FORM DS-14
4-1-55

DEPARTMENT OF STATE
WASHINGTON

INTERDEPARTMENTAL REFERENCE

DATE: 1/16/68

REFERRED TO: Mr. James D. O'Connell

RE:

WRITER ☐ HAS ☐ HAS NOT BEEN INFORMED OF THIS REFERENCE

COMMENTS:

Frank Loy asked that I distribute the attached legal opinion to the members of the Task Force's Subcommittee on Foreign Policy. This legal opinion is Tab C to our draft paper of December 14, 1967 entitled "A Preliminary View of Foreign Policy Implications of a Communications Satellite System for United States Domestic Purposes". He also asked me to distribute a copy to Mr. Pierson, Mr. Bowie and Mr. Novak which I have done.

Attachment.

SIGNATURE: Thomas E. Nelson

OFFICE OR DIVISION: Office of Telecommunications

~~CONFIDENTIAL~~

DEPARTMENT OF STATE
THE LEGAL ADVISER

MEMORANDUM January 12, 1968

TO: E - Mr. Anthony M. Solomon

FROM: L - Leonard C. Meeker

SUBJECT: Domestic Communications Satellite System for the United States - MEMORANDUM OF LAW

Your memorandum dated November 29, 1967, asks our opinion whether "the authorization and establishment of a United States commercial satellite system, which would render communication services only for domestic needs and which would not be established by the consortium created by the Agreements dated August 20, 1964 ... would or would not be a breach of the obligations of the United States under the Agreements." We have considered this specific question and also the question -- which we believe to be unavoidably related -- whether such a system can be established consistent with the Communications Satellite Act of 1962.

Our conclusion is that the Interim Agreement of 1964 binds the United States not to establish any separate commercial satellite system (the United States has taken the position that the definitive agreement to be negotiated should explicitly allow such systems). It might be contended that the language of the Interim Agreement is ambiguous in this regard, but if so we feel that any ambiguity is eliminated by the negotiating history, which makes it clear that the United States intended the Agreement to preclude separate

commercial systems and convinces us that the United States and the Europeans had a mutual understanding that the language finally agreed upon did have this effect. As to the Comsat Act, we conclude on the basis of the language of the pertinent sections and the legislative history that the Act precludes any domestic satellite system established to carry conventional commercial traffic, but might be read to permit a specialized alternative system to be established if the President determined that it would serve some particular national interest of overriding importance. To the extent any such specialized system could be regarded as noncommercial, its establishment would not contravene the Interim Agreement.

A. The Interim Agreement

The operative provisions of the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System (TIAS 5646, the "Interim Agreement") do not speak directly to the question whether other satellite systems may be established to provide domestic or international commercial service. However, the Preamble to the Interim Agreement recites that the parties entered into the Agreement

> "Desiring to establish a single global commercial communications satellite system as part of an improved global communications network which will provide expanded telecommunication services to all areas of the world and which will contribute to world peace and understanding;" and

"Believing that it is desirable to conclude interim arrangements providing for the establishment of a single global commercial communications satellite system at the earliest practicable date, ..."

Article I of the Interim Agreement obligates the parties to cooperate to provide for the construction and operation of the space segment of the global system "in accordance with the principles set forth in the Preamble ...." Although the remainder of the Agreement contains no further language shedding light upon the question raised, it appears that the foregoing language does commit the parties to a "single global commercial communications satellite system." The question is therefore whether the commitment in this language is to be interpreted as precluding the parties to the Interim Agreement from establishing any commercial satellite system other than that established under the Agreement. (Although the Agreement is not explicit in this regard, it has been assumed and indeed never doubted that independent national governmental -- noncommercial -- satellite systems are permitted.)

It might be argued that the phrase "single global commercial communications satellite system" means that there shall be only the one global commercial communications satellite system but that other systems of more limited scope may also be put into operation. However, we feel that this phrase is, on its face, more reasonably read as committing the parties to a single commercial system,

worldwide in character, and thus precluding the establishment of other commercial satellite systems, whatever their scope. But the absence from the Interim Agreement of any explicit prohibition against other commercial satellite systems does leave the matter in sufficient doubt to require an examination of the negotiating history as the basis for our conclusion.

We find the negotiating history to be absolutely clear that it was the intent of the United States that the quoted preambulatory language should preclude all other commercial systems and to be reasonably clear that the major European parties had the same understanding.

