PREDECESSOR, RAY KAMMER, HAVE TESTIFIED TO YOU ON SEVERAL OCCASIONS CONCERNING THE COMMERCIALIZATION OF CIVIL LAND REMOTE SENSING, I WILL NOT DWELL ON THE ACTIVITIES OF THE SEB DURING THE PAST SEVERAL MONTHS, EXCEPT TO SAY THE RFP WAS RELEASED ON JANUARY 3, 1984, AND RESPONSES ARE DUE BY NOON, MARCH 19, 1984. TODAY I WOULD LIKE TO FOCUS MY COMMENTS SPECIFICALLY ON H.R. 4836.

FIRST, MR. CHAIRMAN, LET ME FIRST CONGRATULATE THE COMMITTEES ON THEIR LEADERSHIP REGARDING THIS ISSUE. THE COMMITTEES HAVE, IN H.R. 4836, DEVELOPED AN EXCELLENT BASIS FOR COMMERCIALIZATION. WE APPRECIATE HAVING HAD THE OPPORTUNITY TO WORK CLOSELY WITH YOUR STAFFS ON THIS MATTER, AND WE FEEL THAT IN H.R. 4836, AN EXCELLENT START HAS BEEN MADE.

IT IS THE DESIRE OF THE ADMINISTRATION TO ACHIEVE COMMERCIALIZATION OF CIVIL REMOTE SENSING FROM SPACE AS SOON

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AS POSSIBLE, WHILE MAINTAINING THE U.S. LEAD IN LAND REMOTE SENSING, BOTH OPERATIONALLY AND FROM AN R&D STANDPOINT.

H.R. 4836, WITH SOME TECHNICAL CHANGES WHICH I WILL DISCUSS IN A MOMENT, WILL GO FAR TOWARD ACHIEVING THESE GOALS.

MR. CHAIRMAN, OUR COMMENTS ON H.R. 4836 REFLECT IN LARGE PART THE EXPERIENCE OF THE ADMINISTRATION IN CONDUCTING THE RFP PROCESS OVER THE LAST SEVERAL MONTHS. ONE OF THE LESSONS WE HAVE LEARNED IN THIS PROCESS IS: WE DON'T WANT TO HAVE TO DO IT AGAIN -- AT LEAST RIGHT AWAY. IT IS THEREFORE OF EXTREME IMPORTANCE TO THE ADMINISTRATION THAT LEGISLATION ENACTED BY THE CONGRESS BUILD UPON, AND NOT DISCARD, THE WORK OF THE SEB.

THE RFP PROCESS CONSTITUTES WHAT WE BELIEVE TO BE THE MOST THOROUGH AND EXHAUSTIVE EFFORT TO DATE TO DETERMINE WHICH "NEXT STEPS" IN THE LANDSAT PROGRAM WILL ASSURE CONTINUED U.S. LEADERSHIP IN REMOTE SENSING. IT HAS ALSO BEEN AN IMMENSELY COMPLICATED AND TIME-CONSUMING PROCUREMENT ACTION. IN OUR VIEW, IT WOULD BE EXTREMELY UNFORTUNATE IF THE WORK OF THE SEB WERE TO BE DISCARDED OR REPEATED. IT CERTAINLY WOULD RESULT IN SIGNIFICANT AND COSTLY DELAYS IN THE COMMERCIALIZATION PROCESS, A RESULT WE BELIEVE WOULD BE UNFORTUNATE.

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WITH THESE THOUGHTS, MR. CHAIRMAN, I WOULD LIKE TO OFFER THE FOLLOWING COMMENTS ON H.R. 4836. THESE COMMENTS REPRESENT THE VIEWS OF THE ADMINISTRATION, AND ARE GROUPED AROUND PRINCIPAL ISSUES RAISED BY THE BILL. IN ADDITION TO THESE VIEWS, WE ARE PREPARING A NUMBER OF TECHNICAL COMMENTS AS WELL AS LANGUAGE IMPLEMENTING THE SUGGESTIONS WHICH FOLLOW. I HOPE TO MAKE THESE AVAILABLE TO THE COMMITTEES IN THE VERY NEAR FUTURE.

