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Office of Legislative Liaison
Routing Slip

TO:	ACTION	INFO
1. D/OLL		✓
3. DD/OLL		✓
3. Admin Officer		
4. Liaison		
5. Legislation	✓	
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SUSPENSE *20 March*
Date

Action Office	[Redacted]	STAT
Remarks:	[Redacted]	

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20 March
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OLL #
84-1050



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

SPECIAL Chrono

March 16, 1984

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LEGISLATIVE REFERRAL MEMORANDUM

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

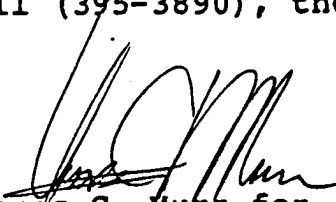
SUBJECT: Commerce proposed testimony for 3/22/84, on S. 1855,
S. 1861, S. 2292

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

4:00 P.M. Tuesday, March 20, 1984. ORAL COMMENTS ACCEPTABLE.

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


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

- | | |
|--------------|---------------|
| cc: S. Gudes | N. Noonan |
| D. Taft | P. Szervo |
| T. Sprehe | B. Hughes |
| A. Donahue | H. Lilienthal |
| R. Landis | |

STATEMENT
OF

WILLIAM P. BISHOP
CHAIRMAN, SOURCE EVALUATION BOARD
FOR CIVIL SPACE REMOTE SENSING

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

MARCH 22, 1984

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS WILLIAM P. BISHOP. I AM THE CHAIRMAN OF THE DEPARTMENT OF COMMERCE'S SOURCE EVALUATION BOARD FOR CIVIL SPACE REMOTE SENSING (THE "SEB"). I AM PLEASED TO BE HERE TODAY TO TESTIFY ON BEHALF OF THE ADMINISTRATION CONCERNING S. 1855, S. 1861, AND S. 2292, TITLED LAND REMOTE SENSING SATELLITE AUTHORIZATION ACTS OF 1983, OR 1984. I DO NOT INTEND TO DWELL ON THE ACTIVITIES OF THE SEB DURING THE PAST SEVERAL MONTHS EXCEPT TO SAY THAT THE RFP FOR COMMERCIALIZATION OF LAND REMOTE SENSING WAS RELEASED ON JANUARY 3RD, 1984, AND RESPONSES WERE RECEIVED ON MARCH 19TH, 1984.

MR. CHAIRMAN, I WOULD LIKE TO PUT ONE POINT CLEARLY ON THE RECORD AT THE OUTSET. IN ORDER TO BE ABLE TO TESTIFY AT THESE HEARINGS AND ANSWER QUESTIONS WHICH YOU MAY ASK, I HAVE DELIBERATELY NOT READ ANY OF THE RESPONSES WHICH WERE RECEIVED BY THE SEB NOR DISCUSSED THEM WITH THE OTHER BOARD MEMBERS. I DO NOT KNOW WHAT THOSE BIDS CONTAIN, AND WILL NOT KNOW UNTIL TOMORROW WHEN I FIRST SEE THEM. THEREFORE, MY DISCUSSION WITH YOU TODAY WILL BE BASED ON INFORMATION DEVELOPED BY THE SEB AND THE LARGER INTERAGENCY TEAM AND ARE IN NO WAY INFLUENCED BY THE CONTENTS OF THE PROPOSALS.

I WOULD LIKE TO THANK THIS COMMITTEE AND THE MEMBERS WHO HAVE INTRODUCED THE THREE BILLS FOR THEIR LEADERSHIP REGARDING THIS ISSUE. THESE BILLS HAVE DEVELOPED THE BASIS FOR A PRACTICAL

APPROACH TO COMMERCIALIZATION. WE HAVE ESPECIALLY APPRECIATED THE OPPORTUNITY TO WORK CLOSELY WITH YOUR STAFFS ON THIS MATTER, AND WE BELIEVE THAT A SOLID START HAS BEEN MADE.

IT IS THE DESIRE OF THE ADMINISTRATION TO ACHIEVE COMMERCIALIZATION OF CIVIL LAND REMOTE SENSING FROM SPACE AS SOON AS POSSIBLE WHILE MAINTAINING THE U.S. LEAD IN LAND REMOTE SENSING AND WHILE HAVING THE PRIVATE SECTOR MAKE MAJOR INVESTMENTS.