Formal negotiation of the Interim Agreement began with meetings in London in April 1964 between representatives of the United States and the countries of Western Europe (joined together in the European Conference on Satellite Communications). On the basis of preliminary exchanges of views, the United States and the European Conference each presented a draft agreement for discussion at these meetings. Both drafts included in their Preambles the substance of the first preambulatory passage quoted above ("Desiring to establish a single global commercial communications satellite system ..."), but did not include the repetition of the same phrase, describing the interim arrangements, that appears in the last paragraph of the final Preamble as quoted above.

The original European draft included a proposed Article allowing separate commercial systems. The United States not only opposed its inclusion but subsequently also proposed alternative language to make the agreement clear that separate commercial systems would not be allowed. The absence of such explicit prohibitory language in the ultimate agreement was the result of an agreement at the final plenary conference held in Washington in July 1964, the circumstances of which we feel make clear that both the United States and the Europeans intended the final two preambulatory references to a "single global commercial satellite system" to be interpreted as precluding separate commercial systems.

The prohibition of such separate commercial systems was one of the major elements of the United States position at the plenary conference. The history of the prior negotiations relating to this matter was described in the United States position paper as follows:

> "An early European draft of the intergovernmental agreement contained a provision stating that nothing in the agreement precluded any party thereto from establishing additional satellite systems if required in the national interest or to meet unique governmental needs. The Communications Satellite Act of 1962 was the source of the language. The provision was put in the European draft at the insistence of the French. The clause was objectionable to the United States in that it was interpreted to permit any party to participate in or sponsor a separate commercial communications satellite system. This is an erroneous interpretation of the intent of the Communications Satellite Act and is in conflict with United States policy, reflected

in the Preamble of the Agreement, which favors a single global commercial system. At the drafting session held in London May 25-29 the United States delegation succeeded in rephrasing the clause to make it consistent with our policy. At the last London meeting the United States delegation was informed by the French delegate that unless the clause was dropped from the Agreement he was under instructions to state that his government could not sign. The United States delegation agreed to drop the clause, relying on the provision of the Preamble which referred to the desire of the parties to establish a single global system.

Subsequently the French press carried stories to the effect that France is now free to establish a separate system if it so desires. Accordingly, the United States has proposed two changes in the Agreement ...."

The first change proposed by the United States was an amendment of the last paragraph of the Preamble so as to add the language underlined below:

"Believing that it is desirable to conclude interim arrangements providing for the establishment of a single global commercial communications satellite system at the earliest practicable date. ..." (Emphasis added.)

Also, a new paragraph would be added to the Agreement:

"Each of the Parties to this Agreement agrees that it will not participate in any commercial communications satellite system other than the single global system which is the subject of this Agreement. Nothing in this Agreement shall preclude the creation of additional communications satellite systems if required to meet the unique governmental needs of any of the Parties to this Agreement."

These two changes were, as noted, a part of the United States position for the plenary conference. The United States Delegation had authority to agree to a revision of this language only if such

revisions did not change this position; the position paper referred to the possible necessity of a further "final decision" as to this matter depending upon the strength of the French position.

At the plenary conference, Leo D. Welch, Vice-Chairman of the United States Delegation, explained the United States desire to add the new paragraph quoted above as follows:

> "The United States has no intention of establishing a competing system, and it stands ready now to make a formal commitment to that effect in the form we have proposed for inclusion in the intergovernmental agreement. We cannot invest our resources in the joint development of a system designed to provide services to the entire world and then find that the system is not supported wholeheartedly and exclusively by our own partners. If any of us were to establish a separate commercial system, no matter how limited its scope, it could only be to the detriment of the system intended to be established under the agreements which we are now negotiating, since we are all committed to making that system one with comprehensive global coverage."

The result was that the proposed United States change in the Preamble was accepted by the Europeans and became part of the agreement, but the proposed paragraph explicitly precluding separate commercial systems was withdrawn. The summary record of the third plenary session of July 23, 1964 records the crucial colloquy as follows:

> "Mr. Ortona explained that the European Conference had given considerable thought to these proposed revisions. He stated that Item 1 of Doc. 5, the amendment to the Preamble of the Agreement, was acceptable to the European Conference. He wanted to emphasize that all should work with the full understanding that it is intended that there will be only a single global commercial satellite system. With this in mind he suggested that the revision proposed by Item 2 of Doc. 5 was not necessary. He would, however, reassure the conference that it was the complete conviction of the European Conference that they would not participate in any other system other than the one which everyone is now working toward.