SCOPE OF THE BILL

FIRST, A WORD CONCERNING THE SCOPE OF THE BILL. THE SHORT TITLE AND FINDINGS REFER TO "LAND REMOTE SENSING", WHILE THE OPERATIVE PORTIONS OF THE BILL APPARENTLY REFER TO BOTH LAND AND OCEAN REMOTE SENSING.

THERE IS NO GENERALLY RECOGNIZED OPERATIONAL CAPABILITY IN OCEAN REMOTE SENSING AT THE PRESENT TIME. INCLUDING OCEAN SENSING WITHIN THE SCOPE OF THE BILL WILL HAVE THE EFFECT OF SPECIFYING THE GOVERNMENT'S CONDITIONS FOR THE COMMERCIALIZATION OF OCEAN REMOTE SENSING LONG BEFORE THE PARAMETERS OF SUCH A SYSTEM - OR THE NEED FOR COMMERCIALIZATION - HAVE BEEN ESTABLISHED. THIS MAY HAVE THE EFFECT OF INHIBITING INNOVATION IN THIS AREA. IT IS THE VIEW OF THE ADMINISTRATION THAT

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THE BILL'S APPLICATION SHOULD THEREFORE BE LIMITED TO LAND REMOTE SENSING.

COMPATIBILITY WITH THE RFP

MR. CHAIRMAN, ONE OF OUR PRINCIPAL CONCERNS, AS INDICATED ABOVE, IS THAT THE BILL DO NOTHING THAT WOULD INVALIDATE THE RESULTS OF THE ONGOING RFP PROCESS. SEVERAL OF THE PROVISIONS IN THE BILL MAY HAVE THIS RESULT AND I WOULD LIKE TO DISCUSS THESE FOR A MOMENT IF I MAY.

REQUIRED MARKETING. SECTION 201(A) OF THE BILL WOULD REQUIRE THE SECRETARY TO CONTRACT FOR THE MARKETING OF DATA GENERATED BY THE CURRENT LANDSAT SYSTEM. WHILE WE ARE NOT OPPOSED IN PRINCIPLE TO THE CONCEPT OF PRIVATE-SECTOR MARKETING OF LANDSAT DATA, THERE IS NO SIMILAR REQUIREMENT IN THE RFP. THUS, IF THE SUCCESSFUL BIDDER IN THE RFP PROCESS DOES NOT UNDERTAKE TO MARKET THE DATA, AN ADDITIONAL PROCUREMENT ACTION WOULD BE REQUIRED FOR THE MARKETING COMPONENT. NOT ONLY WILL THIS PROCUREMENT BE TIME-CONSUMING AND BURDENSOME, BUT IN OUR VIEW, IT WOULD NOT PRODUCE RESULTS COMMENSURATE WITH COST.

BY THE TIME A SECOND PROCUREMENT ACTION WERE COMPLETED, THERE WOULD PROBABLY BE NOT BE MORE THAN 18 TO 24 MONTHS OF USEFUL LIFE REMAINING IN THE LANDSAT SYSTEM. ANY

ACTIVITIES UNDERTAKEN BY A MARKETER ON BEHALF OF THE GOVERNMENT DURING THAT PERIOD WOULD ALMOST CERTAINLY NOT PRODUCE RESULTS JUSTIFYING THE PROCUREMENT EFFORT.

WE WOULD THUS LIKE TO SEE THE LANGUAGE REGARDING THE MARKETING OF LANDSAT DATA BE AMENDED TO GRANT THE SECRETARY DISCRETION IN THIS AREA.

◦ TERM OF THE TITLE III CONTRACT. SECTION 302 OF THE BILL PROVIDES THAT THE CONTRACT ENTERED INTO BY THE SECRETARY UNDER TITLE III SHALL REASONABLY ASSURE THE PROVISION OF REMOTE SENSING DATA FOR A PERIOD OF SIX YEARS, TERMINATING ONE YEAR AFTER THE EXPIRATION OF THIS SIX-YEAR PERIOD. IT IS OUR OPINION THAT THE SIX-YEAR PERIOD CONTEMPLATED BY THE BILL MAY BE OVERLY RESTRICTIVE.