THESE BILLS, WITH SOME TECHNICAL CHANGES WHICH I WILL DISCUSS BELOW, ARE AN APPROPRIATE FRAMEWORK FOR DISCUSSION OF HOW THESE GOALS MAY BE ACHIEVED. OUR COMMENTS ON THESE BILLS REFLECT IN LARGE PART THE EXPERIENCE OF THE ADMINISTRATION IN CONDUCTING THE RFP PROCESS OVER THE LAST NINE MONTHS. ONE OF THE LESSONS WE HAVE LEARNED IN THIS PROCESS IS WE DON'T WANT TO HAVE TO DO IT AGAIN; AT LEAST NOT IN THE NEAR FUTURE. IT IS THEREFORE, OF EXTREME IMPORTANCE THAT LEGISLATION ENACTED BY BOTH HOUSES OF CONGRESS AND THE RFP PREPARED BY THE SEB BE CONSISTENT ON SUBSTANTIVE ISSUES. WITH SOME MINOR EXCEPTIONS, I BELIEVE THEY ARE CONSISTENT.

THE PROCUREMENT PROCESS NOW UNDERWAY CONSTITUTES WHAT WE BELIEVE TO BE THE MOST THOROUGH AND EXHAUSTIVE EFFORT TO DATE TO DETERMINE THE NEXT STEPS IN THE PROGRAM TO FACILITATE THE TRANSFER OF LAND REMOTE SENSING OPERATIONS TO THE PRIVATE SECTOR. IT HAS BEEN AN UNUSUALLY COMPLICATED AND TIME CONSUMING ACTION, AND IT IS MY ESTIMATE THAT AT LEAST TWO MONTHS WILL BE REQUIRED FOR THE

SEB TO SUBMIT ITS ANALYSIS AND RECOMMENDATIONS TO SECRETARY BALDRIGE. A NUMBER OF FIRMS SPENT CONSIDERABLE TIME AND CORPORATE FUNDS PREPARING THE RESPONSES TO THE RFP. IN OUR VIEW IT WOULD BE EXTREMELY UNFORTUNATE IF THE WORK OF THE SEB AND THESE PRIVATE FIRMS WERE TO BE DISCARDED OR REPEATED. IT WOULD CERTAINLY RESULT IN SIGNIFICANT AND COSTLY DELAYS IN THE COMMERCIALIZATION PROCESS. I AM VERY PLEASED, THEREFORE, THAT WE ONLY HAVE MINOR CHANGES TO SUGGEST. OF THE THREE BILLS MENTIONED IN YOUR LETTER OF INVITATION, S. 2292 IS THE MOST EXTENSIVE, AND HAVING BEEN INTRODUCED LATER, IS THE MOST COMPLETE. IT APPEARS TO BE THE BEST VEHICLE IN THE SENATE FOR ACCOMPLISHING THE ADMINISTRATION AND CONGRESSIONAL GOAL OF ACHIEVING A COMMERCIAL LAND REMOTE SENSING SYSTEM. THUS, S. 2292 IS THE PIECE OF LEGISLATION WHICH I WILL SPECIFICALLY DISCUSS TODAY.

IN ADDITION TO THESE COMMENTS, WE ARE PREPARED TO DELIVER TO YOUR STAFF TECHNICAL COMMENTS AS WELL AS SPECIFIC AMENDMENT LANGUAGE FOR YOUR CONSIDERATION, WHICH WILL IMPLEMENT THE SUGGESTIONS IN MY REMARKS HERE.

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 INNOVATIONS IN THIS AREA. IT IS THE ADMINISTRATION'S VIEW THAT THE BILLS' APPLICATION SHOULD THEREFORE BE LIMITED TO LAND REMOTE SENSING.

COMPATIBILITY WITH THE RFP AND SUBMITTED BIDS:

ONE OF OUR PRINCIPAL CONCERNS, AS I INDICATED ABOVE, IS THAT LEGISLATION DO NOTHING THAT WOULD CAUSE US TO BEGIN AGAIN OR TO SERIOUSLY DELAY THE PROCESS. SEVERAL OF THE PROVISIONS IN THESE BILLS ARE MORE RESTRICTIVE THAN THE PROVISIONS IN THE RFP. IT IS OUR INTENT IN MAKING THESE SUGGESTIONS TO SEEK TO MODIFY THE LEGISLATION TO A POINT THAT IT IS CONSISTENT WITH THE REQUIREMENTS OF THE RFP. IN SO DOING, WE HAVE TRIED TO BE SENSITIVE TO THE INTENT OF THE LEGISLATION.