He, therefore, asked whether the U.S. Delegation would withdraw its proposed addition of paragraph (c) of Article I of the Agreement.

M. de la Grandville (France) stated that his country fully supported the views expressed by Mr. Ortona.

Mr. Leo D. Welch (U.S.) stated that in view of the expressions of the Italian and French Delegates, the United States would withdraw its proposed addition (Item 2, Doc. 5) and only add the paragraph proposed by Item 1, Doc. 5 to the Preamble of the Agreement."

We think the foregoing discussion makes it entirely clear that it was the position of the United States that the agreement should preclude the parties from establishing any separate commercial satellite system and allow separate systems only "for unique Governmental uses." We believe that the statements of Ambassador Ortona and of the French delegate at the July 1964 conference indicate that the European Conference essentially accepted the United States position. Moreover, the United States Delegation evidently regarded the result of the conference as consistent with its instructions not to relinquish the prohibition on separate commercial systems without further authority.

Therefore, we believe that the phrase "single global commercial communications satellite system" as used twice in the Preamble to the Interim Agreement states an agreement by the parties not to establish separate commercial satellite systems.

B. The Communications Satellite Act of 1962

The Comsat Act provides for the establishment of the Comsat Corporation and specifically authorizes it, in section 305, to establish and operate, either itself or in conjunction with foreign governments or business entities, "a commercial communications satellite system." There is nothing in the Act itself that either specifically authorizes any other system than that which has been set up by INTELSAT or provides any specific procedure whereby the FCC or any other arm of the Government may authorize the establishment of any other system. There is no doubt under the Act that the Government itself may establish other systems consistent with the requirements of the Act pursuant to the procedures normally followed for the establishment of Government communications systems. The question remaining is whether the FCC can, consistent with the Act, authorize such additional commercial systems in the exercise of its authority under the Communications Act of 1934, or whether such a system may be otherwise authorized.

The Comsat Act contains only two provisions that are directly relevant to the question at hand. First, the statute's declaration of policy and purposes reads as follows in section 102(d):

> "It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest."

Second, section 201(a)(6) provides that "In order to achieve the objectives and to carry out the purposes of this Act -- the President shall --

> "take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest;"

Two things are clear from this statutory language: First, the international satellite system contemplated by the Act can be used for domestic United States communications when and if that becomes feasible. Second, by a necessary negative implication from the final clause of each section, a system other than the international system can be established consistent with the Act only if that system is "required to meet unique governmental needs" or is "otherwise required in the national interest." Since the first of these phrases clearly would not authorize a commercial system in any ordinary sense, and since there is no other pertinent language in the statute, the statute allows the establishment of an independent satellite system to carry commercial traffic only if

such a system can be regarded as "required in the national interest." The question thus becomes one of interpretation of this crucial phrase in the light of the overall statutory scheme and, if need be, the legislative history of the Act.

It is our view that -- although the language of the Act is not absolutely clear -- the quoted sections should most reasonably be read as not contemplating the establishment of additional satellite systems to carry conventional commercial traffic. And the legislative history makes it quite clear that this is the proper reading.

Section 214 of the Communications Act of 1934 provides that before conventional common carrier facilities can be established the FCC must first determine that the "public convenience and necessity require or will require" the establishment of such facilities. This criterion is, of course, common to a great variety of statutes governing authorizations in regulated industries. It seems to us logical that, if Congress had intended to allow separate satellite systems to be established for the same purposes as conventional communications common carrier systems, it would have used this conventional language. But Congress did not. Rather, it used the phrase "required in the national interest", which carries a wholly different set of connotations relating to matters of important governmental activity. Moreover, the fact that the other sections of the Act referring specifically to the duties of the FCC with respect to the international system (sections 201(c)(7), (8), (9) and (10); 304(b) and (f); 401(c)(ii)) do direct

the FCC to apply its conventional standard of "the public interest, convenience and necessity" indicates that the phrase "required by the national interest" was deliberately intended to have a special meaning.