IT IS DIFFICULT TO SPECIFY OR RECOMMEND A MORE APPROPRIATE PERIOD OF TIME PRIOR TO RECEIPT AND ANALYSIS OF ALL THE ANALYSIS OF ALL THE RESPONSES TO THE RFP. HOWEVER, OUR PRELIMINARY FINANCIAL MODELING INDICATES THAT A MORE LIKELY PERIOD FOR SUCCESSFUL CONVERSION TO FULL COMMERCIAL OPERATION WOULD BE EIGHT YEARS RATHER THAN SIX. FURTHER, THE EIGHT-YEAR PERIOD WOULD NOT INCLUDE THE TIME PRIOR TO THE LAUNCH OF THE FIRST COMMERCIAL SATELLITE, WHICH IS LIKELY TO BE THREE TO FOUR YEARS.

THE RFP SETS A CONTRACT PERIOD OF NOT MORE THAN TWELVE YEARS. THE TWELVE-YEAR PERIOD WOULD START WITH THE INITIAL PHASE OF SATELLITE CONSTRUCTION -- NOT WITH THE LAUNCH OF THE FIRST SATELLITE. A CORRESPONDING PERIOD FOR THE CONTRACT DESCRIBED IN TITLE III WOULD THEREFORE BE EIGHT YEARS RATHER THAN SIX, IN ORDER TO BE FULLY CONSISTENT WITH THE RFP.

° TITLE TO LANDSAT DATA. SECTION 202(A) OF THE BILL PROVIDES THAT THE TITLE TO ANY AND ALL DATA GENERATED BY THE LANDSAT SYSTEM SHALL REMAIN WITH THE GOVERNMENT, WHILE PROVIDING THAT THE TITLE II CONTRACTOR BE ENTITLED TO REVENUES FROM THE SALE OF COPIES OF DATA FROM THE SYSTEM.

THIS APPROACH VARIES SOMEWHAT FROM THAT ADOPTED BY THE SEB. THE RFP OFFERS BIDDERS THE OPPORTUNITY TO BID ON THE ENTIRE CURRENT LANDSAT SYSTEM, INCLUDING BOTH THE SPACE AND GROUND SEGMENTS. IF A BIDDER WERE TO PROPOSE TAKING OVER THE OWNERSHIP AND OPERATION OF THE SYSTEM, ACCEPTANCE OF HIS PROPOSAL WOULD APPARENTLY BE PROHIBITED BY THE LEGISLATION AS CURRENTLY DRAFTED.

AS A TECHNICAL MATTER, WE ALSO BELIEVE THAT RETENTION BY THE GOVERNMENT OF TITLE TO THE DATA WOULD REQUIRE A PROVISION IN THE BILL PERMITTING THE GOVERNMENT TO COPY-

RIGHT THE DATA AND LICENSE ITS REPRODUCTION AND SALE BY THE CONTRACTOR. THE RFP AVOIDS THIS REQUIREMENT BY PERMITTING TRANSFER OF TITLE AS WELL AS ASSETS OF THE LANDSAT SYSTEM TO THE PRIVATE SECTOR OPERATOR, IF THIS IS DETERMINED TO BE IN THE NATIONAL INTEREST.

FINANCIAL FLEXIBILITY

MR. CHAIRMAN, IN DRAFTING THE RFP, THE SEB ATTEMPTED TO PROVIDE POTENTIAL BIDDERS WITH THE MAXIMUM POSSIBLE LATITUDE IN STRUCTURING THEIR FINANCIAL PROPOSALS. WE FELT THAT THIS WOULD PERMIT GREATER DIVERSITY AMONG THE PROPOSALS, AND ENCOURAGE CREATIVITY ON THE PART OF THE BIDDERS.