SECTION 201, DEALING WITH THE OPERATION AND DATA MARKETING OF THE EXISTING LANDSAT 4 AND LANDSAT 5 SYSTEMS SPECIFIES THAT THE UNITED STATES GOVERNMENT, SPECIFICALLY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), SHALL CONTINUE OWNERSHIP OF THE SYSTEM AND THE UNENHANCED DATA AND HAVE DECISION AUTHORITY

OVER OPERATION. HOWEVER, A CONTRACT WINNER IS ENTITLED TO SET THE PRICES OF AND IN GENERAL MARKET THIS UNENHANCED DATA AS HE OR SHE WISHES. THIS SEEMS TO INTRODUCE SEVERAL CONFLICTS. THE CONTRACT WINNER IS AUTHORIZED AND PERMITTED TO MARKET DATA WHICH IS OWNED BY THE UNITED STATES GOVERNMENT. WE BELIEVE THAT RETENTION BY THE GOVERNMENT OF TITLE TO THE DATA WOULD REQUIRE PROVISIONS IN THE BILL PERMITTING THE GOVERNMENT TO COPYRIGHT THE DATA AND THEREFORE LICENSES REPRODUCTION AND SALES 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. THUS, THE CONTRACTOR OBTAINS TITLE TO THE DATA, IS FREE TO MARKET IT AND IS NOT SUBJECTED TO A COMPLICATION OF THE GOVERNMENT STILL OWNING THE DATA. WE BELIEVE THE BEST WAY TO DEVELOP THE MARKET IS TO LET THE MARKETPLACE DRIVE THE OPERATION. THEREFORE, WE RECOMMEND AN APPROACH IN THE LEGISLATION SIMILAR TO THAT IN THE RFP. ALSO, SECTION 201(c) SPECIFIES THAT NOAA MUST CONTINUE OWNERSHIP OF THE DATA, OWNERSHIP OF THE SYSTEM AND THE AUTHORITY FOR OPERATIONAL DECISION. THE RFP ALLOWS THE POSSIBILITY FOR A CONTRACTOR TO TAKE OVER BOTH OWNERSHIP AND OPERATION OF THE LANDSAT 4/5 SYSTEM. WE RECOMMEND THAT THE BIDDERS BE ALLOWED THE SAME OPPORTUNITY. THE TRANSFER WOULD REPRESENT THE FIRST STEP IN A TRANSITION TO A MARKET DRIVEN SYSTEM.

SECTION 202(a) REQUIRES THAT THE "SECRETARY SHALL" CONTRACT FOR THE MARKETING OF DATA. ALTHOUGH WE FEEL THAT BIDDERS SHOULD HAVE THE OPTION, WE ARE CONCERNED THAT IF NONE ELECT TO MARKET LANDSAT 4/5 DATA, THEN ANOTHER RFP WILL BE REQUIRED. WE SUGGEST THAT "SHALL" BE CHANGED TO "MAY."

SECTION 202(c)(1) SPECIFIES A VERY EXTENSIVE CONGRESSIONAL REVIEW AND APPROVAL PROCESS, WHICH GOES CONSIDERABLY BEYOND THE REQUIREMENTS OF THE "BATEMAN AMENDMENT." IT IS OUR FEELING THAT PASSAGE OF THIS LEGISLATION BY THE CONGRESS, WITHOUT THIS SECTION, WOULD REPRESENT APPROVAL OF THE COMMERCIALIZATION PROCESS. FURTHER SPECIFIC APPROVAL OF THE CONTRACT BY CONGRESS IS INAPPROPRIATE. CONGRESS SHOULD SET THE POLICY FOR A TRANSFER; THE SECRETARY OF COMMERCE SHOULD IMPLEMENT THE POLICY AS THE SELECTION OFFICIAL FOR THE CONTRACT. WE STRONGLY REQUEST REMOVAL OF 202(c)(1).

WE RECOMMEND THAT THE CLAUSE "AND OTHER FACTORS THAT THE SECRETARY OF COMMERCE DEEMS NECESSARY" BE ADDED AS SECTION 203(3), TO BE CONSISTENT WITH THE RFP. THIS ADDITION PERMITS THE INCLUSION OF OTHER FACTORS IN THE ENTIRE EVALUATION PROCESS.