Thus, we feel that the carriage of ordinary commercial traffic is not a kind of activity that would be "required in the national interest" in the normal sense of those words as used in the statute. We recognize that during the 1964 negotiations the United States Delegation apparently felt that the similar language proposed in the European draft of the Interim Agreement would allow separate commercial systems. But the meaning that such language might be given in an international agreement is not necessarily the same as the meaning it would have in the context of a well developed framework of United States domestic law. In fact, the United States delegation took the position in the negotiation that the United States statute did not allow separate commercial systems and negotiated on that basis. If anything, this reinforces our interpretation of the Act. Though subsequent conduct by the Executive obviously is not controlling with regard to interpretation of Congressional intent, we think such conduct can serve to reinforce other evidence of intent particularly when, as here, a substantial part of the pertinent statutory language was originally drafted by the Executive.

At the very least, the statutory language puts a burden on anyone proposing the establishment of any kind of nongovernmental satellite system to show that Congress' language was intended to allow such a system. By clear negative implication the Act precludes any satellite system not within the scope of the two quoted phrases. We feel that the legislative history is quite clear that in making what amounts to exceptions to a general prohibition Congress had in mind only governmental systems, and that the purpose of the "national interest" phraseology was to permit governmental systems to carry traffic for which there is something less than a "unique governmental need" -- for example, USIA program material. There is no indication of any substance in the legislative history that Congress had any intention of allowing the establishment of separate commercial systems, and indeed there are substantial indications of a specific intent to reserve to itself any possible future authorizations of additional commercial systems. Because of its length, our analysis of the legislative history is appended hereto as a separate memorandum.

Our interpretation of sections 102(d) and 201(a)(6) of the Comsat Act is reinforced by a general view of the Act as a whole. We regard the Act as establishing a comprehensive legislative scheme to govern the entire field of United States commercial

satellite activities. The fact that this comprehensive statute has no affirmative provision specifically empowering the FCC to authorize any commercial satellite system indicates very strongly that the comprehensive scheme contemplated by Congress excluded any such system other than the INTELSAT system, which the Act itself authorized. Any authority of the FCC to permit the establishment of additional systems would have to be derived from its general powers under the Communications Act of 1934. But section 401 of the Comsat Act states explicitly that it shall prevail over the Communications Act of 1934 in case of any inconsistency. It appears to us that it would be inconsistent with the scheme of the Comsat Act were the FCC to assert any authority under the Communications Act of 1934 to allow additional commercial satellite systems.

* * *

We thus conclude that neither the Comsat Act nor the 1964 Agreements would permit the authorization of any separate United States commercial satellite system. However, we do feel that a possible alternative approach might be taken that might satisfy at least some of the goals that have been put forward in the pending FCC proceeding.

Although we conclude that ordinary commercial use would not justify a separate satellite system as "required in the national

interest" within the meaning of the Comsat Act, it might well be argued that certain types of nongovernmental traffic are of such special importance that their carriage on favorable terms is a matter "required by the national interest." Specifically, it might be said that free interconnection of educational television stations is a matter of such overriding national interest; one might go on to argue that a domestic satellite system that in effect finances such free carriage by the carriage of commercial traffic is similarly justified. (We do not, however, feel that it could reasonably be argued that the mere fact that the proceeds of carrying commercial traffic would be used for ecucational television make the system one required by the national interest, since money is obviously available for such purposes from other sources.) Alternatively, such a system might carry both educational and governmental traffic.

Such a possible approach would still run into the problem that the Act seems not to leave any procedure for authorizing nongovernmental satellite systems. However, the Act might well be interpreted as giving the President, under section 201(a)(6), the authority to determine not only the extent to which the Government should use the INTELSAT system or should establish independent systems for its own uses but also whether or not any nongovernmental purposes fall within the category that would qualify a satellite system as "required in the national interest."

To the extent that any such special satellite system did not carry ordinary commercial traffic, it would seem not to be inconsistent with the international Interim Agreement, since the system would then not be a commercial satellite system. A more serious, though perhaps not insurmountable, problem would be raised if any such system financed its basic educational purpose by the carriage of commercial traffic, but it might still be argued with some plausibility that the system remained a "noncommercial" one fundamentally.

UNCLASSIFIED

THE LEGISLATIVE HISTORY OF SECTIONS 102(d) AND 201(a)(6) OF THE COMMUNICATIONS SATELLITE ACT OF 1962

A. Introduction of the Legislation

In February 1962 President Kennedy submitted a proposal to the Congress calling for the establishment of a privately owned communications satellite corporation. The Administration proposal was introduced in the Senate as S. 2814 and in the House as H.R. 10115, the texts of the two bills being identical. The texts of the two relevant sections were as follows:

> Section 102(d). It is not the intent of Congress by this title to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.
>
> Section 201(a)(6). [The President shall] take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes which do not require a separate communications satellite system to meet unique governmental needs;

The Senate Aeronautical and Space Sciences Committee held hearings on S. 2814 and agreed, on March 28, 1962, to report the bill favorably with a number of amendments, none of which affected either of the two sections set forth above. S. 2814 was then referred to the Senate Commerce Committee for additional consideration. On April 2, 1962, Representative Oren Harris introduced H.R. 11040, identical in language to S. 2814, as favorably reported by the Senate Aeronautical and Space Sciences Committee.