WHILE H.R. 4836 ALSO AFFORDS SUBSTANTIAL LATITUDE TO THE TITLE III CONTRACTOR, IT ALSO CONTAINS RESTRICTIONS WHICH IN CERTAIN CASES ARE INCONSISTENT WITH THE RFP, AND IN ANY EVENT ARE NEITHER NECESSARY NOR ADVISABLE IN OUR VIEW. I WOULD LIKE TO DISCUSS THESE BRIEFLY FOR A MOMENT IF I MAY.

- CAPITALIZATION COSTS. FIRST, SECTION 302(B)(4) OF THE BILL PROVIDES THAT THE CONTRACT ENTERED INTO BY THE SECRETARY UNDER TITLE III OF THE BILL MAY PROVIDE FOR A PAYMENT BY THE SECRETARY TO COVER A PORTION OF THE CAPITAL COST IN PROVIDING REMOTE SENSING CAPABILITY.

END

THIS PAYMENT MAY ALSO BE MADE IN INSTALLMENTS BASED ON PROGRESS OVER THE LIFE OF THE CONTRACT.

WHILE THE ADMINISTRATION HAS NO DOUBT THAT THERE MAY BE COSTS ASSOCIATED WITH DEVELOPING THE CAPABILITY REQUIRED BY THE TITLE III CONTRACT, WE ARE NOT PERSUADED THAT A CAPITAL PAYMENT (OR PAYMENTS, AS THE CASE MAY BE) IS THE ONLY ACCEPTABLE FINANCIAL ARRANGEMENT. AGAIN, WE SIMPLY WISH TO ALLOW BIDDERS THE MAXIMUM LATITUDE IN DEVELOPING THEIR PROPOSALS. IT MAY BE THAT OTHER FINANCIAL VEHICLES, SUCH AS LOANS OR LOAN GUARANTEES, MAY BE PROPOSED. IF SO, WE WOULD LIKE TO BE ABLE TO CONSIDER THEM.

◦ GUARANTEED DATA PURCHASES. SECTION 302(B)(6) OF THE BILL PROHIBITS GUARANTEED DATA PURCHASES BY THE FEDERAL GOVERNMENT. NOW, THE RFP HAS MADE IT CLEAR THAT THE GOVERNMENT WILL NOT ENTER INTO AN EXCLUSIVE DATA PURCHASE ARRANGEMENT. WE HAVE ALSO MADE IT CLEAR THAT THE GOVERNMENT WOULD NOT NECESSARILY AGREE TO A PROPOSAL REQUIRING GUARANTEED PURCHASES.

HOWEVER, A CERTAIN LEVEL OF GUARANTEED PURCHASES MAY BE A COMPONENT OF AN OTHERWISE VERY ATTRACTIVE BID. BIDDERS SHOULD BE PERMITTED THE MAXIMUM FLEXIBILITY IN STRUCTURING THE FINANCIAL ASPECTS OF THEIR PROPOSALS.

FLEXIBILITY WORKS TO OUR ADVANTAGE. SO WE BELIEVE THIS RESTRICTION IS NOT IN THE INTERESTS OF THE GOVERNMENT.

° BETTER TECHNOLOGY. SECTION 302(C)(4) OF THE BILL, WHICH PROVIDES THAT THE CONTRACTOR'S ABILITY TO SUPPLEMENT BASIC DATA GENERATION CAPABILITIES SHALL BE ONE FACTOR IN AWARDING THE TITLE III CONTRACT, ALSO PROVIDES THAT SUCH SUPPLEMENTS WOULD HAVE TO BE PROVIDED AT THE CONTRACTOR'S EXPENSE. WE THINK THIS IS AN UNFORTUNATE PROVISION. IN THE RFP, WE ENCOURAGE BIDDERS TO COME FORWARD WITH CREATIVE PROPOSALS WHICH MIGHT INCLUDE HIGHER-GRADE TECHNOLOGY.

