FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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June 16, 1976

IN REPLY REFER TO:

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The Honorable Warren G. Magnuson
The Honorable Abe Ribicoff
The Honorable James B. Pearson
The Honorable Charles H. Percy
C/O James M. Graham, Esq.
Staff Counsel for Regulatory Reform
3308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators:

This is in reply to your joint letter of April 26, 1976, asking for information and views on various conflict of interest matters as they relate to members of the Commission.

Members of the Commission are subject to the conflict of interest provisions of 18 U.S.C. §§202, 203, 205, 207, 208 and 209, and 47 U.S.C. §154(b); Executive Order 11222, May 8, 1965; and Civil Service Regulations, 5 CFR Part 735. I am enclosing for your information a copy of Part 19 of our regulations (Employee Responsibilities and Conduct), which parallels the Civil Service Commission regulations. Except as specifically provided therein, however, Part 19 does not apply to members of the Commission. Requirements pertaining to former Commissioners and employees are set out in Section 4(b) of the Communications Act (47 U.S.C. §154(b)) and Section 1.25 of our rules, (47 CFR §1.25).

Insofar as parts I(a)-(d), (g), of your questionnaire are concerned, the Commission has long taken the position that the requirements of Section 4(b) of the Communications Act (47 CFR §154(b)) are overly broad and unrealistic. Section 4(b) prohibits Commission members and employees from having a financial interest in various types of communications related enterprises and from owning stock in any corporation subject to any of the provisions of the Communications Act. Because practically every segment of the American economy now uses radio, and is, therefore, subject to the licensing provisions of the Communications Act, it is possible that ownership in virtually any common stock could be construed to be a violation of section 4(b). The Commission has requested that Congress clarify

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this area of the law on several occasions but, as yet, no action has been taken. For your information I am enclosing a copy of the Commission's proposed amendment to Section 4(b) which was introduced in the 94th Congress as S.2846. Additionally I am enclosing a portion of my statement of January 21, 1976 before the Subcommittee on Communications of the Senate Committee on Commerce addressing this matter.

In response to question I(e), the Commission has had little experience in dealing with a blind trust mechanism. Because of the strict prohibitions of Section 4(b) the blind trust is not presently utilized by employees of the Commission. In the abstract, if Congress wished to adopt legislation, I am not predisposed against blind trust arrangements if properly designed and regulated. In fact, it could be of assistance to persons with wide holdings who wish to enter public service.

In question I(f) you inquire as to whether persons with backgrounds in the regulated industries should automatically be excluded from appointment. As you know, the final decision as to who is appointed to the Commission rests with the President in conjunction with the advice and consent of the Senate. I, personally, oppose any legislation which would restrict the right of the President and the Senate to secure the best, most capable persons available to serve on the Commission. In a balanced context, I believe that some exposure to the industry to be regulated can be more of a plus than a minus. For example, Mr. James H. Quello, who presently sits on the Commission, has had a great deal of experience in broadcasting. On numerous occasions in dealing with broadcasting matters Commissioner Quello's expertise and background has been of value to the other members of the Commission with less practical experience in this area. Overall, the selection decision is a complicated one, and I believe the President and the Senate should be given as much latitude as possible in selecting the persons best able to serve in the public interest.

With regard to Part II of your questionnaire, generally we have found the present post-agency procedures to be satisfactory, and I have no specific changes to the present system to offer. See Section 4(b) of the Communications Act (47 U.S.C. 154(b)); 18 U.S.C. §207; 47 CFR §1.25. However, in this context, I have been informed that S.3308, which recently passed the Senate, would amend Section 4(b) - to provide that a former Commissioner could not represent any person before the Commission in a professional capacity for a period of two years after termination of service on the Commission. This bill not only raises the present restriction on Commissioner's from one year to two years but eliminates the provision in existing law which makes it inapplicable to those who have served the full term to which appointed.

Commissioner Glen O. Robinson has addressed himself to the questions raised by this provision in the bill, and since I am in agreement with his position I am enclosing a copy of a letter he wrote on the subject to Mr. Ward H. White, Minority Counsel, Subcommittee on Communications, Committee on Interstate Commerce of the Senate. Commissioner Robinson points out that the proposed restriction on future employment would discourage especially well-qualified persons from serving as Commissioners. I agree with this assessment; it seems unreasonable to me to prohibit a person from practicing his profession in an area in which he has spent a great deal of his career and has expertise. However, if the two year law is to be adopted, I believe the proposed legislation should be amended to apply the new law to members who are appointed after its effective date. It seems only fair to hold present Commissioners to the standards of the law under which they entered Commission service, and to hold future Commissioners to the standards of the future law.

Additionally, with regard to post-agency employment, the Commission recently had occasion to deal with 18 U.S.C. §207 and Canon 9-3 and Ethics Opinion 342 of the American Bar Association in a case which raised general questions as to the disqualification of a law firm on the ground that a former FCC Chairman had joined the firm. Since the matter is still subject to possible reconsideration by the agency, I will merely enclose a copy of the decisions for your review.

Finally, with respect to conflict of interest enforcement mechanisms, the Commission operates on a complaint and referral basis. Any complaints we might receive concerning pre-service conflict of interest of Commissioners would be referred to the Civil Service Commission. Complaints we receive concerning post-service conflict of interest of Commissioners would be referred to the Justice Department. Initially in both cases the complaints would be handled by the Commission's Office of General Counsel. As far as we have been able to determine there have been no such complaints filed during the last three years.

I trust that the foregoing has been responsive to your inquiry. If I may be of further assistance in this matter, please contact me again.

Sincerely,

Richard E. Wiley

Richard E. Wiley
Chairman

Enclosures