B. Amended and Passed by the House

In early May, the Harris bill was taken up on the floor of the House of Representatives. During the debate Congressman Harris

offered an amendment to section 102(d) which read as follows:

> "(d) The Congress reserves to itself the right to provide for additional communications satellite systems as required to meet unique governmental needs or if otherwise required in the national interest."

In explaining this amendment to the House, Congressman Harris stated that the amendment had been suggested by the Speaker as a positive, rather than a negative, approach to the question of additional satellite systems. A copy of the complete text of Congressman Harris' remarks in presenting this amendment is attached hereto.

Although the language of the amendment evidently differed from that of the original version in requiring specific further Congressional approval for any additional governmental system, it appears from Congressman Harris' remarks and from the lack of any vocal opposition that the House did not regard this difference as significant.

C. Amended by the Senate Commerce Committee

H.R. 11040 as passed by the House on May 2, 1962, included the language of section 102(d) as amended by Congressman Harris. In this form, the bill was submitted to the Senate and referred to the Senate Commerce Committee. The Senate Commerce Committee amended section 102 (d) to read as it did in the final enactment. This language is as follows:

> "(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest." (emphasis supplied).

Thus, the Committee rejected the House amendment and returned to the original version, adding the underlined language.

In a letter to Senator Magnuson, Chairman of the Commerce Committee, the General Counsel of the Department of Defense discussed the differing language of H.R. 11040 and S. 2814 as follows:

> "Of special importance to the Department of Defense is the recognition [in the provision of S.2814 parallel to section 102(d) of the Comsat Act] that it "is not the intent of Congress by this title to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest." A similar provision in H.R. 11040, as passed by the House, reads: "The Congress reserves to itself the right to provide for additional communications satellite systems if required to meet unique governmental needs or if otherwise required in the national interest." It was explained in the floor debate that this was intended to state the same thought as the language in S. 2814, but in a positive manner. The Department of Defense favors the language in S. 2814 and the intent of the language in H.R. 11040. This provision would make clear that the development and operation of a communications satellite system for national security needs, such as the ADVENT program, would in no way be affected by the establishment of the commercial system."

This comment suggests that the Department of Defense, like the House, did not consider the general intent of the provisions of the two bills to be different, and was concerned only to insure that it could proceed with establishment of a military comsat system without seeking further Congressional action.

With regard to the change in the language adopted by the House, the Senate Commerce Committee Report stated only the following:

> Subsection (d) originally read that it is not the intent of Congress to preclude the creation of additional communication satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest. The committee amended this subsection to provide also that nothing in this act shall preclude the use of the system for domestic communication services where consistent with the provisions of the act. This clarification was made to avoid any possible inference that may be drawn from the other provisions of the bill that Congress had made a policy determination that use of the system be limited to international communications. While it is unlikely that the system will be usable initially for domestic services in the United States because of technical and economic limitations, it is conceivable that eventually use of the system for domestic services may become feasible and entirely consistent with the act.

Addition of the language regarding domestic services apparently resulted from the concern by members of the Commerce Committee that there be communication satellite facilities available for both non-unique Governmental and commercial domestic traffic. This view was reiterated by Senator Pastore during Senate debate when he stated that "public benefits ... may eventually become possible through the extension of the system from international to domestic services when technically and economically feasible." (108 Cong. Rec. 15819, August 17, 1962). The foregoing suggests rather strongly that the Commerce Committee did not anticipate establishment of a separate satellite system for domestic commercial traffic.

The Committee gave no explanation of its reason for rejecting the 102(d) language in the bill passed by the House. However, the change was probably made to accommodate the view of the Department of Defense that further Congressional authorization should not be required for a separate governmental satellite system. There is no

indication that the Committee had any disagreement with the House position that further Congressional authorization should be required for any separate commercial satellite system.