THE REMOTE SENSING MARKET IS AN INTERNATIONAL INDUSTRY IN WHICH THE U.S. WILL HAVE TO BE COMPETITIVE IN ORDER TO SURVIVE. EVEN ^{if} IT COSTS THE GOVERNMENT SOMEWHAT MORE INITIALLY, A PROPOSAL WHICH PROMISES THE DEVELOPMENT OF SUPERIOR SENSING TECHNOLOGIES MAY WELL BE IN THE GOVERNMENT'S LONG-TERM INTEREST, PARTICULARLY INASMUCH AS THE MULTI-SPECTRAL SCANNER (MSS) TECHNOLOGY ADOPTED AS A BASELINE BY THE BILL IS CONSIDERED OBSOLETE BY MANY KNOWLEDGEABLE OBSERVERS. WE WANT TO DO EVERYTHING WE CAN TO ENCOURAGE TECHNOLOGICAL IMPROVEMENTS.

THEREFORE, THESE IMPROVEMENTS SHOULD NOT HAVE TO COME OUT OF THE CONTRACTOR'S POCKET. THEY SHOULD BE FACTORED

INTO THE ENTIRE COST-BENEFIT ANALYSIS WHICH THE SECRETARY MUST CONDUCT.

REBATES. FINALLY, SECTION 303(B) REQUIRES THAT AT LEAST 5 PERCENT OF THE PRICE OF DATA SOLD TO THE GOVERNMENT BE REBATED TO THE TREASURY. AGAIN, WE FEEL THAT THIS PROVISION UNDULY RESTRICTS FLEXIBILITY OF THE BIDDER IN STRUCTURING HIS BID. WHILE REBATES IN CONNECTION WITH GOVERNMENT PURCHASES MAY BE A PERFECTLY ACCEPTABLE WAY TO GO, IT IS NOT IN THE GOVERNMENT'S INTEREST TO REQUIRE THIS ARRANGEMENT. SUCH A REQUIREMENT WILL ONLY NARROW THE RANGE OF CHOICES AVAILABLE TO THE SECRETARY.

LICENSING PROVISIONS

TITLE IV OF THE BILL, DEALING WITH THE LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS, IS NOT A COMPONENT OF THE RFP PROCESS, AND THEREFORE NOT RELATED TO THE SEB'S ACTIVITIES. HOWEVER, I WOULD LIKE TO MENTION TWO ASPECTS OF TITLE IV WHICH CAUSE THE ADMINISTRATION SOME CONCERN.

SECTION 403 OF THE BILL APPARENTLY WOULD AUTHORIZE THE SECRETARY OF COMMERCE TO LICENSE THE CIVIL REMOTE SENSING ACTIVITIES OF OTHER FEDERAL AGENCIES TO THE EXTENT THEY ARE CARRIED OUT IN CONSORTIUM WITH PRIVATE SECTOR PARTIES. WE

BELIEVE THIS PROVISION WOULD CHANGE EXISTING LAW, UNDER WHICH AGENCIES SUCH AS NASA CAN ENGAGE IN JOINT RESEARCH AND DEVELOPMENT WITH PRIVATE INDUSTRY. ALTHOUGH SUCH ENDEAVORS ARE FULLY SUBJECT TO THE REQUIREMENTS OF EXISTING FEDERAL LAW, NO LICENSE FROM THE DEPARTMENT OF COMMERCE IS CURRENTLY REQUIRED. WE SUGGEST THAT THE PURPOSES OF TITLE IV WOULD BE ADEQUATELY SERVED BY LIMITING EXPLICITLY THE LICENSING AUTHORITY OF THE SECRETARY TO OPERATIONAL SYSTEMS.

SECTION 404(B) OF THE BILL REQUIRES THAT THE PROMULGATION OF REGULATIONS AND ISSUANCE OF LICENSES BE CARRIED OUT ONLY AFTER "PUBLIC NOTICE AND HEARINGS IN ACCORDANCE WITH TITLE V OF THE UNITED STATES CODE." WE ARE CONCERNED THAT THIS LANGUAGE MAY BE INTERPRETED AS REQUIRING A FORMAL RULEMAKING PROCESS IN THE PROMULGATION OF REGULATIONS BY THE SECRETARY, AS WELL AS PRIOR TO THE ISSUANCE OF TITLE IV LICENSES. WE ARE OF THE VIEW THAT A FORMAL RULEMAKING IS A FAR MORE COMPLICATED PROCESS THAN OUGHT TO BE REQUIRED IN THESE INSTANCES. WE WOULD THEREFORE LIKE TO SEE THIS PROVISIONS CLARIFIED TO REQUIRE ONLY NOTICE AND COMMENT RULEMAKING IN CONNECTION WITH THE PROMULGATION OF REGULATIONS AND THE ISSUANCE OF LICENSES.