SECTION 303(a)(5) REQUIRES AN EVALUATION INCLUDING "PERCENTAGE OF DATA SALES" TO THE FEDERAL GOVERNMENT. WE ALLOW THIS AS A BID OPTION BUT FEEL THE FINANCIAL PLAN SHOULD BE FLEXIBLE. THUS WE RECOMMEND THE CHANGE OF THE SUBSECTION TO PERMIT OTHER TYPES OF REPAYMENT OF THE FEDERAL INVESTMENT.

SECTION 303(b)(1) SPECIFIES THE SAME CONGRESSIONAL REVIEW OF A CONTRACT DECISION AS I DISCUSSED IN SECTION 202(c)(1). WE ARE OPPOSED TO THIS SUBSECTION FOR THE SAME REASON.

SECTION 305.3 DEALING WITH SALE OF DATA FROM THE FOLLOW-ON COMMERCIAL SATELLITE SYSTEM STIPULATES THAT THE CONTRACT FOR THAT ACTIVITY SHALL NOT PROVIDE FOR ANY GUARANTEED DATA PURCHASE BY THE FEDERAL GOVERNMENT FROM THE CONTRACTOR. THE RFP CLEARLY STATES 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 A GUARANTEED DATA PURCHASE. HOWEVER, WE FEEL THAT FLEXIBILITY IS TO THE GOVERNMENT'S ADVANTAGE IN THIS CASE, AND THIS RESTRICTION IS NOT IN THE BEST INTEREST OF THE GOVERNMENT. A FINANCIAL ARRANGEMENT OF SUPPORT TO THE CONTRACTOR WHICH INCLUDES SOME DEGREE OR TYPE OF GUARANTEED DATA PURCHASE MIGHT BE OF INTEREST BOTH TO THE PROPOSER AND TO THE U.S. GOVERNMENT. WE RECOMMEND THE LESS RESTRICTIVE APPROACH.

SECTION 303.A DESCRIBES A CONTRACT PERIOD WHICH WILL EXTEND FOR A PERIOD OF SIX YEARS, WHILE SECTION 307 SPECIFIES A TERMINATION OF AUTHORITY TEN YEARS AFTER THE DATE OF THE BEGINNING OF A CONTRACT ENTERED INTO UNDER THE PROVISIONS OF THIS TITLE. THERE SEEMS TO BE SOME UNCERTAINTY REGARDING THE INTENDED TIME SPAN, WHETHER 6 YEARS OR 10 YEARS. WE FEEL THAT A PERIOD OF TIME LONGER THAN 6 YEARS, MORE LIKELY AT LEAST 8 YEARS, WILL BE NECESSARY FOR A CONTRACTOR TO REACH THE STATE OF FULL FINANCIAL VIABILITY. THE

TWO TIMES SPECIFIED IN THE LEGISLATION MAY LEAD TO SOME DEGREE OF CONFUSION IN THE AWARDING OF THE CONTRACT. WE PREFER THE LONGER AUTHORITY OF UP TO TEN YEARS.

IN ORDER TO PERMIT FINANCIAL FLEXIBILITY ON THE PART OF A BIDDER, AND TO ELIMINATE A PROCESS WHICH MIGHT JUST TAKE FUNDS FROM ONE FEDERAL AGENCY'S POCKET AND TRANSFER IT TO ANOTHER, WE RECOMMEND THAT THE PHRASE "SUCH AS LAUNCH SERVICES" BE REMOVED FROM SECTION 604.

MR. CHAIRMAN, LET ME CONCLUDE MY PREPARED STATEMENT BY REITERATING WHAT I STATED AT THE OUTSET, THAT THESE THREE BILLS AND IN PARTICULAR THE MORE DETAILED ONE, S. 2292, CONSTITUTE A MAJOR STEP FORWARD TOWARD ESTABLISHING THE LEGAL FRAMEWORK FOR A UNITED STATES COMMERCIAL LAND REMOTE SENSING SYSTEM. WE LOOK FORWARD TO THE PASSAGE OF THIS LEGISLATION BY THE SENATE, SIMILAR LEGISLATION IN THE HOUSE AND THE INITIATION OF THE PROCESS LEADING TO COMMERCIALIZATION OF LAND REMOTE SENSING.

I WOULD BE VERY HAPPY TO ANSWER YOUR QUESTIONS AT THIS TIME. PLEASE BEAR IN MIND THAT I HAVE NOT READ ANY OF THE PROPOSALS AS SUBMITTED, AND THEREFORE WOULD NOT BE ABLE TO ANSWER ANY QUESTIONS DEALING WITH THE DETAILS OF THOSE PROPOSALS.