D. Considered by the Senate Foreign Relations Committee

Before the bill as reported by the Senate Commerce Committee was debated on the floor of the Senate, it was referred to the Senate Foreign Relations Committee. The deliberations of that Committee reflect considerable concern on the part of members of the Committee that to transmit USIA programs on the commercial system might be more expensive for the government than establishment of a government-owned system, and indicate that section 102(d) was regarded as designed to cover just this kind of problem. In this regard, the following colloquy between Senator Lausche, a supporter of the legislation, and Edward R. Murrow, Director of the USIA, is of interest:

THE ESTABLISHMENT OF ADDITIONAL COMMUNICATIONS SATELLITE SYSTEMS

Senator Lausche: ...

Now, in the same section in subparagraph (d) it is stated:

> It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude--
>
> Now pay attention especially --
>
> the creation of additional communications satellite systems if required to meet unique governmental needs or if otherwise required in the national interest.

That means that if the national interest and the governmental needs required, it is not intended to preclude the establishment of such services.

Now, with that as the premise, don't you now have governmental facilities that provide services operated by the Government to care for unique conditions?

Mr. Murrow. This would be my interpretation of the language in the bill.

Senator Lausche. And doesn't it seem that those who prepared this bill foresaw all of these dangers of which you speak, and, therefore, wrote in the bill that if the situation requires it, an additional satellite communications system may be established?

Mr. Murrow. That is my understanding, Senator Lausche. (Hearings, p. 144).

A number of other portions of Mr. Murrow's testimony (see e.g. Hearings, pages 145 to 148 and pages 164-165) support the view that the "additional systems" language was intended both by the Congress and by the Administration to refer only to additional systems established by the government for governmental traffic. And other portions of the hearings indicate that the focus was solely on the right of the government to establish systems for its own use. (E.g., Hearings pp. 204, 301-03). We have found no indication in the report or hearings of the Foreign Relations Committee -- or in those of the Commerce Committee -- of any intention that section 102(d) should be read to permit any commercial satellite system other than the one specifically provided for in the Act.

E. Debated and Passed by the Senate

The Senate enacted section 102(d) as it had been amended by the Commerce Committee. Our review of the floor debates has revealed

no suggestion of any view that the language adopted was intended to permit additional commercial satellite systems to be established without further Congressional action and indicates, again, that the Senate's only concern was with governmental systems.

Senators Church and Lausche proposed on the floor an amendment to section 201(a)(6) to add to that section the reference to additional systems required in the "national interest" found in section 102(d). Senator Sparkman had suggested the amendment during the Hearings to Secretaries Rusk and McNamara as being intended simply to make the language of the two sections conform. (See pp. 180-1 and p. 302), and neither Secretary had expressed any objection. In presenting this conforming amendment to the Senate, Senator Church declared:

> " . . . we make certain that the door is left open for the Government to establish an alternative system, if experience should show that the national interest requires it . . . . The language of the bill . . . would require that the Government use that [single] instrumentality [which would own and operate the communication satellite system]. The Government would be deprived of the right to set up any kind of alternative system except for 'unique Governmental purposes.' (emphasis supplied)
>
> . . . I have tried to [point out] in my introductory statement that the testimony of the Secretary of State and Secretary of Defense . . . makes it perfectly clear that the term 'unique governmental need' is very narrowly confined to highly classified functions. Therefore, the bill in its present form fails to carry out the declared policy and purpose which appear in the preamble of the bill." (108 Cong. Rec. 15208, August 11, 1962)

In subsequently speaking for his proposed amendment to section 201(a)(6), Senator Church again referred to section 102(d) and stated:

> "The wisdom of this last clause 'or if otherwise required in the national interest' is perfectly apparent. We cannot now foretell how well the corporate instrumentality established by this act will serve the needs of our people. If it should develop that the rates charged are too high, or the service too limited, so that the system is failing to extend to the American people the maximum benefits of the new technology, or if the Government's use of the system for Voice of America broadcasts to certain other parts of the world proves to be excessively expensive for our taxpayers, then certainly this enabling legislation should not preclude the establishment of alternative systems, whether under private or public management. And just as certainly is that gateway meant to be kept open, just in case we should ever have to use it, by the language to be found in the bill's declaration of policy and purpose to which I have referred." (108 Cong. Rec. 16362, August 13, 1962)

To be sure, the latter speech by Senator Church might in part be interpreted as contemplating an alternative "private" or commercial system. But we do not feel that this isolated reference, when compared with the clear statement, quoted above, which Senator Church made when introducing the amendment, casts significant doubt on the otherwise consistent pattern of the legislative history. Even the latter language is not necessarily inconsistent with the view that the Congress itself would make the judgment whether or when an alternative private system would be established. It certainly does not indicate that he contemplated such an alternative system could be established by simple act of the FCC.