I SHOULD NOTE IN THIS REGARD OUR SUPPORT OF SECTION 403(F) OF THE BILL, WHICH WOULD PERMIT FORMAL ADJUDICATIONS, ON

PETITION, IN THE CASE OF DENIALS OF LICENSE APPLICATIONS,
LICENSE SUSPENSIONS, REVOCATIONS, AND THE LIKE.

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NONDISCRIMINATORY DATA

THE ADMINISTRATION SUPPORTS THE REQUIREMENT OF THE BILL THAT DATA FROM OPERATIONAL SYSTEMS BE MADE AVAILABLE ON A NONDISCRIMINATORY BASIS. NONDISCRIMINATORY DATA ACCESS HAS BEEN INSTRUMENTAL IN PRESERVING U.S. FREEDOM OF ACTION IN THE CONDUCT OF REMOTE SENSING FROM SPACE. IT HAS FOSTERED THE ABILITY OF THE UNITED STATES TO ENGAGE IN GLOBAL RESEARCH AND TO ENJOY UNRESTRICTED ACCESS TO DATA OF ALL AREAS OF THE WORLD.

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SECTION 603 OF THE BILL WOULD HAVE THE EFFECT OF PERMITTING ANY SYSTEM OPERATOR TO SELL SATELLITE DATA UNDER THE CONDITION THAT THE DATA WILL NOT BE REPRODUCED OR REDISSEMINATED BY THE PURCHASER. THE PURPOSE OF THIS PROVISION IS APPARENTLY TO SECURE FOR THE SYSTEM OPERATOR PROTECTIONS AND PROPERTY RIGHTS SIMILAR TO THOSE OFFERED BY THE COPYRIGHT LAWS. WE WOULD SUGGEST THAT, RATHER THAN LEAVE OPEN THE QUESTION OF WHETHER SUCH DATA MAY, IN FACT, BE COPYRIGHTED BEFORE SALE (AND THUS, THE QUESTION OF WHETHER THE SYSTEM OPERATOR'S LEGAL REMEDIES FOR VIOLATIONS MAY BE FOUND IN CONTRACT LAW OR

UNDER THE COPYRIGHT LAWS), THE BILL SIMPLY PROVIDE THAT SYSTEM OPERATORS MAY COPYRIGHT THEIR DATA UNDER THE COPYRIGHT LAWS.

ROLES OF THE DEPARTMENTS OF STATE AND DEFENSE

SECTION 606 OF THE BILL REQUIRES THAT THE SECRETARY OF COMMERCE CONSULT WITH THE SECRETARIES OF STATE AND DEFENSE REGARDING MATTERS INVOLVING NATIONAL SECURITY AND OUR INTERNATIONAL OBLIGATIONS, RESPECTIVELY. HOWEVER, THIS SECTION APPARENTLY VESTS IN THE SECRETARY AUTHORITY TO DETERMINE WHAT ADDITIONAL CONDITIONS SHALL BE IMPOSED ON SYSTEM OPERATORS FOR REASONS OF NATIONAL SECURITY AND INTERNATIONAL OBLIGATIONS. IN OUR VIEW, THIS AUTHORITY RIGHTLY BELONGS WITH THE SECRETARIES OF DEFENSE AND STATE, RESPECTIVELY. WE WOULD THEREFORE SUGGEST AMENDMENT OF THIS SECTION TO ENSURE THAT THE EXISTING AUTHORITIES OF THE DEPARTMENTS OF DEFENSE AND STATE ARE IN NO WAY DIMINISHED BY THE BILL.

OTHER ISSUES

FINALLY, MR. CHAIRMAN, I WOULD LIKE TO MAKE A FEW COMMENTS OF A MORE TECHNICAL NATURE.

RESEARCH AND DEVELOPMENT. CONCERNING THE PROVISIONS OF TITLE V OF THE BILL, WE WOULD SUGGEST THAT SECTION 502(B)

BE MODIFIED TO CLARIFY THAT THE PROGRAM OF APPLICATION RESEARCH AND MONITORING TO BE CARRIED OUT BY THE SECRETARY OF COMMERCE SHALL BE "OPERATIONAL" IN NATURE, WHILE THE PROGRAMS CARRIED OUT BY NASA PURSUANT TO SECTION 502(C) INVOLVE EXPERIMENTAL MONITORING.

SECTION 502(D) OF THE BILL PROVIDES FOR JOINT PREPARATION AND TRANSMITTAL TO THE CONGRESS BY THE ADMINISTRATORS OF NOAA AND NASA OF A REPORT CONTAINING, AMONG OTHER THINGS, A UNIFIED NATIONAL PLAN FOR REMOTE SENSING RESEARCH AND DEVELOPMENT APPLIED TO THE EARTH AND ITS ATMOSPHERE. WE WOULD LIKE TO SEE THIS PROVISION CLARIFIED REGARDING THE LEAD RESPONSIBILITY FOR RESPONSIBILITY OF THIS REPORT. THE ADMINISTRATION WOULD DEFER TO THE CONGRESS ON THE QUESTION OF WHICH AGENCY SHOULD HAVE LEAD RESPONSIBILITIES.

° CAPITAL COSTS IT HAS BEEN SUGGESTED THAT THE MENTION OF LAUNCH SERVICES IN CONNECTION WITH "SUBSTANTIAL ASSISTANCE" IN SECTION 604(A) OF THE BILL COULD POSSIBLY CREATE DOUBT AS TO WHETHER THESE ARE "CAPITAL COSTS" OF THE CONTRACTOR. WE WOULD SUGGEST DELETION OF THIS REFERENCE IN ORDER TO CLARIFY THAT A CONTRACTOR'S CAPITAL COSTS INCLUDE LAUNCH COSTS.

◦ FREQUENCY ALLOCATION. SECTION 605 OF THE BILL ENCOURAGES THE ALLOCATION OF GOVERNMENT AND OTHER CIVIL RADIO FREQUENCIES TO LICENSE HOLDERS BY THE SECRETARY AND THE FEDERAL COMMUNICATIONS COMMISSION. WE RECOMMEND THAT LANGUAGE BE ADDED TO SECTION 605 WHICH REFLECTS THE PRIMARY RESPONSIBILITY OF THE FEDERAL COMMUNICATIONS COMMISSION FOR THE ISSUANCE OF LICENSES FOR THE TRANSMISSION OF RADIO SIGNALS.

◦ REIMBURSEMENT OF ADDITIONAL COSTS. SECTION 606(C)(2) OF THE BILL PROVIDES FOR REIMBURSEMENT TO SYSTEM OPERATORS BY THE GOVERNMENT OF ADDITIONAL COSTS IMPOSED FOR REASONS OF NATIONAL SECURITY OR INTERNATIONAL OBLIGATIONS. THE BILL ALSO APPEARS TO AUTHORIZE REIMBURSEMENT OF "LOST INVESTMENTS". WHILE THE TERM "LOST INVESTMENTS" PROBABLY IS SYNONYMOUS WITH "CAPITAL COSTS", WE WOULD PREFER TO AMEND THIS PROVISION TO CLARIFY THAT THE GOVERNMENT WILL NOT REIMBURSE AN OPERATOR FOR LOST INCOME OR PROFITS. THIS WOULD BE FULLY CONSISTENT WITH THE LONGSTANDING FEDERAL POLICY IN THIS AREA.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE HAPPY TO ANSWER YOUR QUESTIONS AT THIS TIME.