Senator Lausche, the co-sponsor of the amendment, explained it as follows:

> "The report of the Committee on Commerce described the language with reference to the unique governmental needs to mean that the Government, through the Department of Defense, might establish its own satellite system to supply the unique needs. The unique needs are the coded messages, the secret messages.
>
> The amendment which has been offered by the Senator from Idaho and myself provides that the Government may set up its own satellite communications system to supply unique needs, which means the transmission of coded and secret messages, and may set up a separate satellite communications system when the national interest requires it." (Emphasis supplied) (108 Cong. Rec. 15335, August 13, 1962)

We think the foregoing discussions indicate clearly that the Senate intended the phrases "unique governmental needs" and "national interest" in sections 102(d) and 201(a)(6) to refer only to security and non-security government requirements, respectively. Thus, the Senate does not appear to have contemplated establishment of an additional private system for ordinary commercial traffic under authority of the Comsat Act.

F. Final Action in the House

The legislation as passed by the Senate was then reconsidered and adopted by the House with a minimum of debate. In presenting the Senate bill to the House, Congressman Harris declared that the Senate had made "numerous small changes" in the bill as passed by the House, and presented a detailed analysis of these changes. The portions of the analysis referring to sections 102(d) and 201(a)(6) are set out below:

Section 102(d): As passed by the House, this subsection provides that the Congress reserves to itself the right to provide for additional communications satellite systems if required to meet unique governmental needs or if required in the national interest. The Senate added a provision that it is not the intent of Congress by this act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this act. Conforming changes were made by the Senate in several sections of the bill.

Section 201(a)(6): As passed by the House, this paragraph requires the President to take all necessary steps to insure the availability and utilization of the communications satellite system for general governmental purposes except where a separate system is required to meet unique governmental needs. As passed by the Senate, this paragraph requires the President to take all necessary steps to insure such availability and utilization except where a separate system is required to meet unique governmental needs or is otherwise required in the national interest. (108 Cong. Rec. 17672, August 27, 1962).

It should be noted that in discussing section 102(d), Congressman Harris referred to the Senate's having "added" the language referring to use of the system for domestic communications but made no mention of any substantive difference between Senate and House versions with regard to the rest of the language of the section. (108 Cong. Rec. 16606, August 27, 1962).

It thus appears that the House, in adopting the Senate version, thought that the effect would not be materially different from the position it had previously taken that additional satellite systems should not be allowed without further Congressional action. It is understandable that the House might have regarded the allowance of separate governmental systems as not materially inconsistent with its earlier position, but it is inconceivable that it could have regarded the allowance of separate commercial systems as consistent

Remarks of Congressman Harris in introducing version of Section 102(d) adopted by House (108 Cong. Rec. 7523-24, May 2, 1962).

Mr. HARRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment to the committee amendment offered by Mr. HARRIS: Page 19, strike out lines 22 through 25 and insert the following:

"(d) The Congress reserves to itself the right to provide for additional communications satellite systems if required to meet unique governmental needs or if otherwise required in the national interest."

Mr. HARRIS. Mr. Chairman, this is an amendment suggested by our distinguished Speaker of the House with whom I conferred on this legislation concerning two or three matters that we thought would strengthen it. I have not had an opportunity to discuss it with the committee, but paragraph (d) in the committee bill is a provision that was included at the outset and had to do with reserving the right to the Government to provide an additional system should it be determined in the public interest. But as the Clerk read a moment ago, it is approached in a negative way. In other words, as originally proposed, I assume at the council level in the administration, or somewhere along the line, I am not sure just where, this was a provision in various proposals and the committee did not disturb it. But it was agreed that it was not the intent of the Congress by this act to preclude the creation of an additional communication satellite system or systems, and so forth. I thought the suggestion made by our distinguished Speaker was very good, that we should take a positive rather than a negative approach.

The amendment, therefore, is that that Congress reserve to itself the right to provide an additional communications satellite system if required to meet unique governmental needs or if otherwise required in the national interest.

It is a positive approach instead of a negative approach.

The CHAIRMAN. The question is on the amendment to the committee amendment.

The amendment to the committee amendment was agreed to.